

S **S235735**

**IN THE
SUPREME COURT OF CALIFORNIA**

RAND RESOURCES, LLC et. al.,

Plaintiffs and Appellants,

v.

CITY OF CARSON, et. al.,

Defendants and Respondents.

SUPREME COURT
FILED

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Deputy

AFTER A DECISION BY THE COURT OF APPEAL, SECOND APPELLATE
DISTRICT, DIVISION ONE CASE No. B264493

2nd

PETITION FOR REVIEW

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ISSUES PRESENTED

Following the improper filing on November 17, 2014, by Rand Resources LLC (Rand) of a complaint, even though it was a suspended corporation as it had been for nearly two years before and then filing a First Amended Complaint (FAC) which now included a new Plaintiff, Carson El Camino LLC (El Camino) who solely derived its rights as alleged in the FAC as an assignee by suspended Rand, Respondents Leonard Bloom and U.S. Capital LLC. (collectively referred to as Bloom) filed an Anti-Slapp Motion pursuant to *Code of Civil Procedure* 425.16. Bloom challenged the three causes of action alleged against him which were for 4) Fraud; 5) Intentional Interference with

Contract; and 6) Intentional Interference with Prospective Business Advantage (which are misnumbered as 3rd 4th and 5th causes of action in the FAC).

On May 7, 2015, the Trial Court found that “an action for breach of an exclusive commercial development with a public entity (containing causes of action for inducing breach of contract, intentional and negligent interference and Business and Professions Code section 17200) is subject to anti-SLAPP on the basis of rights of petition and free speech in connection with a public issue.” *Tuchscher Development Enterprises Inc. v. San Diego Unified Port District*, 106 Cal. App. 4th 1219, 1232-11235 (2003).”

The Trial Court further determined “[a]s stated in *Tuchscher*, communications involving the proposed development of such commercial property fall into the ‘matter of public interest’ portion of the [anti-SLAPP] statute and, as such, they need not be made in connection with an issue under consideration or review by a legislative, executive, or judicial body. *Code of Civil Procedure section 425.16 (e)(4)*; *Id.* 106 Cal App 4th at 1233; *Ludwig v. Superior Court*, 37 Cal App 4th 8, 17 (1995). Therefore both these defendants meet their initial burdens and the burden shifts to the Plaintiffs.”

In a published opinion, the Court of Appeal reversed. The Opinion only addressed the first “prong” of section 425.16. In doing so however the Opinion misapplied section 425.16 by narrowly and incorrectly focusing on the premise that “[t]he identity of the City’s representative is not a matter of public interest.” Hence the Anti-Slapp protections therefore do not

apply. The Opinion raises serious questions about the meaning and application of "Public Interest" in a commercial development negotiation between the Public entity and private sector. *Tuchscher Development Enterprises Inc. v. San Diego Unified Port District*, 106 Cal. App. 4th 1219, 1232-1235 (2003).

It creates or exacerbates conflicts among Court of Appeal decisions regarding the significance to be accorded Public entities to seek private developers to join with the Public entity in large scale Public Interest developments. Tying the hands of both the Public Entity (in this case the City of Carson and then Mayor Dear collectively (City)), and the Private developer Bloom who were in talks, not at all related to being the City agent with attempts to have the NFL locate to City, presents the following questions for review by this Court:

1. How should a Court of Appeal interpret and apply the "Public Interest" standard under section 425.16?
2. Should a suspended California corporation be allowed standing to prosecute a State Court lawsuit contrary to well established law?

INTRODUCTION

The Opinion erodes the "Public Interest" protections afforded under section 425.16 to the Public Entity and Private sector in commercial development negotiations. *Tuchscher Development Enterprises Inc. v. San Diego Unified Port District*, 106 Cal. App. 4th 1219, 1232-1235 (2003). The

Opinion ruled that unverified claims in the FAC were legally and factually tenable to overcome and prevent the very statutory protections afforded under Anti-Slapp even though (a) the statute does not provide a definition for “an issue of public interest” and (b) Three general categories of cases have been held to concern an issue of public interest or a public issue: “(1) The subject of the statement or activity precipitating the claim was a person or entity in the public eye. [Citations.] [¶] (2) The statement or activity precipitating the claim involved conduct that could affect large numbers of people beyond the direct participants. [Citations.] [¶] (3) The statement or activity precipitating the claim involved a topic of widespread public interest.” *Commonwealth Energy Corp. v. Investor Data Exchange, Inc.* (2003) 110 Cal.App.4th 26, 33.

The Trial Court in reading the FAC and the Opinion both agree that factually the City was the subject of the activity, the activity of potentially building an NFL stadium in the City was conduct that would affect large numbers of people beyond the direct participants, and the this activity involved a topic of widespread public interest. Yet the Opinion sought to carve out an exception by claiming if there is an alleged fraud or interference claimed in a complaint (even if just alleged and unverified in the complaint) then the Anti-Slapp protections no longer exist.

This Court should grant review in this case for two reasons:

First, the Court of Appeal has not only created an otherwise non-existent exception to the protections of Anti-Slapp, it should grant review to resolve the conflict the Opinion

creates with the decision in *Tuchscher Development Enterprises Inc. v. San Diego Unified Port District*, 106 Cal. App. 4th 1219, 1232-1235 (2003). (Tuchscher). *Tuchscher* held that, “Commercial and residential development of a substantial parcel of bayfront property, with its potential environmental impacts, is plainly a matter of public interest.”

The Opinion holds, instead, that if there is an alleged fraud or interference claimed in a complaint (even if just alleged and unverified in the complaint) then the Anti-Slapp protections no longer exist as such actions are not a matter of public interest. This approach undercuts the protection afforded by the broad interpretation of “an issue of public interest”. The Opinion also encourages civil actions in any case where an individual or entity does not have a public contract renewed and then they can decide to sue the public entity and the party awarded the new contract (not the case presently) to create delay and unnecessary expense.

Second, this Court should grant review to uphold the law of this state that when a corporation is suspended, it has lost all rights and privileges as a corporation *and cannot legally operate*. A suspended corporation is required to close its business and stop all business related activity. *Moreover, a suspended corporation cannot sue or defend any action in court*. Furthermore, a suspended corporation that provides a service, or goods, to third parties while suspended may not be able to collect payment for such services or goods since the suspended corporation technically was not permitted to engage in any business transactions. *Grell v. Laci Le Beau Corp.*, 73 Cal. App. 4th 1300,

1306 (1999). *See Cal. Rev. & Tax. Code* § 23302; In this matter the Exclusive Agency Agreement (EAA) *is voidable*. *Cal. Rev. & Tax. Code* § 23304.1 (a) (d).

Few questions could call more urgently for this Court's review and guidance.

STATEMENT OF THE CASE

A. Factual Background

i. The Alleged Exclusive Agency Agreement

In 2008, Rand, on behalf of Rand and the City's ex-redevelopment agency entered into an alleged exclusive negotiating agreement, whereby Rand was provided with the exclusive right to negotiate a \$100 million dollar mixed-use retail project on the property subject to this lawsuit. (AA:I:2:28-29 ¶¶ 23-24, 26). The redevelopment agency was dissolved by Governor Brown and due to the dissolution, the City and Rand allegedly entered into an EAA. (AA:I:2:29 ¶ 30).

Under the EAA, Rand "would become the exclusive agent of the City for the purpose of 'coordinating and negotiating with the NFL for the designation and development of an NFL football stadium in the City.'" (AA:I:2:29-30¶ 31). This football stadium would involve a "new, state-of-the-art sports and entertainment complex within the City" where "one of more National Football League ("NFL") franchises" would "play its home games."

The City's Economic Development Commission

reviewed and voted to extend the EAA. (AA:I:2:32¶39). However, the City independently reviewed the EAA and voted “within the sole and unfettered discretion of the City” in 2014 to not extend the EAA. (AA:2:32, 39 ¶¶ 40-41, 49).

ii. Allegations of Fraud

Rand and its alleged assignee, another suspended corporation El Camino, filed the FAC after the original Complaint which only named Leonard Bloom (AA:1:1) added U.S. Capital LLC and City as co-defendants. The FAC alleges against Bloom three causes of action against for 4) Fraud; 5) Intentional Interference with Contract; and 6) Intentional Interference with Prospective Business Advantage (which are misnumbered as 3rd 4th and 5th causes of action in the FAC). The Cause of Action for Fraud includes City as co-defendants. (AA:I:2:23-49).

Rand’s tortious interference and fraud claim is based on the alleged communications between Defendant Bloom and certain unnamed NFL officials, and between certain unnamed Carson officials, including Carson Mayor James Dear in connection with the City and Dear’s communications relating to whether the EAA should be extended. (AA:2: 37-38 ¶¶ 63-68).

Even though Rand asserts that Bloom and/or the City should have disclosed such communications to Rand, Rand nowhere identifies what duty Bloom had to Rand, what statute this duty is based on, or even alleges that either had such a duty or plead facts in support that such a duty existed. That is

because the law is to the contrary, notwithstanding the immunity provided under Civil Code §47 (b).

B. Procedural Background –Trial Court

On April 9, 2015, Bloom filed the anti-SLAPP Motion to Strike, which was set for hearing on May 7, 2015. (AA:7:430-454). Bloom moved to strike all Three causes of action alleged against him. The City filed its separate Motion to Strike which was also set to be heard on the same date.

On May 7, 2015, the Trial Court, after hearing oral argument from all parties, granted the motion in its entirety. (AA:IV:24:1116-1126). The Trial Court found that “an action for breach of an exclusive commercial development with a public entity (containing causes of action for inducing breach of contract, intentional and negligent interference and Business and Professions Code section 17200) is subject to anti-SLAPP on the basis of rights of petition and free speech in connection with a public issue.” *Tuchscher Development Enterprises Inc. v. San Diego Unified Port District*, 106 Cal. App. 4th 1219, 1232-11235 (2003).”

The Trial Court further determined “[a]s stated in *Tuchscher*, communications involving the proposed development of such commercial property fall into the ‘matter of public interest’ portion of the [anti-SLAPP] statute and, as such, they need not be made in connection with an issue under consideration or review by a legislative, executive, or judicial body. *Code of Civil Procedure* section 425.16 (e)(4); *Id.* 106 Cal App 4th at 1233; *Ludwig v. Superior Court*, 37 Cal App

4th 8, 17 (1995). Therefore both these defendants meet their initial burdens and the burden shifts to the Plaintiffs.” (AA:IV:24:1123).

Although the Trial Court found Rand a suspended corporation had standing (not conceded by Bloom herein), it went on to find as it related to statements that were alleged to constitute the fraud that they were made “in connection with a legislative proceeding” as used in the anti-SLAPP context, “[t]hus the statements in this case were made in connection with a legislative proceeding. Such statements are protected by Civil Code Section 47 (b). Plaintiffs have not posed objections to the moving parties evidence and are precluded from presenting contrary evidence. For this reason, the Bloom defendants’ motion to strike the fraud cause of action is granted.” (AA:IV:24:1123).

The Trial Court then determined Rand failed to meet their burden of presenting competent admissible evidence substantiating the probability that they will prevail at trial regarding the causes of action for intentional interference with contract and intentional interference with prospective business advantage, In part based on the ruling on the objections. Rand did not file any objections to Blooms evidence, and the court ruled on the Bloom’s objections to Rand’s alleged evidence. (AA:24:1141-1160).

C. The Court of Appeal Decision.

The Opinion goes to great lengths to claim The Trial Court’s reliance upon *Tuchscher*, supra, 106 Cal.App.4th 1219,

and *Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8 is misplaced. The Opinion incorrectly fabricates a created distinction that communications pertaining to an actual planned development is not a “Public interest”. The Opinion continues with the claim that the identity of the agent representing a party in negotiating matters that might lead to a development is not a matter of Public Interest and in *Tuchscher*, the plaintiff conceded that the development in controversy was an issue of public interest. The appellate court stated, “We need not consider whether respondents’ communications were made with an issue under consideration or review by a legislative, executive or judicial body, because there appears to be no dispute that the proposed development of Crystal Bay is a matter of public interest, and thus respondent’s statements and writings fall within subdivision (e) (4) of section 425.16.” (106 Cal.App.4th at p. 1233.) Here, there is no such concession and the subject of the FAC is not communications pertaining to the actual development of real estate, but who represented the City in luring an NFL team to move to the City—a condition precedent to the development.”

What the Opinion fails to recognize is that the FAC is also replete with all the references to City and Bloom discussing the commercial development of property for the purposes of building a multifunctional stadium. Obviously parties need to talk before any agreement is reached. Indeed there is no evidence that any agreement was ever entered into between Bloom and the City or that the City did not renew the EAA because of Bloom and as noted Rand at all times was a

suspended Corporation and could not legally operate nor even have the EAA renewed.

The Opinion continues on its analysis by claiming the holding in *Ludwig* was not applicable as in *Ludwig* it did not do an extensive analysis. “The Ludwig court summarily concluded, without analysis, that development of an outlet mall, ‘with potential environmental effects such as increased traffic and impaction on natural drainage, was clearly a matter of public interest.’(37Cal.App.4th at p. 15.) Here, the FAC does not pertain to a real estate development project with such environmental or traffic effects, even though a redevelopment of contaminated land was an ultimate potential consequence of luring an NFL team to Carson. Thus, neither Tuchscher nor Ludwig supports, much less mandates, a conclusion that the subject matter of any cause of action in the FAC is a protected free speech or petitioning activity within the scope of section 425.16, subdivision (e)(4).”

And finally the Opinion goes on to “...also disagree with the City’s contention that this cause of action (as well as each of Plaintiffs’ other claims) alleges speech or conduct falling within the scope of section 425.16, subdivision (e)(2). The FAC alleges that the defendants’ breach began soon after April 2013. The expiration, and thus the issue of renewal, of the EAA was more than one year away. Thus, the communications and conduct alleged in the cause of action were made solely in connection with the breach of the EAA, and not in connection with the issue of its renewal or any other issue under consideration or review by the City.” The Opinion makes

multiple assumptions not supported by fact to draw these distinctions to preclude the application of Anti-Slapp.¹

REASONS FOR GRANTING REVIEW

- I. REVIEW SHOULD BE GRANTED BECAUSE THE COURT OF APPEAL'S DECISION HAS NOT ONLY CREATED AN OTHERWISE NON-EXISTENT EXCEPTION TO THE PROTECTIONS OF ANTI-SLAPP, IT SHOULD GRANT REVIEW TO RESOLVE THE CONFLICT THE OPINION CREATES WITH THE DECISION IN *TUCHSCHER DEVELOPMENT ENTERPRISES INC. V. SAN DIEGO UNIFIED PORT DISTRICT*, 106 CAL. APP. 4TH 1219, 1232-1235 (2003).

Although the Opinion begins its analysis with the broad and sweeping protections of Anti-Slapp as well as the expansive interpretation of “Public Interest”, it concludes that so long as creative unsubstantiated and unverified pleadings allege fraud and interference, the Anti-Slapp Protections are lost. That is not the law.

A. Anti-SLAPP Standard - Public Interest

California's Anti-SLAPP statute is designed to give defendants the ability to ensure the “prompt exposure and dismissal of SLAPP suits” designed to chill the exercise of free

¹ Although briefed and argued, the Opinion makes no mention of Rand's corporate suspension precluding any ability to contract or do business. Hence Rand at all times had no standing and no ability to file suit against Bloom or the City in the first place.

speech. *Ludwig v. Superior Court*, 37 Cal. App. 4th 8, 16 (1995) (Section 425.16 was intended to “provid[e] a fast and inexpensive unmasking and dismissal of SLAPPs.”); *Code of Civil Procedure* § 425.16(b). The statute applies equally to amended pleadings. *Yu v. Signet Bank/Virginia*, 103 Cal. App. 4th 298, 313-15 (2002).

In order to prevail on its Motion, Bloom needed only make a prima facie showing that the acts or statements at issue were made “in furtherance of” its rights of free speech “in connection with a public issue.” *Code of Civil Procedure* § 425.16(b)(1),(e); *Navellier v. Sletten*, 29 Cal. 4th 82, 88 (2002). A court may consider with the motion the pleadings, declarations, and matters that may be judicially noticed. *Brill Media Co., LLC v. TCW Group, Inc.*, 132 Cal. App. 4th 324, 329 (2005). In determining whether a prima facie showing has been made, the California Legislature expressly commanded that the statute be construed “broadly.” *Code of Civil Procedure* § 425.16(a). This showing may be done through the pleadings or supporting affidavits.” *Code of Civil Procedure* § 425.16 (b); *Navellier*, supra 29 Cal. 4th at 124.

An Exclusive Agency Agreement for the Development of an NFL stadium is a “public issue” and is an “issue of public interest”

The Trial Court correctly found that “an action for breach of an exclusive commercial development contract between a private developer and a public entity (containing causes of action for inducing breach of contract, intentional and negligent interference and Business and Professions Code section 17200)

is subject to anti-SLAPP on the basis of rights of petition and free speech in connection with a public issue.” In support of its finding, the Superior Court relied on *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* 106 Cal.App.4th 1219, 1232-1235 (2003).

There can be little doubt that the real estate development alleged in the FAC meets the “broad” standard that it is a public issue or issue of public interest. The anti-SLAPP statute encompasses “any other conduct ... in connection with a public issue or an issue of public interest.” *Code of Civil Procedure* § 425(e)(4). “The definition of ‘public interest’ within the meaning of the anti-SLAPP statute has been broadly construed to include ... private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental agency.” *Damon v. Ocean Hills Journalism Club*, 85 Cal. App. 4th 468, 479 (2000). Developmental projects such as a discount mall “with the potential environmental effects such as increased traffic and impact[s] on natural drainage [are] clearly a matter of public interest.” *Ludwig v. Superior Court*, 37 Cal. App. 4th 8, 15 (1995); see also *Tuchscher Dev. Enters., Inc. v. S.D. Unified Port Dist.*, supra 106 Cal. App. 4th at 1234. (“[C]ommercial and residential development of a substantial parcel of bayfront property, with its potential environmental impacts, is plainly a matter of public interest.”)

Here, the FAC clearly acknowledges the scale and impact of the contemplated developmental project. The EAA allegedly assigned exclusive agency to Rand “for the purpose

of ‘coordinating and negotiating with the NFL for the designation and development of an NFL football stadium in the City.’ (AA:I:2:29-30¶ 31). This football stadium would involve a “new, state-of-the-art sports and entertainment complex within the City” where “one of more National Football League (“NFL”) franchises” would “play its home games.” (AA:I:2:24¶1). The impact of such a billion dollar plus project is one of national interest, let alone one of public interest for a city the size of Carson (population under 100,000), and would be unlike anything ever completed in the City. (AA:I-II:5:79-80 ¶¶ 3-6). Indeed, such a project not only would significantly impact the economics, infrastructure, and culture of the City, but because most of the property once operated as a landfill, the potential environmental undertaking will be daunting. (AA:I-II:5:80-81¶¶ 5-8).

B. The Communications Were Protected Free Speech

The gravamen of the fraud-based causes of action attacks are the communications between City and Bloom on the one hand, and between City and Rand on the other. However, each of these communications was “made in connection with a public issue.” *Code of Civil Procedure* § 425.16(b)(1).

In *Tuchscher*, supra, the plaintiff-developer sued a city, public entity and its then-commissioner, and a rival developer, contending that the defendant public officials and rival developer interfered with the developer’s exclusive negotiating agreement relating to the commercial development of certain bayfront property. This interference took place by means of

communications with other public officials and the rival developer, such as “closed door meetings, telephone calls and emails” designed to take away the exclusivity rights from the plaintiff-developer to the rival developer. *Id.* at 1228.

The gist of [the plaintiff’s] complaint was that respondents conspired with [the rival developer] to deprive [the plaintiff-developer] of the benefits of the negotiating agreement by disrupting the City’s staff from negotiating the development agreement and inducing the City to cease negotiations. [The plaintiff-developer] alleged respondents furthered conspired by (1) communicating with the mayor and other agents and employees of the City ..., and (2) facilitating communications and meetings between [the rival developer] and a [city] representative, and that respondents’ objective was to secure the rights to develop both the ... project and [the respondents’] own commercial property.... *Id.*

“Under these circumstances, the fact that the defendants ceased negotiations with a particular developer and sought advice from a rival developer was protected action under the anti-SLAPP statute.” *Id.* at 1228, 1233-34.

The parallels between *Tuchscher* and here go beyond the mere fact that a developer under an exclusivity agreement is suing both a city and a rival developer for communications relating to negotiations of whether the current exclusivity arrangement should be extended. (AA:I:2:31¶ 36). Just as the communications that were the target in *Tuchscher* were “closed door meetings, telephone calls and emails,” here, Rand alleges the communications that are the heart of the fraud claims

consisted of “clandestine meetings,” “talk(s) by the phone or through text messages,” and “confidential emails.” (AA:I:2:31,35-37¶¶ 36, 54, 63). Moreover, the gist of the communications were designed to “induc[e] the City to cease negotiations” to end the exclusive negotiation agreement (in *Tuchscher* at 1228) just as they were designed here “to cause[] the City to breach its prior representations and agreement to extend the EAA” (AA:I:2:33¶42). Such communications are clearly encompassed by the anti-SLAPP statute per *Tuchscher* regardless of whether they were legitimate, or fraudulent as Rand and the Opinion contend. *Navellier*, supra, 29 Cal. 4th at 94 (“Any claimed illegitimacy of the defendant’s acts is an issue which the plaintiff must raise and support in the context of the discharge of the plaintiff’s secondary burden to provide a prima facie showing of the merits of the plaintiff’s case.”).

Here, in contract, the legislative process of determining whether to renew the EAA was not collateral to the allegedly improper communications, it was the very purpose of the alleged communications. Rand acknowledges that the EAA was the subject of legislative deliberation; after all, Rand requested the City Council to extend the EAA, and Rand complains the City Council did not extend it. (AA:2:32-33,35 ¶¶ 40-41,49.) Leading up to the decision about whether the City should continue to retain Rand, the City engaged in communications with Bloom about whether they could take over as agents once the EAA expired. (AA:I:2:31¶36). Even if the City was allegedly prohibited from actually engaging another agent to seek out an NFL stadium deal during the EAA

term, (not that this is conceded) nothing in the EAA prevented the City from communicating with others regarding possible future alternatives to the EAA once the EAA expired. (AA:I:2, 4-49).

This suit thus is tantamount to an attempt to freeze the City's right to explore these alternatives with third parties to fully inform itself prior to a very important decision about who should be the City's NFL agent after the EAA expires. Accordingly, the alleged wrongful communications were a necessary and essential part of the legislative process, activity that is protected under the anti-SLAPP statute. See *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106, 1115 (1999) (observing that communications preparatory to or in anticipation of official proceedings are protected).

Alternatively, the FAC involves alleged conduct "made in connection with an issue under consideration or review by a legislative ... or any other official proceeding authorized by law." *Code of Civil Procedure* § 425(e)(2). The FAC concedes that the EAA and the project as a whole were the subject of multiple legislative and other official proceedings. The exclusive negotiating agreement that was the alleged predecessor to the EAA was entered into between the City's redevelopment agency and Rand. Multiple extensions were granted by the redevelopment agency. The EAA itself was entered into by City Council. More importantly, the City's Economic Development Commission reviewed and voted on whether to extend the EAA, and the City voted on whether to extend the EAA. (AA:I:2:24-34). Given each of these

circumstances, the property, agreement, and potential development at issue were all issues “under consideration or review by a legislative ... or ... other official proceeding,” and thus properly encompassed by the anti-SLAPP statute. *Code of Civil Procedure* § 425(e)(2).²

II. REVIEW SHOULD BE GRANTED BECAUSE THE COURT OF APPEAL'S DECISION HAS NOT ADDRESSED HOW RAND COULD NOT PREVAIL ON ANY OF THEIR CAUSES OF ACTION BECAUSE RAND WAS A SUSPENDED CORPORATION AT ALL TIMES FROM 09/13/2012 (9 DAYS AFTER ENTERING INTO THE EAA) UP TO 3/19/2015 AND ASIDE FROM THIS MATERIAL BREACH, THE EAA COULD NEVER HAVE BEEN EXTENDED AS A SUSPENDED CORPORATION CAN NOT TRANSACT ANY BUSINESS AND IS REQUIRED TO CLOSE ITS DOORS.

The California Secretary of State and Franchise Tax Board reveals that Rand Resources, LLC (Entity Number 199823610096) was a Suspended Corporation, as of *September 13, 2012 (JUST NINE DAYS AFTER SIGNING THE EAA)* for all times thereafter and up and until March 19, 2015. (AA:III:19:1066-1071).

As such the claims in the FAC that there was any interference with a EAA by Bloom, the EAA should have been renewed (although clearly not a mandatory requirement based on a clear reading of the EAA and within the City's sole and absolute discretion) and Bloom committed a fraud by having meetings, all is a smoke screen alleged by Rand. In fact the

² This reviewing court will note the FAC devotes nearly an entire page addressing how Appellants complied with the Government Claims Act. If there was no legislative purpose or government involvement in this matter, then why comply with the Government Claims Act? (AA:I:2:27¶¶19-21).

only fraud committed is by Rand and its assignee El Camino as Rand could not assign sell or transfer anything (Partial or otherwise) to El Camino as it was suspended at all times, notwithstanding the lack of any evidence to show City approval or an exception to an assignment by Rand to some third entity. (See *Cal. Rev. & Tax. Code* § 23302 (West); The EAA is voidable *Cal. Rev. & Tax. Code* § 23304.1 (a) (d).

Clearly the impact of a corporation being placed in suspended status is substantial. When a corporation is suspended, it has lost all rights and privileges as a corporation *and cannot legally operate*. In that regard, technically a suspended corporation is required to close its business and stop all business related activity. Moreover, a suspended corporation cannot sue or defend any action in court. Furthermore, a suspended corporation that provides a service, or goods, to third parties while suspended may not be able to collect payment for such services or goods since the suspended corporation technically was not permitted to engage in any business transactions. *Grell v. Laci Le Beau Corp.*, 73 Cal. App. 4th 1300, 1306 (1999).

Rand had no legal authority to assign anything to anyone, do any business during the entire term of the EAA and under no circumstance would have been able to have the EAA renewed in September 2014 even if the City decided to do so as it has been suspended at all times up to March 19, 2015. Accordingly, Rand had no standing to assert any of the causes of actions found in the FAC and the appeal should have been dismissed on this ground as well.

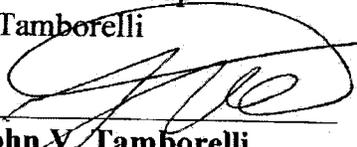
CONCLUSION

For the foregoing reasons, this Court should grant this petition for review.

Dated: July 6, 2016

Respectfully submitted,

Tamborelli Law Group
John V. Tamborelli

By: 

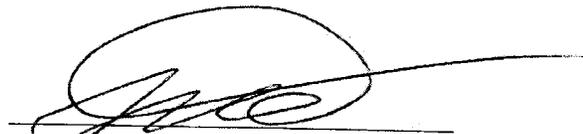
John V. Tamborelli

Attorneys for Defendants and
Respondents Leonard Bloom and U.S.
Capital LLC

**CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.504(d)(1).)**

The text of this petition consists of 4,799 words as counted by the Microsoft Word version 2010 word processing program used to generate this Petition.

Dated: July 6, 2016

A handwritten signature in black ink, appearing to read "John V. Tamborelli", is written over a horizontal line. The signature is stylized and includes a large loop at the end.

John V. Tamborelli, Esq.

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

COURT OF APPEAL – SECOND DIST.

FILED

May 31, 2016

JOSEPH A. LANE, Clerk

ccassidy Deputy Clerk

RAND RESOURCES, LLC et al.,

Plaintiffs and Appellants,

v.

CITY OF CARSON et al.,

Defendants and Respondents.

B264493

(Los Angeles County
Super. Ct. No. BC564093)

APPEAL from an order of the Superior Court of Los Angeles County. Michael L. Stern, Judge. Reversed.

Huang Ybarra Singer & May, Joseph J. Ybarra, Aaron M. May and Carlos A. Singer for Plaintiffs and Appellants.

Aleshire & Wynder, Sunny K. Soltani, Anthony R. Taylor and Christina M. Burrows for Defendants and Respondents City of Carson and James Dear.

Tamborelli Law Group and John V. Tamborelli for Defendants and Respondents Leonard Bloom and U.S. Capital LLC.

The trial court granted anti-SLAPP motions against a city's exclusive agent in its action for breach of, and interference with, the agency contract and related causes of action. The agent contends the defendants' actions did not arise from an act in furtherance of their right of free speech or to petition for redress of grievances and were not in connection with an issue of public interest, and therefore fell outside the scope of the anti-SLAPP statute. We agree and reverse.

BACKGROUND

1. Factual background and First Amended Complaint (FAC)

a. Rand's early efforts, federal litigation, and the ENA

Richard Rand (Rand) is the sole member of plaintiff Rand Resources, LLC (Rand Resources) and the managing and controlling member of plaintiff Carson El Camino, LLC, which is the assignee of Rand Resources with respect to its rights under the Exclusive Agency Agreement (EAA) at the center of this action. El Camino is also the owner of 12 acres of land near the intersection of the 405 and 110 freeways that was part of a 91-acre site that the parties, including the City of Carson (City), were interested in developing as a sports and entertainment complex, including a football stadium, with the goal of persuading a National Football League (NFL) franchise to make the site its home.

At an early point in Rand's dealings with the City's Redevelopment Agency, the City's then-mayor demanded a bribe from Rand, but Rand refused to pay. He instead sued the City and the Redevelopment Agency in federal court for civil rights violations and prevailed in a jury trial in December of 2006. (*Rand v. City of Carson et al.* (C.D.Cal., Dec. 11, 2006, No. CV 03-1913 GPS (PJWx)).) The City appealed and Rand cross-appealed on the issue of damages. While the appeal was pending, the parties reached an agreement in which the Redevelopment Agency granted Rand Resources the exclusive right to negotiate with the City and Redevelopment Agency with respect to the development of the sports and entertainment complex. In exchange, Rand agreed to stay his cross-appeal and refrain from enforcing the judgment. The parties' arrangement was reflected in an Exclusive Negotiating Agreement (ENA). The parties thereafter amended

the ENA and extended it pursuant to its terms. In August of 2012 they entered into a new ENA. The FAC in the present case alleges that Rand “worked diligently to develop a sports/entertainment complex on the site, including but not limited to efforts aimed at developing the site as the location for a new NFL stadium.”

b. The EAA

On September 4, 2012, after the dissolution of all redevelopment agencies in the state in 2012, the City entered into the EAA with Rand Resources. In the EAA, the City appointed Rand Resources “as its sole and exclusive agent” for a two-year period ending September 4, 2014, for the purposes of “coordinating and negotiating with the NFL for the designation and development of an NFL football stadium . . . in the City,” “facilitating the execution of appropriate agreements between the NFL and the City documenting the designation and development of the Property [(the 91-acre site)] as an NFL Football Stadium,” and “performing such other services as may be reasonably requested by City in connection with this Agreement.” It further provided: “During the Term of this Agreement, City’s appointment of [Rand Resources] as its agent for the Authorized Agency shall be exclusive such that (i) [Rand Resources] shall be the sole person designated as the agent of City for the Authorized Agency during the Term, and (ii) City shall not engage, authorize or permit any other person or entity whomsoever to represent City, to negotiate on its behalf, or to otherwise act for City in any capacity with respect to any subject matter falling within the Authorized Agency. In addition, City shall not itself, through its officials, employees or other agents, contact or attempt to communicate with the NFL or any agent or representative of the NFL or accept offers from the NFL or its agents or representatives to communicate directly with the NFL or any of NFL’s designated agents or representatives (including, without limitation, its legal counsel) with regard to the Authorized Agency. From and after the date of this Agreement and throughout the Term, City covenants and agrees to refer exclusively to Agent all offers and inquiries received by City from the NFL and its agents or representatives.”

The EAA provided it could be “extended by the mutual written consent of the parties for up to two (2) additional periods of one (1) year. The City’s City Manager, or designee, may grant such extension upon receipt of an extension request and a report from [Rand Resources] indicating in specific terms the efforts of [Rand Resources] to date and the anticipated steps to be undertaken in the extension period for completion of the applicable planning and negotiation phases of the Project. To the extent that such efforts are reasonably determined by the City to be consistent with the requirements of this Agreement, the City shall grant such extension request. The granting of any extension pursuant to this Section . . . shall be within the sole and unfettered discretion of the City.”

Plaintiffs allege that Rand and Rand Resources “worked diligently on bringing an NFL franchise to Carson” and spent “hundreds of thousands of dollars and a significant amount of time” in doing so. They retained numerous advisors, attorneys, engineers, and others to help them “deal with the NFL and issues regarding the potential sites,” portions of which were contaminated with hazardous materials and required remediation. They hired architects to draft plans for a stadium, met with NFL executives and team owners, and created “promotional and marketing materials detailing the merits of Carson as the site for an NFL franchise and new stadium.” They also met with investors, including in China, and met and communicated with City officials to discuss their efforts. Plaintiffs allege their efforts “raised the NFL’s interest in Carson as a potential site for an NFL franchise,” as shown by statements by the league regarding their “strong interest” in Carson.

c. City allows Bloom defendants to act as its agent

In April of 2013, Rand and the City reached a settlement regarding the federal court action. Soon thereafter, “the City stopped adhering to the terms of the EAA” and allowed defendants Leonard Bloom and U.S. Capital LLC (collectively the Bloom defendants) to begin “acting as the City’s agent and representative” with respect to the NFL and development of the sports and entertainment complex. The FAC alleges the

Bloom defendants did so with knowledge of the EAA and its terms and discussed with Mayor James Dear how to “‘get around’ the EAA.” “[W]ith the knowledge and support of representatives of the City, including Mayor Dear,” the Bloom defendants contacted NFL representatives and purported “to be agents of the City with respect to bringing an NFL franchise to Carson.” The Bloom defendants, the City, and Dear made efforts to conceal their meetings and communications with one another, including using confidential e-mails to discuss matters related to the prospective stadium. Dear also sent the Bloom defendants private and confidential City of Carson documents relating to development of a stadium, and Bloom and a colleague “routinely ghostwrote letters for Mayor Dear that [he] put on his official letterhead and sent to third parties as part of their efforts to undermine the EAA.” Bloom also used “promotional materials that were derivative of those created and used by Rand in connection with meetings with NFL officials and others.” In August of 2014, with knowledge that Rand Resources was the named agent in the EAA, Bloom created a new entity for himself that he named Rand Resources, LLC.

After several City employees and a representative of the San Diego Chargers informed Rand of the Bloom defendants’ activities, Rand asked Dear about Bloom. Dear falsely denied knowing Bloom or of his activities.

Before the expiration of the original term of the EAA, Rand Resources submitted a written request for its extension along with “a report detailing its efforts to date and the anticipated steps to be undertaken in the extension period.” Bloom met with Dear and at least one City councilperson “to discuss and conspire about how to breach the EAA and not extend it.” Before the extension was voted on, Rand and his attorney met with City Attorney Bill Wynder and the City manager. Wynder stated the City would not extend the EAA and explained “that the City had been ‘walking on eggshells’ with Leonard Bloom and ‘did not need’ Rand anymore.” Even though the City’s Economic Development Commission voted unanimously to extend the EAA, “the City” voted not to extend the EAA.

Plaintiffs allege the defendants' actions "eviscerated" the exclusivity of the agency under the EAA, which was "necessary for credibility in dealing with NFL officials and provided Plaintiffs with the potential of earning significant payments should an NFL franchise decide to move to Carson and build [a] stadium there." Plaintiffs were damaged through "hundreds of thousands of dollars in expenditures . . . and the lost opportunity to receive a multi-million dollar commission," as well as the loss of "other potential development opportunities" with respect to their real property and damage to their reputation as a real estate developer.

d. FAC

Plaintiffs filed their FAC in February of 2015. Their first cause of action alleged breach of contract against the City. It alleges the City breached the EAA by (1) "not adhering to its promise to make Rand the exclusive agent of the City" by engaging, authorizing, and permitting the Bloom defendants to represent the City and negotiate on its behalf with respect to bringing an NFL team and stadium to the City, and (2) failing to grant the request to extend the EAA.

Plaintiffs' second cause of action, also asserted against the City only, alleges tortious breach of contract: "The City's breach of the EAA was done willfully intentionally, and accompanied by and breached through acts of fraud and deceit." Specifically, they allege the City "took actions to cover up and conceal its breach of the EAA" from plaintiffs and "conspired with and acted in concert with" the Bloom defendants to breach the EAA and cover up the breach. Plaintiffs cite defendants' secretive meetings and communications, Dear's denial of knowledge of Bloom and his actions, and Wynder's false representation before the parties entered into the EAA that "so long as Rand showed reasonable progress with respect to bringing an NFL franchise to Carson, the EAA would be renewed."

Plaintiffs' third cause of action is promissory fraud, also against only the City. It is based upon the aforementioned promise made by Wynder in August of 2012, acting on behalf of the City, "that, even though the EAA only initially provided for a term of two

years, the City would extend the EAA for the two years beyond that period, just as it had with the ENA, so long as Rand showed reasonable progress with respect to bringing an NFL franchise to Carson.” Absent this promise, plaintiffs would not have entered into the EAA. The cause of action alleges “Wynder, on behalf of the City, made this promise having no intention at the time to honor it but rather to deceive and induce Rand into entering the EAA.”

The fourth cause of action, fraud, is asserted against the City, Dear, and the Bloom defendants. Although it incorporates by reference all prior allegations of the FAC, it specifically realleges the efforts of the City, Dear, and the Bloom defendants to “hide and conceal the City’s breach of the EAA and Bloom’s interference with the EAA . . . with the intent to deceive Rand and induce Rand to continue to abide by the EAA and not sue them.” It further realleges that “Bloom took steps to make it appear that he was affiliated with and controlled Rand Resources,” and Dear denied knowledge of Bloom. Plaintiffs allege they relied upon “the fraudulent actions and false representations” by continuing to expend resources in attempting to bring an NFL franchise to the City.

The fifth cause of action is intentional interference with contract, asserted against the Bloom defendants. It alleges the Bloom defendants “knew of the existence of the EAA and intended to interfere with Plaintiffs’ rights under the EAA or knew that [their] actions were substantially certain to interfere with” those rights. “As a result of [the Bloom defendants’] interference, the City breached the EAA by, among other things, violating the exclusivity provisions at the heart of the EAA and refusing to extend the term of the agreement.”

The sixth cause of action alleges intentional interference with prospective economic advantage by the Bloom defendants. It alleges the Bloom defendants “knew of the EAA and Plaintiffs’ reasonable expectation that the term of the EAA would be extended and intended to interfere with Plaintiffs’ prospective economic advantage from such extension, including by using as [their] own promotional materials created by Plaintiffs, at great time and expense.”

2. Anti-SLAPP motions and trial court's ruling

The City and Dear filed a special motion to strike the second through fourth causes of action pursuant to Code of Civil Procedure section 425.16,¹ also known as an anti-SLAPP motion. Simultaneously, the Bloom defendants filed their own anti-SLAPP motion seeking to strike the fourth through sixth causes of action.² Plaintiffs sought leave to conduct discovery to rebut the motions and moved to continue the hearing on the motions, but the trial court denied their ex parte application without explanation. Plaintiffs nonetheless opposed both motions and included evidence in support of the allegations of the complaint, including numerous e-mails between Dear or City employees and Bloom or persons acting on behalf of the Bloom defendants that apparently pertained to matters within the scope of Rand Resources's exclusive agency.

The trial court granted both motions in their entirety. Citing *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219 (*Tuchscher*), the trial court concluded that section 425.16 was applicable to plaintiffs' case because "communications involving the proposed development of such commercial property fall into the 'matter of public interest' portion of the statute [subdivision (e)(4)] and, as such, they need not be made in connection with an issue under consideration or review by a legislative, executive, or judicial body." The court nevertheless went on to conclude that, with respect to the Bloom defendants, the statements alleged in the fraud cause of action were made in connection with a legislative proceeding. The court further concluded that plaintiffs had not met their burden at the second step of the analysis to demonstrate a probability of prevailing on their claims. The court therefore granted both motions and stated that the defendants were entitled to attorney fees pursuant to section 425.16, subdivision (c). All defendants subsequently

¹ Undesignated statutory references pertain to the Code of Civil Procedure.

² With respect to the applicability of section 425.16, the motions were nearly identical.

filed motions for attorney fees, but the appellate record does not include any ruling upon these motions.

On May 26, 2015, the trial court entered “partial judgment” in favor of Dear, Bloom, and U.S. Capital, and later stayed the action, apparently pending resolution of this appeal.

DISCUSSION

1. Pertinent principles regarding anti-SLAPP motions

a. Statutory framework

The Legislature enacted section 425.16, the anti-SLAPP statute, “out of concern over ‘a disturbing increase’ ” in civil suits “aimed at preventing citizens from exercising their political rights or punishing those who have done so.” (*Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 21 (*Simpson*)). “ “While SLAPP suits masquerade as ordinary lawsuits such as defamation and interference with prospective economic advantage, they are generally meritless suits brought primarily to chill the exercise of free speech or petition rights by the threat of severe economic sanctions against the defendant, and not to vindicate a legally cognizable right.” ’ ” (*Ibid.*)

The statute provides for “a special motion to strike to expedite the early dismissal of these unmeritorious claims.” (*Simpson, supra*, 49 Cal.4th at p. 21.) The motion involves a two-step process. First, the defendant must make a prima facie showing that the plaintiff’s cause of action arises from an act by the defendant in furtherance of the defendant’s right of petition or free speech in connection with a public issue. (§ 425.16, subd. (b)(1).) If the defendant succeeds in making this showing, the court must then consider whether the plaintiff has demonstrated a probability of prevailing on the claim. (*Ibid.*) If not, the motion should be granted. (*Ibid.*) In ruling on the motion, “the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” (§ 425.16, subd. (b)(2).)

Subdivision (e) of section 425.16 provides that an “ ‘act in furtherance of a person’s right of petition or free speech . . . in connection with a public issue’ includes:

(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.”

b. Determining the applicability of the statute to a cause of action

“Our Supreme Court has recognized the anti-SLAPP statute should be broadly construed [citation] and that a plaintiff cannot avoid operation of the anti-SLAPP statute by attempting, through artifices of pleading, to characterize an action as a garden variety tort or contract claim when in fact the claim is predicated on protected speech or petitioning activity. [Citation.] Accordingly, we disregard the labeling of the claim [citation] and instead ‘examine the *principal thrust* or *gravamen* of a plaintiff’s cause of action to determine whether the anti-SLAPP statute applies’ and whether the trial court correctly ruled on the anti-SLAPP motion. [Citation.] We assess the principal thrust by identifying ‘[t]he allegedly wrongful and injury-producing conduct . . . that provides the foundation for the claim.’ [Citation.] If the core injury-producing conduct upon which the plaintiff’s claim is premised does not rest on protected speech or petitioning activity, collateral or incidental allusions to protected activity will not trigger application of the anti-SLAPP statute.” (*Hylton v. Frank E. Rogozienski, Inc.* (2009) 177 Cal.App.4th 1264, 1271–1272.) “[T]he gravamen of an action is the *allegedly wrongful and injury-producing conduct*,” i.e., “‘the *acts on which liability is based*,’ ” “not the damage which flows from said conduct.” (*Renewable Resources Coalition, Inc. v. Pebble Mines Corp.* (2013) 218 Cal.App.4th 384, 387, 396 (*Pebble Mines*).)

The trial court must “distinguish between (1) speech or petitioning activity that is mere *evidence* related to liability and (2) liability that is *based on* speech or petitioning

activity. Prelitigation communications or prior litigation may provide evidentiary support for the complaint without being a basis of liability.” (*Graffiti Protective Coatings, Inc. v. City of Pico Rivera* (2010) 181 Cal.App.4th 1207, 1214–1215.) “[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute. [Citation.] Moreover, that a cause of action arguably may have been ‘triggered’ by protected activity does not entail that it is one arising from such. [Citation.] In the anti-SLAPP context, the critical consideration is whether the cause of action is *based on* the defendant’s protected free speech or petitioning activity.” (*Navallier v. Sletten* (2002) 29 Cal.4th 82, 89.) “In other words, ‘the defendant’s act underlying the plaintiff’s cause of action must *itself* have been an act in furtherance of the right of petition or free speech.’” (*Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 670.) Thus, the statute does not automatically apply simply because the complaint refers to some protected speech activities. (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 187–188.)

c. Determining whether a matter is a public issue or an issue of public interest

“The statute does not provide a definition for ‘an issue of public interest,’ and it is doubtful an all-encompassing definition could be provided. However, the statute requires that there be some attributes of the issue which make it one of public, rather than merely private, interest. A few guiding principles may be derived from decisional authorities. First, ‘public interest’ does not equate with mere curiosity. [Citations.] Second, a matter of public interest should be something of concern to a substantial number of people. [Citation.] Thus, a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest. [Citations.] Third, there should be some degree of closeness between the challenged statements and the asserted public interest [citation]; the assertion of a broad and amorphous public interest is not sufficient [citation]. Fourth, the focus of the speaker’s conduct should be the public interest rather

than a mere effort ‘to gather ammunition for another round of [private] controversy’ [Citation.] . . . A person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.” (*Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132–1133.)

Three general categories of cases have been held to concern an issue of public interest or a public issue: “(1) The subject of the statement or activity precipitating the claim was a person or entity in the public eye. [Citations.] [¶] (2) The statement or activity precipitating the claim involved conduct that could affect large numbers of people beyond the direct participants. [Citations.] [¶] (3) The statement or activity precipitating the claim involved a topic of widespread public interest.” (*Commonwealth Energy Corp. v. Investor Data Exchange, Inc.* (2003) 110 Cal.App.4th 26, 33 (*Commonwealth*)).

d. Standard of review

We review the trial court’s ruling on an anti-SLAPP motion de novo. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325.)

2. The trial court erred by granting both anti-SLAPP motions.

Plaintiffs contend the trial court erred in granting the defendants’ anti-SLAPP motions because the gravamen of their complaint “is the City’s breach of the EAA and the Bloom Defendants’ interference with that contract, neither of which constitutes an act taken in furtherance of Defendants’ constitutional right of petition or free speech.”

Plaintiffs further note that, to the extent the defendants rely upon the City’s decision not to renew the EAA as a governmental proceeding under section 425.16, subdivision (e)(2), that decision occurred “well *after* Bloom had interfered with the Agreement and the City had breached it. The City’s after-the-fact decision not to extend the EAA cannot somehow immunize Defendants from liability for acts taken *while the EAA was in place*.”

If it did, private contracts with municipalities would be virtually unenforceable.”

Plaintiffs also contend “the mere fact that bringing an NFL franchise to the City may be a matter of ‘public interest’ does not mean that the anti-SLAPP statute was triggered here.

Defendants still were required to demonstrate that the acts giving rise to the asserted liability constitute *protected activity*. . . . Defendants' liability is predicated on commercial conduct, not speech or petitioning”

Defendants, in contrast, contend that they made the prima facie showing required at the first stage of the analysis because “[t]he real estate development alleged in the FAC,” including development of an NFL stadium in the City, is necessarily a matter of public interest within the scope of section 425.16, subdivision (e)(4). They further argue that the plaintiffs’ claims fall within the scope of section 425.16, subdivision (e)(2) because “the EAA and the project as a whole were the subject of multiple legislative and other official proceedings,” as shown by votes on the EAA by the City Council and the City’s Economic Development Commission.

We agree with the plaintiffs, although with slightly differing rationale. Accordingly, we address only the first “prong” of section 425.16 analysis.

a. Second cause of action (City only, tortious breach of contract)

The alleged wrongful conduct in plaintiffs’ tortious breach of contract cause of action is the City’s violation of the terms of the EAA by allowing someone other than Rand Resources to act as its agent with respect to efforts to bring an NFL franchise to the City. Thus, the cause of action is not premised upon protected free speech or the right to petition for redress of grievances, but upon the City’s conduct in carrying out (or not) its contract with Rand Resources, with an allegation the breach of contract was accompanied by fraud in two forms: covering up the breach (including Dear’s false denial about knowing Bloom), and a pre-agreement misrepresentation that the EAA would be renewed if Rand made reasonable progress. The mere fact that some speech occurred in the course of the asserted breach does not mean that the cause of action arises out of protected free speech. To hold otherwise would place the vast majority, if not all, civil complaints alleging business disputes and a large portion of tort litigation within the scope of section 425.16.

As for the City's contention that this cause of action (as well as each of Plaintiffs' other claims) alleges speech or conduct falling within the scope of section 425.16, subdivision (e)(4), we disagree. While having an NFL team, stadium, and associated developments in Carson is no doubt a matter of substantial public interest, plaintiffs' complaint does not concern speech or conduct regarding a large scale real estate development or bringing an NFL team to Carson and building it a stadium. It instead concerns the identity of the person(s) reaching out to the NFL and its teams' owners to curry interest in relocating to Carson. The identity of the City's representative is not a matter of public interest. In this regard, it is noteworthy that the City was not paying Rand Resources for its services or even reimbursing Rand Resources for its expenses. Furthermore, the particular communications alleged in the cause of action, i.e., the false representation that the EAA would be renewed, Dear's false denial about knowing Bloom, and communications entailed in meetings between the defendants, are also not matters of public interest. As the *Commonwealth* court stated, "Just because you are selling something that is intrinsically important does not mean that the public is interested in the fact that you are selling it." (110 Cal.App.4th at p. 34.) "The part is not synonymous with the greater whole." (*Ibid.*) An issue of public interest must "go beyond the parochial particulars of the given parties." (*Ibid.*)

The City's (and the trial court's) reliance upon *Tuchscher, supra*, 106 Cal.App.4th 1219, and *Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8 is misplaced, for several reasons. Most significantly, both involved communications pertaining to an actual planned development, not the identity of the agent representing a party in negotiating matters that might lead to a development. In addition, in *Tuchscher*, the plaintiff conceded that the development in controversy was an issue of public interest. The appellate court stated, "We need not consider whether respondents' communications were made with an issue under consideration or review by a legislative, executive or judicial body, because there appears to be no dispute that the proposed development of Crystal Bay is a matter of public interest, and thus respondent's statements and writings

fall within subdivision (e)(4) of section 425.16.” (106 Cal.App.4th at p. 1233.) Here, there is no such concession and the subject of the FAC is not communications pertaining to the actual development of real estate, but who represented the City in luring an NFL team to move to the City—a condition precedent to the development.

Somewhat similarly, the *Ludwig* court summarily concluded, without analysis, that development of an outlet mall, “with potential environmental effects such as increased traffic and impaction on natural drainage, was clearly a matter of public interest.” (37 Cal.App.4th at p. 15.) Here, the FAC does not pertain to a real estate development project with such environmental or traffic effects, even though a redevelopment of contaminated land was an ultimate potential consequence of luring an NFL team to Carson. Thus, neither *Tuchscher* nor *Ludwig* supports, much less mandates, a conclusion that the subject matter of any cause of action in the FAC is a protected free speech or petitioning activity within the scope of section 425.16, subdivision (e)(4).

We also disagree with the City’s contention that this cause of action (as well as each of Plaintiffs’ other claims) alleges speech or conduct falling within the scope of section 425.16, subdivision (e)(2). The FAC alleges that the defendants’ breach began soon after April 2013. The expiration, and thus the issue of renewal, of the EAA was more than one year away. Thus, the communications and conduct alleged in the cause of action were made solely in connection with the breach of the EAA, and not in connection with the issue of its renewal or any other issue under consideration or review by the City. Moreover, the particular communications alleged in the cause of action, i.e., the false representation that the EAA would be renewed, Dear’s false denial about knowing Bloom, and communications entailed in meetings between the defendants were not made in connection with whether the EAA would be renewed or replaced with some agreement with the Bloom defendants. Indeed, Wynder’s false representation that the EAA would be renewed was made before the EAA even went into effect.

For all of these reasons, the trial court erred by concluding the second cause of action fell within the scope of section 425.16.

b. Third cause of action (City only, promissory fraud)

The alleged wrongful conduct in plaintiffs' promissory fraud cause of action is Wynder's false representation regarding renewal of the EAA, made in August of 2012, before the City and Rand Resources entered into the EAA, in order to induce Rand Resources to enter into the agreement. Although the basis of the cause of action is a statement, the gravamen of the cause of action is the manner in which the City conducted itself in relation to the business transaction between it and Rand Resources, not the City's exercise of free speech or petitioning activity. Moreover, for the reasons previously stated, the statement does not fall within the scope of section 425.16, subdivisions (e)(2) or (e)(4).

For all of these reasons, the trial court erred by concluding the third cause of action fell within the scope of section 425.16.

c. Fourth cause of action (all defendants, fraud)

The gravamen of the fourth cause of action with respect to the City is, as with the second and third cause of action, the City's violation of the terms of the EAA by allowing someone other than Rand Resources to act as its agent with respect to efforts to bring an NFL franchise to the City and the manner in which the City conducted itself in relation to the business transaction between it and Rand Resources, not the City's exercise of free speech or petitioning activity. Moreover, the identity of the person representing the City in its efforts to lure an NFL team to the City is not a matter of public interest.

As to Dear, his statement that he did not know Bloom was not a matter of public interest and did not constitute free speech or petitioning activity protected by section 425.16.

As far as the Bloom defendants are concerned, the conduct at the heart of this cause of action is, in essence, their duplicitous attempts to pretend they were the City's official, authorized representative, including pretending they were Rand Resources by creating a new corporation with that name, with the apparent goal of deceiving those they dealt with to believe they were dealing with plaintiff Rand Resources. All of this pertains

to the Bloom defendants' private conduct of their own business, not their free speech or petitioning activities. They were not, for example, voicing criticism of a plan to have an NFL franchise base itself in the City or even a plan to build a stadium and sports-retail complex there. They were simply attempting to usurp, by any available means, the rights and role of plaintiff Rand Resources. Moreover, the identity of the person representing the City in its efforts to lure an NFL team to the City is not a matter of public interest, and the Bloom defendants' conduct commenced long before the consideration of the renewal of the EAA. To the extent the cause of action pertains to any communications, they are separate from any public issue and are instead unrelated private commercial conduct.

To the extent this or any other cause of action may be read as incorporating references to the decision not to renew the EAA, we conclude these are merely a reference to a category of evidence that plaintiffs have to prove the elements of their claims, including interference and damages, not the gravamen of the cause of action. “[W]e look to the allegedly wrongful and injurious conduct of the defendant, *rather than the damage which flows from said conduct.*” (*Pebble Mines, supra*, 218 Cal.App.4th at pp. 396–397.)

For all of these reasons, the trial court erred by concluding the fourth cause of action fell within the scope of section 425.16.

d. Fifth and sixth causes of action (Bloom defendants, intentional interference with contract and prospective economic advantage)

The alleged wrongful conduct at the heart of plaintiffs' interference with contract and interference with prospective economic advantage causes of action is again the Bloom defendants' efforts to usurp Rand Resources's rights and role under the EAA. As addressed with respect to the fourth cause of action, this conduct arises from the Bloom defendants' private conduct of their own business, not their free speech or petitioning activities. To the extent the cause of action pertains to any communications, they are separate from any public issue and are instead unrelated private commercial conduct. To

the extent this or any other cause of action may be read as incorporating references to the decision not to renew the EAA, we conclude these are merely a reference to a category of evidence that plaintiffs have to prove their claims, not the gravamen of the cause of action.

For all of these reasons, the trial court erred by concluding the fifth and sixth causes of action fell within the scope of section 425.16. Given our conclusion that none of the challenged causes of action fall within the scope of the statute, we need not address the second step, plaintiffs' probability of success.

3. Attorney fees

Although it is unclear from the appellate record whether the trial court actually awarded any of the defendants attorney fees pursuant to section 425.16, subdivision (c), the trial court's determination that defendants were entitled to such fees must be reversed because defendants are no longer prevailing parties on their motions. As the new prevailing parties, the plaintiffs, upon remand, may seek attorney fees incurred in opposing the anti-SLAPP motions.

DISPOSITION

The May 7, 2015 order granting the anti-SLAPP motions is reversed. Any and all orders by the trial court awarding attorney fees to the defendants, or any of them, are also reversed. The May 26, 2015 “partial judgment” is vacated. The action is reinstated against all defendants and remanded for further proceedings. The plaintiffs may move for attorney fees incurred in opposing the anti-SLAPP motions. Appellants are awarded their costs on appeal.

CERTIFIED FOR PUBLICATION.

LUI, J.

We concur:

CHANEY, Acting P. J.

JOHNSON, J.

PROOF OF SERVICE STATE OF

CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 21700 Oxnard Street, Suite 1590, Woodland Hills, California, which is located in the county in which the within-mentioned mailing occurred.

On July 7, 2016, I served true copies of the following document(s) described as PETITION FOR REVIEW on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Tamborelli Law Group's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 7, 2016, at Woodland Hills, California.



Ronnie Gipson

SERVICE LIST

California Supreme Court
350 McAllister Street
San Francisco, California 94102

Original plus 13 Copies
(Sent via overnight delivery)

Honorable Michael L. Stern,
Trial Judge
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Superior Court of the State of California
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