

PROFESSIONAL LIABILITY UPDATE

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MALICIOUS PROSECUTION

California Law

By Jessica B. Rudin and Jennifer A. Becker

*The Second District holds that an attorney is entitled to rely on the representations of his or her client in determining whether probable cause exists to file a claim.*

**Swat-Fame v. Goldstein** 02 C.D.O.S. 7873

Leslie Goldstein, a sales representative, hired the law firm of Posner & Rosen (“Posner”) to prosecute employment related claims she believed she had against her former employer, Swat-Fame, a clothing manufacturer.

Goldstein wrote down all of the alleged statements Swat-Fame made to induce her to accept its offer of employment. Posner sent Swat-Fame a demand letter based on Goldstein’s representations. Swat-Fame rejected the offer and told Posner it was “substantially misinformed” regarding the facts.

A complaint was filed based on the information Goldstein gave Posner. At her deposition, Goldstein made several admissions that effectively negated the facts alleged in her complaint. Goldstein also testified that she never told her lawyers that any facts alleged in the

complaint were untrue.

After the case was emasculated through demurrers and a motion for summary adjudication, Goldstein dismissed her remaining claims with prejudice.

Swat-Fame sued Goldstein and Posner for malicious prosecution. In a successful motion for summary judgment, Posner argued that the employment action was filed with probable cause and without malice.

On appeal Swat-Fame argued that Posner lacked probable cause to bring the fraud claim for several reasons: First, Posner knew the false representations alleged in the complaint were only opinions and not actionable. Second, even if the facts alleged stated a cause of action, Posner was on notice that Goldstein’s claims were not tenable.

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Finally, Posner should be held responsible for maliciously maintaining Goldstein's lawsuit after discovering that the Swat-Fame statements the client alleged were false, were, in fact, true.

In affirming, the Court of Appeal pointed out that the allegations were true to the best of the lawyers' knowledge at the time the underlying complaint was filed. The trial court had overruled a demurrer to the underlying fraud claim, establishing probable cause to bring the claim.

The Court rejected Swat-Fame's argument that the lawyers were on notice that Goldstein's claims were untenable and therefore they filed the complaint without probable cause. Swat-Fame's only evidence of "notice" was its response to Goldstein's demand letter in which Swat-Fame stated that the lawyers were misinformed. The Court refused to find that "boilerplate" denials of fact put Posner on notice of fatal flaws in Goldstein's claims, thereby negating probable cause.

Finally, the Court followed the recent decision of *Vanzant v. Daimler Chrysler Corporation* (2002) 96 Cal.App.4th 1283 (Update No. 132) when it rejected Swat-Fame's argument that the lawyers were responsible for malicious maintenance of the Goldstein complaint once they learned the true facts. There is no liability for malicious prosecution so long as an underlying action was initiated with probable cause.

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