

PROFESSIONAL LIABILITY UPDATE

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MALICIOUS PROSECUTION

California Law

By Jessica B. Rudin and Jennifer A. Becker

The Second District holds that settlement of an underlying suit may not operate to negate favorable termination and may not support an “anti-SLAPP” motion to strike.

Mattel, Inc. v. Luce, Forward, Hamilton & Scripps and James B. Hicks (2002) 99 Cal.App.4th 1179

Mattel sued Luce, Forward, Hamilton & Scripps and its former partner, James B. Hicks, for malicious prosecution of a copyright action filed by Hicks on behalf of his client, Harry Christian. Christian alleged that Mattel’s Barbie doll infringed on his copyrighted “Claudene” doll. The District Court granted Mattel’s summary judgment and imposed over \$500,000 in Rule 11 sanctions against Hicks for filing a case without factual foundation. The District Court further found he “acted boorishly” in discovery. Mattel settled the underlying case with Christian, but the settlement did not include Hicks.

Hicks filed a special motion to strike Mattel’s complaint for malicious prosecution pursuant to C.C.P. § 425.16, the “anti-strategic lawsuit against public participation” statute. He argued that

Mattel could not prevail on its claim for malicious prosecution because Mattel’s settlement of the underlying action with Christian was not a favorable termination. Mattel argued that the settlement did not include the copyright claim. The trial court denied the special motion.

In affirming, the Court of Appeal acknowledged the authority that settlement of a case can preclude a finding of favorable termination even after rulings or judgments in favor of the underlying defendant. However, without significant analysis, the court distinguished *Christian v. Mattel* and did not apply the rule. Reasoning that summary judgment had been entered in favor of Mattel and that it had been determined that Hicks had filed a meritless claim, the court found the

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subsequent settlement with Christian did not eliminate Mattel's malicious prosecution claim against Hicks.

Comment: This decision is contrary to the holding in *Ferreira v. Gray, Carey et al* (2001) 87 Cal.App.4th 409, which held that a post-verdict settlement eliminates the favorable termination factor and precludes a malicious prosecution action against the both the underlying client and her attorneys. The only distinction between *Ferreira* and *Mattel*, is that in *Mattel*, the underlying trial court had determined that Hicks filed a meritless action. Unless *Mattel* is overruled, there is no bright line rule regarding the effect of post-judgment settlements on malicious prosecution actions.

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