

PROFESSIONAL LIABILITY UPDATE

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MALICIOUS PROSECUTION

California Law

By Jessica B. Rudin

The California Supreme Court holds that malicious prosecution actions brought against litigants and their attorneys are subject to scrutiny under California's anti-Strategic Lawsuit Against Public Participation statute

Jarrow v. LaMarche (2003) 31 Cal.4th 728

Jarrow Formulas, Inc. hired Sandra LaMarche to perform graphic design work. When their professional relationship soured Jarrow sued LaMarche for breach of contract. LaMarche's attorney, Mark Brutzkus, filed a cross-complaint. Jarrow obtained summary adjudication on LaMarche's cross-complaint and sued LaMarche and Brutzkus for malicious prosecution.

LaMarche and Brutzkus filed a Special Motion to Strike the complaint pursuant to C.C.P. § 425.16, California's anti-SLAPP (Strategic Lawsuit Against Public Participation) lawsuit. The trial court denied the motion based on its determination that the malicious prosecution action did not arise from a constitutionally protected right of free speech or petition. The Court of Appeal reversed the trial court, finding that both LaMarche and her attorney, Brutzkus, were engaged in protected activity when they filed and prosecuted the cross-complaint: LaMarche exercised her right to petition; Brutzkus exercised his freedom of expression.

The California Supreme Court accepted review and affirmed the Court of Appeal decision. The Court found that the malicious prosecution action arose from LaMarche's and Brutzkus' actions taken in furtherance of their right of petition. For this reason, it found the first prong of the anti-SLAPP analysis – whether an action arises out of an act of free speech or right of petition – was satisfied.

Jarrow conceded that C.C.P. § 425.16, on its face, applies to most malicious prosecution actions. Nevertheless, he urged the court to exempt malicious prosecution claims from the anti-SLAPP statute because victims of malicious prosecution would otherwise be denied a remedy. Jarrow urged the court to apply the same logic that led to the exemption of malicious prosecution claims from the litigation privilege of C.C. § 47(b).

The Supreme Court reasoned that the procedure set forth in C.C.P. § 425.16 is a screening mechanism designed weed out meritless claims. No exemptions are necessary to ensure redress for an injury

arising out of a legitimate claim of malicious prosecution. In contrast, because the litigation privilege operates as an absolute bar on tort liability based on statements made in litigation, an exemption to permit malicious prosecution claims is necessary.

Comment: The California Supreme Court has established a bright-line rule that malicious prosecution actions are subject to C.C.P. § 425.16 and that both attorneys and their clients are entitled to its protections. Significantly, the Court has once again demonstrated that malicious prosecution actions, while permissible, are subject to careful scrutiny.