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JUNE 30, 2017

California’s Anti-SLAPP Statute: A Potent, Yet Confounding, Weapon

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Lawsuits designed to chill the valid exercise of the constitutional right of free speech or the right to petition, denominated as “strategic lawsuits against public participation” (or “SLAPP” suits), have taken on increasing significance over the last several decades. The classic example of a SLAPP suit is one filed by a large business against local activists to halt or impede the activists’ political or legal opposition to the company’s plans. The SLAPP plaintiff’s goal is not necessarily to prevail, but to effectively silence the opposition by preventing them from exercising their constitutional rights to speech and/or petition. The victim of a SLAPP suit could resort to traditional remedies (e.g., malicious prosecution), but those remedies can be difficult and costly to obtain, leaving the SLAPP victim with few viable options to prevent being essentially “muzzled” by a richer and more powerful adversary.

In response to this significant problem, the legislature enacted Code of Civil Procedure Section 425.16 in 1992 (the “anti-SLAPP” statute). The anti-SLAPP statute provides a potent weapon to a victim of a SLAPP suit. The anti-SLAPP statute allows a SLAPP defendant to file a special motion to strike very early in the case to challenge the plaintiff ’s claims on the merits. The recipient of an anti-SLAPP motion must clear evidentiary hurdles and satisfy sometimes amorphous legal standards simply to prevent dismissal of the case. The nature of SLAPP litigation is dynamic and constantly evolving. On several occasions over the past decades, this publication discussed and analyzed the developing interpretations of the anti-SLAPP statute.1 SLAPP issues have arisen in contexts that appear far removed from any constitutional battle. While the constitutional quandary posed by the classic SLAPP case described above makes perfect sense, some litigants seem to be surprised that a seemingly private dispute between two parties can be transformed into a complex struggle over constitutional principles entailing broad public interest concerns. Since the party losing an anti-SLAPP motion has the right of immediate appeal, there is a large volume of anti-SLAPP appellate decisions. The breadth and scope of the practice areas affected by SLAPP decisions is staggering. Courts are still struggling to analyze, interpret, and apply the anti-SLAPP statute in a consistent manner. As relevant here, a significant number of real estate cases apply the anti-SLAPP statute. These cases have produced holdings that are somewhat difficult to reconcile, some of which are discussed, compared, and contrasted below.

This article will summarize the mechanics of the anti-SLAPP statute, analyze the application of the anti-SLAPP statute in certain contexts, and provide some insights for lawyers handling cases potentially implicating constitutional free speech and/or petitioning activity and therefore falling within the purview of the anti-SLAPP statute.

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