

PROFESSIONAL LIABILITY UPDATE

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MALICIOUS PROSECUTION

California Law

by Jessica B. Rudin

The Second District holds that the statute of limitations for malicious prosecution actions arising from cases reversed on appeal begins to run on the date remittitur is entered. It also holds that attorneys may rely upon C.C.P. § 425.16, the anti-SLAPP statute, to attack malicious prosecution actions.

White v. Lieberman (2002) 103 Cal.App.4th 210

Pursuant to an alleged right of possession to a tract of land, Kenneth White (“White”) wrote to 87 homeowners and demanded concurrent possession of their homes. The homeowners hired Lawrence R. Lieberman (“Lieberman”) to represent them in opposing White’s claim. Lieberman filed a lawsuit on behalf of his clients against White seeking quiet title and monetary relief for slander of title. The lawsuit concluded in favor of the homeowners.

White successfully appealed the slander of title judgment, which was reversed on November 18, 1999. The homeowners’ petition for review was denied and a remittitur issued on February 23, 1999. The trial court entered a new judgment on March 26, 1999.

White filed a malicious prosecution against Lieberman and other defendants between February 24, 2000 and March 25, 2000. Lieberman demurred and

moved to strike under C.C.P. § 425.16 (anti-Strategic Lawsuit Against Public Participation “SLAPP” motion) on various grounds, including the interim adverse judgment rule and the statute of limitations. The trial court sustained Lieberman’s demurrer, but declined to rule on the anti-SLAPP motion because it was rendered moot by the demurrer.

On appeal, White argued that the “start-stop” component to calculating the limitations period articulated in *Rare Coin Galleries v. A-Mark Coin Co., Inc.* (1988) 2002 Cal.App.3d 330, applies only to cases affirmed on appeal. Because his case was reversed on appeal, the statute of limitations on his malicious prosecution claim began to run on the day a new judgment was entered, not the date of the Supreme Court’s remittitur. Lieberman argued that the statute began to run on the day the Court of Appeal reversed the judgment, was tolled while the case was on appeal, and began to run when the

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Supreme Court issued its remittitur. The Court disagreed with both White and Lieberman. In order to ensure uniformity and predictability, it held that where a case is reversed on appeal, the statute of limitations for malicious prosecution begins to run on the date the remittitur is issued, not on the date of the reversal, and not on the date a new judgment is entered.

The court further found the trial court erred in refusing to rule on Lieberman's anti-SLAPP motion and grant attorneys' fees to Lieberman. White argued that Lieberman did not have standing to file the anti-SLAPP motion because he was not a party to the underlying action. Relying on *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, in which a tenants' counseling service was permitted to use the anti-SLAPP statute, the court held that an attorney can also obtain the protection of the statute. The court acknowledged that the one California Appellate decision providing specific support for its ruling, *Jarrow Formulas, Inc. v. LaMarche* (2002) 97 Cal.App.4th 1 (PL Update Issue 130), was under review by the Supreme Court, but reasoned that review in that case was granted pending resolution of cases involving an issue other than an attorney's ability to use the anti-SLAPP statute.

Comment: While *Jarrow v. LaMarche* is under review, *White* is the only appellate decision that supports an attorney's use of the anti-SLAPP statute to dispose of a malicious prosecution action.