Slapping Down An Anti-SLAPP: First District Holds Next-Door Neighbor Opponents Of Residential Renovation Project And Related CEQA Compliance In City's Administrative Proceedings Were Properly Named As Real Parties In Interest In Project Proponent's Subsequent Mandate Action Challenging City's Project Denial

By Arthur F. Coon on May 12, 2023

In a published opinion filed April 14, 2023, the First District Court of Appeal (Div. 3) taught some interesting procedural lessons in a CEQA/writ of mandate case arising from the City of San Francisco's denial of a single-family home renovation project proposed by one Durkin and his LLC (Appellants) that was successfully challenged in the City's administrative proceedings by a neighboring owner (Kaufman). *Christopher Durkin v. City and County of San Francisco, et al. (Philip Kaufman, Real Party in Interest)* (2023) ___ Cal.App.5th ___.

After being named a real party in interest in project proponents/Appellants' later writ of mandate action challenging the City's project denial on CEQA and other grounds, neighboring owner/project opponent Kaufman went on the attack in the Superior Court by filing an anti-SLAPP (Strategic Lawsuit Against Public Participation) motion to strike the petition as allegedly arising from his protected activity and lacking minimal merit. The trial court granted Kaufman's anti-SLAPP motion and ultimately awarded him $219,269.25 in attorneys' fees.

On Appellants' consolidated appeals of the anti-SLAPP order and the fee order, the First District reversed, vacated both, and awarded Appellants their costs on appeal.

An anti-SLAPP motion poses a two-prong inquiry, requiring (1) the moving party to make a prima facie showing that the challenged claims arose from defendants' constitutionally protected free speech and petition rights, and (2) if that burden is met, non-moving party then has the burden to show its claims have a probability of success.

Here, the Court of Appeal held that even though Kaufman's (successful) opposition to Appellants' project in the City's administrative proceedings was protected petitioning activity, the trial court erred because Appellants' mandate petition did not *arise from* that protected activity. To "arise from" protected activity, that activity must form the basis for the claim, i.e., the claim must contain allegations of the protected activity that are asserted as its grounds for relief and basis for liability. Just because an action is triggered by, or took place after or in response to, protected activity does not mean it arose from that activity within the meaning of the anti-SLAPP statute. Here, the petition's allegations were directed against and alleged unlawful acts or omissions of the City's Board of Supervisors, i.e., alleged failure to make required factual findings to reverse a mitigated negative declaration, lack of substantial evidence supporting the decision, and violation of a state law five-hearing limit. While the petition named Kaufman as a real party, and alleged he filed the administrative appeal leading to the Board's decision (so as to provide context), it sought no coercive relief against Kaufman and its allegations of his petitioning activity did not supply any elements of its asserted causes of actions. As stated by the Court: "Kaufman's petitioning conduct was not a necessary part of appellants' mandamus claims against the City."

Nor did it matter if Kaufman was not a necessary or indispensable party under CCP § 389 or a typical CEQA action real party, such as a project approval recipient (see Pub. Resources Code, §§ 21065(b), 21167.6.5(a), (b), (c)). Per the Court: "Even assuming for the sake of argument that it was unnecessary for appellants to name Kaufman as a real party in interest, it does not follow that their doing so subjected their petition to application of the anti-SLAPP law. The anti-SLAPP law does not target unnecessary claims, but those that arise from protected conduct." (Citations omitted.) The Court also correctly observed that merely naming a person as a real party in a mandate action does not *compel* that person to defend the action, but simply *confers certain rights* on the person, i.e. to be served, to file an answer or other pleadings, and to be heard before the court grants a peremptory writ; notwithstanding these rights to participate in the litigation, a real party can also simply decline to participate in the litigation if he, she or it so chooses.

There is nothing in this case that really breaks new legal ground – and the only thing that surprises me about it is how the trial got it so wrong. Nonetheless, the Court of Appeal's opinion does helpfully clarify the nature and role of real parties in interest in writ actions generally (including, but not limited to, CEQA writ actions), as well as the operation of the anti-SLAPP statute in the somewhat unusual context where a project opponent is named in a CEQA action by a project proponent plaintiff seeking to overturn a lead agency's project *denial* and related CEQA determination in court.

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