

PROFESSIONAL LIABILITY UPDATE

ANTI-SLAPP

By Shane M. Cahill

***Bleavins v. Demarest* (2011) 2011 WL 2557256 (Cal.App. 2nd Dist.)**

The Second District holds that an attorney retained by an insurer to defend intentional causes of action is protected by the anti-SLAPP statute from claims by the client's opponent.

John Demarest and his law firm, Hanger, Steinberg, Shapiro & Ash (Demarest) were retained by Allstate to defend David Bleavins's neighbors in a lawsuit he filed concerning an easement agreement. After the underlying lawsuit was dismissed, Bleavins sued Demarest alleging the firm should have refused to defend claims involving the neighbor's alleged intentional misconduct, because such claims were uninsurable and therefore the defense violated public policy, insurance law, and fair business practices. Bleavins claimed Demarest's defense empowered and emboldened the neighbors to continue to engage in intentional misconduct. Bleavins also claimed that Demarest made misrepresentations, failed to provide promised documents and information, and engaged in protracted and abusive litigation tactics to increase litigation expense.

Demarest filed a motion under California's anti-Strategic Lawsuit Against Public Participation Statute (anti-SLAPP), C.C.P. § 425.16, asserting the conduct was protected and that Bleavins could not show a probability of prevailing. The trial court granted the motion as to the fraud claim, but allowed the other claims to proceed.

The Court of Appeal reversed and held all of the allegations were protected activity. The defense of the intentional acts, as well as the manner in which the defense was conducted, involved Demarest's client's right to petition.

Furthermore, Bleavins could not prevail on any of his claims. His neighbor's right to a defense of intentional claims was a contractual matter between the neighbors and their insurer, and Bleavins had no standing to insert himself into their contractual relationship. Moreover, Demarest owed no duty of care to Bleavins as his client's opposing litigant. Bleavins's remedy for the alleged abusive or frivolous litigation tactics was a motion for sanctions in the underlying action. Additionally, Bleavins failed to support his claims with admissible evidence.

Comment: This is another example of the use of the anti-SLAPP statute to terminate claims based on an attorney's protected conduct in representing clients.

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