

S214058

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT  
FILED

PATRICIA J. BARRY

FEB 13 2014

*Plaintiff and Appellant,*

Frank A. McGuire Clerk

v.

Deputy

THE STATE BAR OF CALIFORNIA,

*Defendant and Respondent.*

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After a Published Decision by the Court of Appeal Second Appellate District, Division Two Case No. B242054, Reversing a Judgment Entered by the Superior Court for the County of Los Angeles, Case No. BC452239, The Honorable Deirdre Hill presiding

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**OPPOSITION TO RESPONDENT PATRICIA BARRY'S REQUEST FOR PRODUCTION OF BAR RECORDS**

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**THE STATE BAR OF CALIFORNIA**

FEB 13 2014

CLERK SUPREME COURT

Still not having filed her late answering brief, Ms. Barry has now filed an “application for production of bar records” asking this Court to order discovery from the State Bar of 16 categories of documents that have nothing to do with the issues before the Court. Ms. Barry’s latest application should be denied for several reasons.

First, this is not an original proceeding; it comes before the Court on petition for review of a decision by the Court of Appeals. There is no legal basis for conducting discovery at this stage of the proceedings.

Second, the trial court found that Ms. Barry’s underlying motion was subject to dismissal under the anti-SLAPP statute, a finding Ms. Barry did not appeal and which is now final. The anti-SLAPP statute specifically protects the targets of a SLAPP suit like this one from discovery. Code of Civ. Proc., § 425.16, subd. (g).

Third, none of the topics on which Ms. Barry seeks discovery formed any part of the decision under review. Indeed, Ms. Barry did not make any attempt to challenge the calculation of the fee award under review. Nor are they relevant in any way to the legal issue before the Court: whether attorneys’ fees are recoverable under Code of Civil Procedure section 425.16, subdivision (c) where the reason why a plaintiff has no reasonable probability of prevailing on the merits is a determination that the court lacks subject matter jurisdiction over the dispute?

Fourth, Ms. Barry's assertion of retaliation is nonsensical. Ms. Barry filed this action, which even she now admits had no merit, not the State Bar. Ms. Barry then appealed the small anti-SLAPP fee award against her, not the State Bar. This Court's review was necessary to correct the error the Court of Appeal made in its published decision, which affects not only the State Bar in all similar cases, but also any other defendant in this situation. This case is being pursued, and review was granted, to determine this important question of law. See Cal. Rules of Court, rule 8.500(b)(1).

For all of these reasons, Ms. Barry's motion for discovery should be denied. She should be ordered to file a late answering brief or found in default for not having done so.

DATED: February 12, 2014

Respectfully submitted,

**KERR & WAGSTAFFE LLP**

By 

Michael von Loewenfeldt  
*Attorneys for Defendant,  
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**THE STATE BAR OF  
CALIFORNIA**

**PROOF OF SERVICE**

I, Ginie Phan, declare that I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 100 Spear Street56, 18th Floor, San Francisco, California 94105.

On February 13, 2014, I served the following document(s):

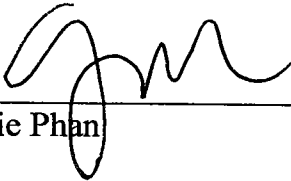
**OPPOSITION TO RESPONDENT PATRICIA BARRY'S  
REQUEST FOR PRODUCTION OF BAR RECORDS**

on the parties listed below as follows:

Patricia J. Barry 634 Spring Street, #823 Los Angeles, CA 90014	Los Angeles Superior Court Stanley Mosk Courthouse 111 North Hill St. Los Angeles, CA 90012
California Court of Appeal 2nd Appellate District, Division 2 Ronald Reagan State Building 300 S. Spring Street 2nd Floor, North Tower Los Angeles, CA 90013 <i>Via Electronic Submission to California Court of Appeal</i>	

By first class mail by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid and placing the envelope in the firm's daily mail processing center for mailing in the United States mail at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 13, 2014 at San Francisco, California.

  
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Ginie Phan