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ANTI-SLAPP

California Law

By John S. Hong

Taheri Law Group v. Evans (C.A. 2nd, Feb. 26, 2008) 08 C.D.O.S. 2289

The Second District holds that an attorney's advice concerning whether a client should discharge his current counsel and pay legal fees is protected activity in furtherance of the right to petition under the anti-SLAPP statute.

Taheri Law Group sued Neil C. Evans for intentional interference with prospective economic advantage and intentional interference with business relations. Taheri claimed Evans induced client Alexander Sokurus to discharge Taheri and advised Sokurus not to pay over \$500,000 in fees.

Evans moved to strike the complaint under California anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute, C.C.P. § 425.16. Evans alleged his advice constituted petitioning activity and Teheri could not establish a probability of prevailing on his claims.

Teheri argued that the anti-SLAPP statute did not apply because the gravamen of the action was "client stealing," which had nothing to do with First Amendment rights. Plaintiff further argued that even if the statute applied, the commercial speech exemption of C.C.P. § 425.17 bars application of the statute.

The Court of Appeal agreed with Evans that the anti-SLAPP statute applied to a lawsuit alleging improper solicitation of an existing client. Teheri's cause of

action arose from Evan's communications with the client regarding pending litigation and Evan's potential work on the client's behalf.

The court rejected Teheri's argument that the commercial speech exemption should apply. An attorney's advice to a prospective client about pending litigation is not a commercial dispute between competing retailers of the kind the legislature intended. Moreover, the court was not willing to curb a client's right to representation by an attorney of the client's choice.

Teheri did not demonstrate a probability of prevailing on its claims, based on Evan's declaration that the client approached him; Evans did not solicit him.

Comment: California's Anti-SLAPP Statute can curtail disputes between counsel over the representation of the same client.