

PROFESSIONAL LIABILITY UPDATE

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MALICIOUS PROSECUTION

California Law

By Jessica B. Rudin

A malicious prosecution action may be the subject of a special motion to strike under CCP §425.16, the anti-SLAPP statute.

Chavez v. Mendoza (2001) 94 Cal.App.4th 1083

Enriqueta Mendoza (“Mendoza”) sued Richard and Ina Chavez (“Chavez”) on various tort claims. After the Chavezes obtained a judgment in their favor, they filed a malicious prosecution action against Mendoza and her attorney.

Mendoza filed a special motion to strike the malicious prosecution complaint under CCP §425.16. This statute, commonly known as the anti-SLAPP statute, (“Strategic Lawsuit Against Public Participation”) is designed to weed out non-meritorious claims that are asserted to frustrate the moving party’s constitutionally protected acts, such as the right to free speech. The trial court denied Mendoza’s special motion to strike.

The Court of Appeal held that pursuing litigation, even it lacks probable cause, involves the constitutional right to petition. Relying on **Sheldon Appel v. Albert & Oliker** (1989) 47 Cal.3d 863 the court held that subjecting malicious prosecution claims to the anti-SLAPP statute and requiring plaintiffs to demonstrate “early on that the complaint

is supported by sufficient prima facie showing of facts to sustain a favorable judgment” is consistent with the disfavored nature of the tort. Application of the anti-SLAPP statute would not prevent meritorious malicious prosecution claims, but would deter the dilatory and harassing use of the tort recognized and disapproved of by the **Sheldon Appel** court.

Comment: Defendants now have an additional method of challenging malicious prosecution actions at the very early stages of litigation. The Chavez court was not asked to and did not address whether the special motion to strike is available to attorneys who assist their clients in the exercise of their right to petition.

601 Montgomery Street, Suite 900
San Francisco, California 94111
Telephone (415) 397-2222
Facsimile (415) 397-6392
www.longlevit.com

3130 Wilshire Boulevard, 2nd Floor
Santa Monica, California 90403-2300
Telephone (310) 829-0977
Facsimile (310) 829-0991
www.longlevit.com