

SCOCA grants review in pivotal anti-SLAPP case

On May 13, 2015, the California Supreme Court granted review in *Baral v. Schnitt* to resolve the divide among lower courts regarding whether anti-SLAPP motions can strike so-called “mixed” causes of action.

In 2003, Defendant David Schnitt formed a new business entity, IQ BackOffice (“IQ”). Schnitt operated the company as a single member single manager LLC from its inception until 2010, when the company was put up for sale. In 2005, Plaintiff Robert Baral made an investment in IQ and became an economic interest holder. At Baral’s request, his son was made a bookkeeper at IQ. In preparation for the sale, Schnitt discovered a series of unauthorized payments by IQ to Baral’s son. Schnitt then commissioned a fraud audit that implicated Baral and his son in several instances of misconduct.

In response to the fraud audit and subsequent sale of the company, Baral filed eighteen separate claims against Schnitt, sixteen of which were related to Baral’s contention that he should have been allowed to participate in the negotiations for the sale of IQ. The remaining two claims—involving defamation—were exclusively connected to the fraud audit. Schnitt filed an anti-SLAPP motion to strike the defamation claims and a demurrer as to the various other claims. The trial court granted both the motion to strike and the demurrer. The trial court then granted leave to amend only with respect to the demurrer, but not the defamation claims.

Baral then filed claims for breach of fiduciary duty, constructive fraud, and declaratory relief based on much of the same misconduct alleged in the stricken defamation claims connected to the fraud audit. Again, Schnitt brought an anti-SLAPP motion with respect to the audit claims. The anti-SLAPP motion and subsequent appeal were both denied due to a reference in SCOCA’s holding in *Oasis West Realty, LLC v. Goldman*, stating that, if a plaintiff “can show a probability of prevailing on any part of its claim,” the cause of action can survive. This newly announced rule—first articulated by the California Court of Appeal for the Fourth District in *Mann v. Quality Old Time Service, Inc.*—was not discussed in either

party's briefs or in oral argument.

California's anti-SLAPP law was created to limit frivolous lawsuits designed to chill the exercise of free speech and petition. A Strategic Lawsuit Against Public Participation ("SLAPP") is a claim brought against a person arising from protected activity in furtherance of free speech or the right to petition. These suits are subject to special motions to strike, unless the plaintiff establishes that there is a probability that they will prevail on the claim. Anti-SLAPP laws offer those subjected to frivolous lawsuits unique procedural protections, such as an immediate stay of discovery and the right to attorney's fees and costs for the prevailing party.

Lower courts are divided in their interpretation of *Oasis West*. Some courts view *Oasis West* to hold that a cause of action, organized under one header, which contained both protected and unprotected activity, could be shielded from anti-SLAPP motions as one cause of action. Others noted, however, that this interpretation ran contrary to California's definition of "cause of action" and the post-*Mann* decision by SCOCA in *Taus v. Loftus*. Since SCOCA's decision in *Oasis West*, lower appellate courts have wrestled with the same issue at least fifteen times, often coming to conflicting resolutions, even in the same district. In deciding *Baral v. Schnitt*, SCOCA will finally have the opportunity to rule definitively on whether such mixed causes of action are properly subject to the anti-SLAPP statute.

Disclosure: Attorneys Jim Wagstaffe and Kevin Clune represent Mr. Schnitt in the case of *Baral v. Schnitt*.

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James (Jim) Wagstaffe and Kevin Clune are attorneys with the law firm of Kerr & Wagstaffe, LLP. Their firm regularly litigates cases involving anti-SLAPP, First Amendment, and related matters. Both Jim and Kevin have litigated numerous appeals before the California Supreme Court.

In addition to Jim's courtroom experience, Jim has authored and co-authored a number of publications, including the widely-used Federal Civil Procedure Before Trial (TRG 2013 - Three Volumes, 3,500 pages, cited in over 1,000 published decisions), the nation's leading practice guide on federal court practice. Jim's other publications include: California Trial Evidence (Practising Law Institute; Litigation and Administrative Practice Course Handbook Series) (PLI 2013); Game Changers: New Federal Rule Amendments (Thomson Reuters 2011); California Legal Ethics (TRG 1999); Commencing and Removing Actions to Federal Court (TRG 1986).



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