Filed 8/30/18 Geiser v. Kuhns CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

GREGORY GEISER, Plaintiff, Appellant, and Cross-Respondent, v. PETER KUHNS et al., Defendants, Respondents, and Cross-Appellants.	B279738 (Los Angeles County Super. Ct. Nos. BS161018, BS161019, BS161020)

APPEAL from orders of the Superior Court of Los Angeles County, Armen Tamzarian, Judge. Affirmed.

Dinsmore & Sandelmann, Frank Sandelmann and Brett A. Stroud, for Plaintiff, Appellant, and Cross-Respondent.

Law Office of Matthew Strugar, Matthew Strugar; Law Office of Colleen Flynn, Colleen Flynn, for Defendants, Respondents, and Cross-Appellants.

INTRODUCTION

Plaintiff Gregory Geiser filed petitions for civil harassment restraining orders against defendants Peter Kuhns and spouses Mercedes and Pablo Caamal, after defendants demonstrated at plaintiff's place of business and in front of his residence in an attempt to prevent the Caamals' eviction from their home. In response, defendants moved to strike the civil harassment petitions as strategic lawsuits against public participation (anti-SLAPP motions). After plaintiff voluntarily dismissed his civil harassment petitions, the trial court awarded defendants attorney fees as the prevailing parties on the petitions. The trial court denied defendants' attorney fees on their anti-SLAPP motions, ruling they would not have prevailed on the motions.

Plaintiff appeals the trial court's determination that defendants were the prevailing parties on the civil harassment petitions and, alternatively, the calculation of the attorney fees award. Defendants appeal the trial court's determination that they would not have prevailed on their anti-SLAPP motions. We affirm.

BACKGROUND

Plaintiff is the founder, President, and Chief Executive Officer of Wedgewood LLP, which is in the business of purchasing, rehabilitating, and selling distressed properties. On September 23, 2015, through a non-judicial foreclosure sale, a Wedgewood subsidiary purchased from Wells Fargo a triplex Ms. Caamal owned (the property) for $284,000. Wedgewood then obtained an eviction judgment for one of the units.

According to Ms. Caamal, on December 17, 2015, she and her husband, along with a group of concerned citizens, went to

Wedgewood's office building and requested a meeting with plaintiff to attempt to prevent their eviction and to negotiate a repurchase of her home. The concerned citizens included Kuhns and persons involved with the Alliance of Californians for Community Empowerment (ACCE), an entity whose various missions include saving homes from foreclosure and fighting against displacement of long-term residents. Kuhns is the Los Angeles Director for ACCE. The group set up a tent in Wedgewood's lobby and disrupted its business.

Plaintiff was not present. Wedgewood's Chief Operating Officer Darin Puhl and its General Counsel Alan Dettelbach went to the lobby. Dettelbach attempted to move the tent and was shoved by one of the demonstrators. The police were called. No one was arrested or cited.

Puhl spoke with the Caamals and learned they were interested in repurchasing the property. He offered to meet with them in private if the demonstrators left the building. The Caamals agreed. In the meeting, the Caamals told Puhl they could afford to repurchase the property. Puhl agreed to hold off enforcement of Wedgewood's eviction judgment on the triplex's first unit (an unlawful detainer trial was set for January 2016 for the other two units) for several weeks so the Caamals could meet with a lender to assess whether they could qualify for a loan. Although Puhl "gave [the Caamals] an idea of the value [of the property] according to similar properties in the area," they did not discuss a purchase price.

The Caamals subsequently submitted to Wedgewood a prequalification letter apparently with a purchase price of $300,000. In early January 2016, Puhl again met with the Caamals. Puhl informed them that Wedgewood believed the

property was worth $400,000 according to real estate websites and $300,000 was unacceptable. Wedgewood offered to sell them the property for $375,000.

The Caamals asked for additional time to obtain a home loan, agreeing to vacate the entire property within 60 days—by March 20, 2016—if they could not obtain financing. On March 18, 2016, the Caamals sent Wedgewood a prequalification letter with a $300,000 purchase price. Wedgewood deemed the prequalification letter unacceptable because it was not for the purchase price of $375,000 and it expressly stated that it did "not constitute loan approval."

The Caamals did not vacate the property by the date agreed upon, and, on March 23, 2016, they, Kuhns, and persons involved with ACCE returned to Wedgewood's office building seeking to meet with plaintiff. Mr. Caamal allegedly stated, "'[Y]ou're not getting me out of this property alive.'" The Caamals and their supporters left the premises either because the police were called and removed them or because Puhl agreed to review the Caamals' "prequalification" documents.

Because the Caamals had not arranged to purchase the property by the date agreed upon, Wedgewood had the San Bernardino Sheriff's Department evict them on March 30, 2016. Later that night, defendants and persons involved with ACCE went to plaintiff's residence. According to defendants, the Caamals and their supporters staged a residential picket on the sidewalk outside of plaintiff's home. They held signs, sang songs, chanted, and gave short speeches. The demonstration lasted for about an hour—from about 9:00 p.m. to 10:00 p.m. Officers from the Manhattan Beach Police Department were present, but did

not order the demonstrators to disburse or intervene to stop the demonstration. No one was arrested or cited.

According to Gilbert Saucedo, a National Lawyers Guild legal observer, ACCE organized the demonstration to protest the unfair and deceptive practices Wedgewood and its agents used to purchase Ms. Caamal's triplex and to evict the Caamals. He estimated there were 25 to 30 demonstrators and described the demonstration as "peaceful."

Plaintiff viewed the demonstration at his home differently. Two days after the demonstration, he filed petitions for civil harassment restraining orders against defendants. In his petitions, plaintiff stated that around 9:00 p.m., a "mob" of about 30 persons arrived at his residence and chanted, "Greg Geiser, come outside! Greg Geiser, you can't hide!" Plaintiff called the police. His wife sneaked out the back door and hid at a neighbor's house.

Plaintiff further recounted the incident in his declaration in support of restraining orders as follows: "Sometime before midnight, as a result of discussions with the police and Wedgewood's lawyer, the mob disbanded. My wife and I were left shaken by the escalating campaign of harassment that has followed me from work to my home. In view of the mob actions combined with the direct verbal threats, we are in fear for our safety. We have arranged for private security to stand guard outside both our place of business and our house.

"I further understand from conversations Wedgewood's general counsel had with the police the night the mob assaulted my home that police require a court order to keep the mob away from my house by any meaningful distance. This is why we are seeking this Court's assistance in issuing an order for these

respondents to stay away from my wife and me, my business, and my home, by at least 100 yards."

The trial court issued temporary restraining orders. The orders required defendants to stay at least 50 yards from plaintiff, his wife, and Wedgewood for the following three weeks.

Defendants responded to the civil harassment petitions by filing anti-SLAPP motions. They claimed plaintiff was attempting to stifle their free speech and expressive activity.

In addition to the civil harassment petitions, plaintiff sought to prevent further demonstrations in front of his home through the Manhattan Beach City Council. The day after the demonstration, plaintiff spoke with a city council member. Based on that conversation, the council member proposed an ordinance to the Manhattan Beach City Council that would prohibit targeted residential picketing.

On July 5, 2016, plaintiff spoke at the Manhattan Beach City Council meeting at which the proposed ordinance was addressed.[1] During a break in the meeting, Manhattan Beach Police Department Chief Eve Irvine approached plaintiff and assured him that what had happened at his home on March 30 would never be allowed to happen again. She explained the police department had received additional training about how to enforce the city's existing laws in those types of situations. If the demonstrators returned to his home, the police department would do everything in its power to make sure that his home, family, and neighbors were protected. Following that meeting, plaintiff had several phone conversations with other members of the

---

[1] On August 17, 2017, the City Council tabled a motion to approve the ordinance.

Manhattan Beach Police Department and members of the Manhattan Beach City Council during which he was assured that if a similar demonstration happened, he could expect a "full response" from the police department.

On August 4, 2016, plaintiff dismissed without prejudice the three civil harassment petitions.[2] He dismissed the petitions because, based on his July 5, 2016, conversation with Chief Irvine, he "felt reassured" the police department would respond appropriately if the demonstrators returned. Also, it had become clear to plaintiff from ongoing settlement negotiations with the Caamals that they were not going to repurchase their property and he believed it would be easier to list and sell the property without pending litigation.

When plaintiff dismissed the civil harassment petitions, the trial court had not ruled on defendants' anti-SLAPP motions. Defendants moved for an award of $84,150 in attorney fees (a $56,100 lodestar with a 1.5 multiplier) and $370 in court costs as the prevailing parties under the mandatory attorney fees provision of the anti-SLAPP statute (Code Civ. Proc., § 425.16, subd. (c)(1)[3]) and, alternatively, as the prevailing parties under the discretionary attorney fees provision of the civil harassment

---

[2] Plaintiff and Wedgewood had also filed a civil action against defendants and ACCE relating to essentially the same conduct giving rise to the civil harassment petitions (case number BC615987). We grant plaintiff's request to take judicial notice of plaintiff's dismissal of that action on July 14, 2016, and otherwise deny his request for judicial notice.

[3] All statutory citations are to the Code of Civil Procedure.

statute (§ 527.6, subd. (s)) (attorney fees motion).[4] The trial court ruled that defendants would not have prevailed on the anti-SLAPP motions, but found they were the prevailing parties on the civil harassment petitions. The trial court thus awarded defendants $40,000 in attorney fees and court costs. In declining to award the full amount sought by defendants, the trial court found that the hourly rates defendants' attorneys requested were high in light of their experience and the nature and difficulty of the litigation. The trial court also found that large parts of the requested attorney fees related to unsuccessful settlement negotiations and the anti-SLAPP motion, which the trial court concluded would not have succeeded.

DISCUSSION

I. Plaintiff's Appeal

Plaintiff appeals the award of attorney fees and costs, claiming the trial court erred by: (1) excluding evidence that was crucial to determine that plaintiff was the prevailing party on the civil harassment petitions; (2) ultimately concluding that defendants were prevailing parties; and (3) miscalculating the amount of fees.

A. *"Exclusion" of Evidence*

Plaintiff contends the trial court erred when it excluded as hearsay his declaration testimony that Chief Irvine assured him

---

[4] Defendants did not separately request attorney fees for work performed on the anti-SLAPP motion and for work performed on the civil harassment petition. Instead, they sought an award of attorney fees for all work performed in the litigation.

the police department would protect him and his family in the event of further demonstrations at his home. The ruling was error, plaintiff argues, because the testimony was offered to show that plaintiff acted in reliance on that assurance when he dismissed his civil harassment petitions, and not for the truth of the matter asserted—i.e., that the police would protect him. Plaintiff contends the error was prejudicial because it was crucial to the trial court's prevailing party determination. The trial court did not err.

We review a trial court's rulings on evidentiary objections for an abuse of discretion. (*Carnes v. Superior Court* (2005) 126 Cal.App.4th 688, 694.) "Discretion is abused only when in its exercise, the trial court 'exceeds the bounds of reason, all of the circumstances before it being considered.'" (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 281 (*Shaw*).) An appellant bears the burden of establishing an abuse of discretion when challenging a trial court's discretionary rulings. (*Ibid.*)

In the declaration he submitted in opposition to defendants' attorney fees motion, plaintiff stated that Chief Irvine, other members of the Manhattan Beach Police Department, and members of the Manhattan Beach City Council assured him the police department would protect him if the demonstrators returned to his home. Defendants objected to those parts of plaintiff's declaration as hearsay.

The trial court ruled, "[Plaintiff] claims he obtained the relief he sought *outside of court* after he received an assurance from Manhattan Beach Police Chief Eve Irvine that 'what happed at [his] home on the night of March 30 would <u>never</u> be allowed to happen again.' This statement and similar alleged statements by Chief Irvine and other city officials, however, are inadmissible

hearsay." In a footnote appended to the ruling, the trial court stated, "[Plaintiff] argues that the statements are admissible to show what his state of mind was when he dismissed the petitions. The court agrees. (See Evid. Code, § 1250.) But petitioner's state of mind is of marginal relevance to the issue of who was the prevailing party in this litigation and the other issues the court must decide to adjudicate [defendants'] motions."

Later, in a section addressing defendants' evidentiary objections, the trial court sustained hearsay objections to the statements made by other members of the Manhattan Beach Police Department and by Manhattan Beach City Council members. With respect to the statements attributed to Chief Irvine, the trial court sustained the hearsay objection, explaining that "Chief Irvine's statements are hearsay to the extent they are offered for the truth of the matter asserted."

Plaintiff's appeal concerns only the trial court's ruling on Chief Irvine's alleged statements. His argument that the trial court erred by excluding the statements as hearsay fails because the trial court did not exclude the statements for all purposes. The trial court's ruling is clear. It excluded the police chief's statements to the extent they were offered for the truth of the matter asserted, but admitted them to explain why plaintiff dismissed his civil harassment petitions—the very reason plaintiff argues on appeal they were admissible. Accordingly, we find no error with respect to the trial court's evidentiary ruling.

B. *Prevailing Party*

Plaintiff contends the trial court abused its discretion when it determined that he was not the prevailing party under section 527.6. He argues that he prevailed because he "obtained the

object of the litigation, namely assurances from representatives of the City of Manhattan Beach that future harassment would be prevented." We disagree.

We review a trial court's prevailing party ruling under section 527.6 for an abuse of discretion. (*Adler v. Vaicius* (1993) 21 Cal.App.4th 1770, 1777; *Elster v. Friedman* (1989) 211 Cal.App.3d 1439, 1443 (*Elster*).) As stated above, a trial court abuses its discretion "only when in its exercise, the trial court 'exceeds the bounds of reason, all of the circumstances before it being considered.'" (*Shaw, supra,* 170 Cal.App.4th at p. 281.)

"'A plaintiff will be considered a prevailing party when the lawsuit "'was a catalyst motivating defendants to provide the primary relief sought'" or succeeded in "'activating defendants to modify their behavior.'" [Citation.]' [Citation.]" (*Elster, supra,* 211 Cal.App.3d at pp. 1443-1444 [section 527.6 action].) Ordinarily, when a plaintiff voluntarily dismisses an action, the defendant is the prevailing party. (See *Coltrain v. Shewalter* (1998) 66 Cal.App.4th 94, 100, 107 [alleged SLAPP suit dismissed without prejudice].) However, "a court may base its attorney fees decision on a pragmatic definition of the extent to which each party has realized its litigation objectives, whether by judgment, settlement, or otherwise." (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 622 [contract action].)

The trial court ruled that defendants were the prevailing parties, finding that "they obtained what they wanted out of the litigation—[plaintiff] dismissed his actions and did not get restraining orders or any other relief." It rejected plaintiff's claim that he was the prevailing party because he achieved what he sought outside of court through Police Chief Irvine's assurances that what happened at his home would not be allowed to happen

again. The trial court found that plaintiff "did not obtain this alleged promise by Chief Irvine *as a result of these lawsuits*." It reasoned that plaintiff could have sought Chief Irvine's commitment without filing the civil harassment petitions. Moreover, the trial court recognized the substantial difference between what plaintiff did achieve outside of the lawsuit, i.e., "a commitment by Chief Irvine to enforce existing law—whatever that is worth," and the "gravity" of what plaintiff sought through the lawsuit, i.e., "remedies that would have limited [defendants'] liberty, namely their freedom of movement and communication," as well as "a court finding that they engaged in socially unacceptable behavior."

We agree with the trial court. The objective of plaintiff's civil harassment petitions was to obtain orders restraining defendants from, among other things, harassing or contacting him or his wife, and requiring defendants to stay 100 yards award from him, his wife, his home, and his workplace—i.e., Wedgewood. Plaintiff failed to achieve that objective, and obtaining Chief Irvine's assurances fell short of such objective.

Moreover, to the extent obtaining Chief Irvine's commitment to enforce the law can be characterized as having obtained plaintiff's objectives in bringing suit, there is no evidence that plaintiff's civil harassment petitions motivated Chief Irvine to give her assurances or even that Chief Irvine knew of the petitions. In this regard, we reject plaintiff's contention the trial court impermissibly "required" a nexus between plaintiff's filing the petitions and Chief Irvine's actions. The trial court never stated such a nexus was necessary for plaintiff to be a prevailing party. Rather, the trial court's consideration of the lack of any causation between the lawsuit

and Chief Irvine's assurance to plaintiff was a valid (if not dispositive) factor in the exercise of its discretion. We likewise reject plaintiff's suggestion that the absence of evidence that his civil harassment petitions were not a motivating factor for the police department means we should infer the petitions were a motivating factor. That suggestion fails to acknowledge that plaintiff bears the burden of showing the trial court's prevailing party determination exceeded the bounds of reason. (*Shaw, supra,* 170 Cal.App.4th at p. 281.)

For the foregoing reasons, we find no abuse of discretion in the trial court's determination that defendants were prevailing parties.

C. *Attorney Fees Calculation*

Plaintiff contends the trial court erred in calculating defendants' attorney fees award on the civil harassment petitions. Plaintiff has failed to demonstrate error.

"A trial court's exercise of discretion concerning an award of attorney fees will not be reversed unless there is a manifest abuse of discretion. [Citation.] '"The 'experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong['']—meaning that it abused its discretion. [Citations.]'" [Citation.] Accordingly, there is no question our review must be highly deferential to the views of the trial court. [Citation.]" (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1239 (*Nichols*).)

In their attorney fees motion, defendants requested $84,150 in attorney fees and $370 in court costs.[5] The trial court awarded a reduced amount—$40,000—finding defendants' attorneys' hourly rates were too high and a large amount of time was spent on unsuccessful settlement negotiations and the anti-SLAPP motion, which would not have succeeded.

Plaintiff contends the trial court disregarded its findings in reducing the requested attorney fees and court costs by $44,520 because time spent on the anti-SLAPP motion alone accounted for $43,230 of the initial request. Thus, plaintiff concludes, the trial court essentially reduced the attorney fees award by the amount spent on the anti-SLAPP motion with no reductions for the attorneys' unreasonably high hourly rates or fruitless settlement negotiations.

Plaintiff does not explain how he arrived at the $43,230 figure. His opening brief cites his opposition to defendants' attorney fees motion, which in turn does not explain how plaintiff arrived at the unmodified lodestar of $28,820 ($28,820 x 1.5 = $43,230) for work on the anti-SLAPP motion referenced in the opposition. "Counsel is obligated to refer us to the portions of the record supporting his or her contentions on appeal. [Citations.] . . . [W]e will not scour the record on our own in search of supporting evidence. [Citation.] Where, as here,

---

[5] In their reply in support of their motion, defendants increased their request for attorney fees to $100,525, the adjustment reflecting attorney time responding to plaintiff's opposition. The trial court based its attorney fees award on the $84,150 figure in defendants' attorney fees motion and not on the $100,525 figure in their reply. Defendants do not claim on appeal that the trial court erred.

respondents have failed to cite that evidence, they cannot complain when we find their arguments unpersuasive. [Citation.]" (*Sharabianlou v. Karp* (2010) 181 Cal.App.4th 1133, 1149.) Plaintiff has failed to show the trial court abused its discretion in awarding defendants' attorney fees and court costs. (*Nichols, supra,* 155 Cal.App.4th at p. 1239.)

II. Defendants' Cross-Appeal

Defendants contend the trial court erred in denying attorney fees related to their anti-SLAPP motions on the ground that defendants would not have prevailed on such motions. Specifically, they argue the trial court erred in finding that the anti-SLAPP statute did not apply to plaintiff's civil harassment petitions because defendants failed to establish the first step in bringing a successful motion—i.e., that defendants engaged in protected activity. Because defendants' challenged activity concerned a purely private issue and not a public issue or an issue of public interest, the trial court did not err.[6]

"A SLAPP suit—a strategic lawsuit against public participation—seeks to chill or punish a party's exercise of constitutional rights to free speech and to petition the government for redress of grievances. [Citation.] The Legislature enacted . . . section 425.16—known as the anti-SLAPP statute—to provide a procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of constitutional rights." (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048,

---

[6] Accordingly, we do not reach defendants' second contention that plaintiff would not have prevailed on his civil harassment petitions.

1055-1056; § 425.16, subd. (b)(1)[7].) The anti-SLAPP statute is to be construed broadly, but not so broadly as to apply to purely private transactions. (*Garretson v. Post* (2007) 156 Cal.App.4th 1508, 1524 (*Garretson*).) We review an order denying an anti-SLAPP motion de novo. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325-326.)

"Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384.)

At the first step, "[t]he moving defendant's burden is to demonstrate that the act or acts of which the plaintiff complains were taken 'in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue,' as defined in the statute. (§ 425.16, subd. (b)(1).)" (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) Section 425.16, subdivision (e) sets

---

[7] Section 425.16, subdivision (b)(1) provides, "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim."

forth four categories of conduct the anti-SLAPP statute protects.[8] Defendants argue their demonstrations were conducted "in connection with a public issue or an issue of public interest" within the meaning of section 425.16, subdivisions (e)(3) and (e)(4) because they were directed at plaintiff and his company and were "related to the company's residential real estate business practices that displace residents and gentrify working-class neighborhoods." Further, the demonstrations concerned the root causes of the great recession—large scale fix-and-flip real estate practices.

"'"The definition of 'public interest' within the meaning of the anti-SLAPP statute has been broadly construed to include not only governmental matters, but also private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity." [Citation.]' (*Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1233, 132 Cal.Rptr.2d 57;

---

[8] Section 425.16, subdivision (e) provides, "As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

see *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 479, 102 Cal.Rptr.2d 205.) '[T]he precise boundaries of a public issue have not been defined. Nevertheless, in each case where it was determined that a public issue existed, "the subject statements either concerned a person or entity in the public eye [citations], conduct that could directly affect a large number of people beyond the direct participants [citations] or a topic of widespread, public interest [citation]." [Citation.]' (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 736-737, 87 Cal.Rptr.3d 347.)" (*USA Waste of California, Inc. v. City of Irwindale* (2010) 184 Cal.App.4th 53, 65 (*USA Waste of California, Inc.*).)

Defendants' demonstrations at Wedgewood's office building and plaintiff's residence focused on coercing Wedgewood into selling back to Ms. Caamal her triplex at a reduced price. That was a private matter concerning a former home owner and the corporation that purchased her former home and not a public issue or an issue of public interest. (*Garretson, supra,* 156 Cal.App.4th at p. 1524; *USA Waste of California, Inc., supra,* 184 Cal.App.4th at p. 65.) The private nature of the demonstrations is made clear in defendants' own declarations submitted in support of the anti-SLAPP motions.

In Ms. Caamal's declaration, she described the motivation for the demonstrations at Wedgewood's office building. As to the first demonstration, she stated that she and her husband "and a group of concerned citizens *seeking to assist us*, went to Wedgewood's office building in Redondo Beach and requested a meeting with [plaintiff] *to attempt to prevent the impending eviction and negotiate a re-purchase of m*[*y*] *home*." (Italics added.) As to the second demonstration, she stated that "as Wedgewood was attempting to lock me and my husband from our

home and continuing to ignor[e] letters from both myself and my attorney, my husband and I, as well as another group of citizens *supporting our effort to repurchase our home*, returned to Wedgewood's office and again requested a meeting with [plaintiff]." (Italics added.) She said nothing about Wedgewood's residential real estate business practices displacing residents and gentrifying working-class neighborhoods or about large scale fix-and-flip real estate practices being a root cause of the great recession.

Consistent with his wife's stated purpose for the first demonstration, Mr. Caamal stated in his declaration, "I "accompanied my wife to Wedgewood's office building . . . to obtain an answer as to why Wedgewood was refusing to negotiation [*sic*] with my wife *in her attempt to repurchase our home*." (Italics added.) Kuhns likewise stated in his declaration, "I and others involved with ACCE accompanied Mr. and Ms. Caamal to Wedgewood's office building . . . *to obtain an answer as to why Wedgewood was refusing to negotiation* [*sic*] *with the Camaals in their attempt to repurchase their home."* (Italics added.) Neither Mr. Caamal nor Kuhns says anything in his respective declaration about the purpose of the demonstrations relating to issues of displacement of residents due to residential real estate business practices, gentrification, or large scale fix-and-flip real estate practices leading to the great recession.

Even a third-party participant, Saucedo, the National Lawyers Guild legal observer, described in his declaration the purpose for the demonstration at plaintiff's residence as a private matter limited to the Camaal's dispute with Wedgwood. He stated that ACCE organized the demonstration at plaintiff's residence "to protest unfair and deceptive practices used by

Wedgewood . . . and its agents *in acquiring the real property of Pablo and Mercedes Caamal, and evicting them from their home*." (Italics added.) That motivation was purely personal to the Caamals and did not address any societal issues of residential displacement, gentrification, or the root causes of the great recession.

Based on this record, we agree with the trial court's conclusion that defendants' activities were not in connection with a public issue or an issue of public interest.[9] In this regard, *Thomas v. Quintero* (2005) 126 Cal.App.4th 635 (*Thomas*) is instructive. Defendants argue that *Thomas* supports their claim they engaged in protected activity because the *Thomas* court found that protest activities against a landlord by a tenant and a group of activists were covered by the anti-SLAPP statute in that particular case. But the facts of *Thomas* demonstrate precisely why defendants' activities here were not protected.

In *Thomas*, *supra*, 126 Cal.App.4th at page 654, defendant Quintero was a tenant in a building owned by plaintiff Thomas. They became "embroiled in a number of landlord-tenant disputes, which culminated in an eviction proceeding." (*Ibid.*) Quintero was then put in touch with a group called Campaign for Renters Rights (CRR) through which he met many other former tenants of Thomas. (*Ibid.*) Quintero thus learned that Thomas was "a 'notorious landlord' whose pattern of unjust evictions throughout

---

[9] The dissent (*post* at p. 4) agrees that assisting the Caamals was "the most immediate objective" of the defendants' activities but posits it was not "the only objective." The record, however, lacks evidence that would satisfy defendants' burden to demonstrate they had some other objective "with connections to broader issues of interest to the public," as the dissent surmises.

Oakland was 'the first big public case of the campaign in Oakland for a Just Cause of Eviction Ordinance.'" (*Ibid.*) Indeed, CRR previously "had helped to organize 21 former tenant families who were allegedly owed more than $35,000 in unpaid security deposits by Thomas" and "claim[ed] to have contacted more than 100 former tenants of Thomas's." (*Id.* at pp. 654-655.) According to CRR materials, "Thomas had filed evictions against 142 families over a five-year period," and "he was successfully sued by the City of San Rafael for $19,000 when he failed to initiate repairs of rental units he owned there." (*Id.* at p. 655.) After Quintero and a group appeared at Thomas's church to protest, Thomas petitioned for a civil restraining order, claiming that Quintero and his group "harassed church members, blocked entrances, and trespassed on church property, with the stated purpose of causing extreme embarrassment and severe emotional distress" to him. (*Id.* at p. 654.)

The court in *Thomas, supra,* 126 Cal.App.4th at page 661, held that Quintero's activities were protected by the anti-SLAPP statute, finding that, "while his private interests were certainly in issue, there were much broader community interests at stake in the protests." Specifically, the court reasoned that the protests involved issues of public interest because Thomas was "accused of wrongfully evicting and improperly retaining the security deposits of more than 100 tenants" and was "accused of a pattern of refusing to make needed repairs to his rental properties, allegedly resulting in legal action being taken against him by several municipalities." (*Ibid.*) The court found that such "allegations against Thomas implicate both a concern for the stability of the rental market in the affected community, as well as intimate the threat of potential urban blight associated with

the failure to make necessary repairs to buildings in the neighborhood." (*Ibid.*) Moreover, the court noted that the "protest activities were not an end to themselves, but were coupled with a genuine effort to engage the members of Thomas's congregation in discussing and finding a solution to the disputes," namely, "there was a direct call for public involvement in an ongoing controversy, dispute, or discussion with respect to Thomas's past and continued property management practices." (*Ibid.*)

Here, by contrast, we do not find in the record any basis to conclude plaintiff was a public figure or had gained widespread notoriety throughout the community for his real estate activities. Nor do we find any basis to believe the Caamals' private dispute with plaintiff was one of many similar disputes shared in common with members of the community.[10] The record is also

---

[10] In their cross-appeal reply brief, defendants state plaintiff's company "has been accused of unlawful conduct throughout the state" and claim "the record includes accusations" that the company harassed and evicted "many" immigrant working class families, directed its employees to aggressively target foreclosed homes and refrain from repairing them, and participated in various unlawful and fraudulent schemes. To support that claim, however, defendants cite only to two civil complaints filed by two separate homeowners involving two individual properties located in San Francisco. Those complaints are appended as exhibits to a request for judicial notice, which it appears the trial court never granted. Even if properly before this court, these two additional, isolated instances do not transform the Caamals' private dispute into a public one. (See *Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 925 (*Rivero*) [supervisor's conduct toward eight

devoid of any governmental complaints, actions, or disputes with plaintiff or his company, which might be indicative of a broader public issue with respect to plaintiff's house-flipping conduct. Further, as discussed above in defendants' declarations, the purpose of the protests was to assist the Caamals in getting their house back, not to engage other members of the community or to call for public involvement in finding a solution to purported issues concerning real estate practices. These important differences from the circumstances in *Thomas, supra,* 126 Cal.App.4th 635, underscore exactly why the demonstrations regarding the Caamals' home was not protected activity concerning a public issue or issue of public interest.

Finally, defendants contend that the "wide-spread" media attention their demonstrations received shows that the demonstrations were matters of public interest. While the fact of media coverage may be indicative of a public matter, "[m]edia coverage cannot by itself . . . create an issue of public interest within the statutory meaning." (*Zhao v. Wong* (1996) 48 Cal.App.4th 1114, 1121, disapproved on other grounds in *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106; see also *Rivero, supra,* 105 Cal.App.4th at p. 926 ["If the mere publication of information in a union newsletter distributed to its numerous members were sufficient to make that information a matter of public interest, the public-issue limitation would be substantially eroded, thus seriously undercutting the obvious goal of the Legislature that the public-issue requirement have a limiting effect"].) For the reasons discussed above, defendants' protests concerned the Caamals' private dispute with plaintiff

---

custodians in the union did not rise to the level of a public issue involving unlawful workplace activity].)

and his company. The fact that it attracted some media attention did not convert a purely private matter into one of public interest.

DISPOSITION

The orders are affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

KIN, J.*

I concur:

MOOR, J.

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Geiser v. Kuhns et al.
B279738

BAKER, Acting P. J., Concurring in Part and Dissenting in Part

We hear a substantial number of appeals involving anti-SLAPP challenges to lawsuits that are not core, paradigmatic SLAPPs. (*Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 815-816 ["[W]hile SLAPP suits 'masquerade as ordinary lawsuits' the conceptual features which reveal them as SLAPP's are that they are generally meritless suits brought by large private interests to deter common citizens from exercising their political or legal rights or to punish them for doing so"] (*Wilcox*), disapproved on another ground in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53; Sen. Com. on Judiciary, Analysis of Sen. Bill No. 515 (2003-2004 Reg. Sess.) as amended May 1, 2003, pp. 5-6 [quoting *Wilcox* and describing it as "set[ting] forth a description of the quintessential SLAPP suit"].) But here we appear to have one, and yet the majority does not recognize it for what it is.

Most of the key facts that reveal plaintiff Gregory Geiser's civil harassment suits targeted free speech and petitioning rights are undisputed. It is undisputed the lawsuits Geiser filed against former homeowners Pablo and Mercedes Caamal, as well as Peter Kuhns, the Los Angeles Director of a local organization Alliance

of Californians for Community Empowerment (ACCE),[1] arose from their decision to organize and participate in a public protest on the sidewalk outside Geiser's home.[2] There is no dispute that it was not just the Caamals who participated in the protest, but some 25 to 30 others as well, including ACCE members and a legal observer from the National Lawyers Guild. There is no dispute that months after Geiser filed his petitions seeking to restrain any further "harassment," his own company put out a *press release* decrying ACCE's "portray[al of] the Caamal family as victims, while exploiting a very emotional issue without any serious attempt . . . to resolve the situation." And there is no dispute that after the Caamals and Kuhns responded to Geiser's lawsuits by filing anti-SLAPP motions, Geiser dismissed the suits rather than seeking vindication on the merits in court. These are many of the hallmarks of vintage SLAPP conduct.

The majority opinion concludes otherwise because it does not adhere to the statutory command, and our Supreme Court's repeated direction, that the anti-SLAPP statute (and its descriptions of protected activity) must be construed broadly. (Code Civ. Proc., § 425.16, subd. (a); *Barry v. State Bar of California* (2017) 2 Cal.5th 318, 321; *City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 419-420.) The majority acknowledges Code of Civil Procedure section 425.16 provides an

---

[1] ACCE, according to Kuhns, is an entity whose various missions include "sav[ing] homes from foreclosures and the fight against displacement of long[-]term residents in our communities."

[2] Kuhns describes the protest as a one-hour "residential picket" during which the participants "held signs, sang songs, chanted, and gave short speeches, all from the sidewalk."

anti-SLAPP remedy to those engaged in making "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest." (Code Civ. Proc., § 425.16, subds. (b)(1), (e)(3).) But the majority reasons the protest on the sidewalk outside Geiser's home was not undertaken "in connection with" an issue of public interest because it was about "a private matter"—pointing to snippets of declarations submitted by the Caamals and Kuhns that discuss efforts made days before the protest to get Wedgewood LLC (Wedgewood)—Geiser's distressed home purchasing company—to cease eviction efforts and permit the Caamals to repurchase the property. The majority's rationale is unpersuasive for at least two reasons.

First, as already foreshadowed, the Kuhns and Caamal declarations on which the majority relies describe the motivation for earlier visits to Wedgewood's offices rather than the protest outside Geiser's home. There is good reason to think the 25 to 30 person group protesting outside Geiser's home would have had broader aims than the groups that participated in the earlier office visits. Indeed, the National Lawyers Guild representative who was present for the sidewalk protest (not the earlier office visits) tends to confirm this; his declaration states ACCE organized the demonstration [outside Geiser's home] "to protest unfair and deceptive practices used by Wedgewood, LLC . . . and its agents in acquiring the real property of [the Caamals], and evicting them from their home." The reference to "practices" indicates conduct that includes but extends beyond the Caamals' own situation, especially when combined with Kuhns's description of ACCE's mission (noted *ante*).

Second, and more fundamentally, it is no surprise the declarations include language that describes the support of "concerned citizens" for the Caamals and a desire to help them avoid eviction—that was the most immediate objective of the protest outside Geiser's home. That is not to say it was the only objective, however, and prior anti-SLAPP decisions have recognized protected speech and petitioning activity is often undertaken in service of individual causes but with connections to broader issues of interest to the public. (See, e.g., *Hunter v. CBS Broadcasting Inc.* (2013) 221 Cal.App.4th 1510, 1527 ["[T]he proper inquiry is not whether CBS's selection of a weather anchor was itself a matter of public interest; the question is whether such conduct was 'in connection with' a matter of public interest"]; *Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450, 454-455 [fourth grade basketball coach's suit arising from parent coaching complaints implicates an issue of public interest]; *Cross v. Cooper* (2011) 197 Cal.App.4th 357, 371, 375 [current home tenants' disclosure to prospective home purchaser that a sex offender lived nearby was speech undertaken in connection with an issue of public interest].) That is the case here, and the presence of at least several people with no discernible preexisting relationship to the Caamals for a protest at 9:00 p.m. on a Wednesday evening bears this out.[3] This was a community protest where the only apparent shared tie among everyone present was the desire to engage in or facilitate public speech directed at those believed to be engaged in

---

[3] Even Wedgewood's own press release tends to confirm the broader connections to issues of public interest. It stated that for ACCE, "making headlines and political gain[ ] far outweighs helping the Caamals return to their home."

unfair (or at least greedy and callous) practices that displace long-term community residents. When construed broadly, that is activity "in connection with an issue of public interest." (Code Civ. Proc., § 425.16, subds. (b)(1), (e)(3).)

The conclusion I draw here is not novel. To the contrary, the legal ground in this case has already been plowed by the First District Court of Appeal, which reached a conclusion opposite the majority's on notably similar facts. (*Thomas v. Quintero* (2005) 126 Cal.App.4th 635 (*Thomas*).) In *Thomas*, the Court of Appeal found the anti-SLAPP statute applied to a civil harassment petition filed by a landlord against a tenant who, with the help of a community renters' organization, organized a sidewalk protest against the landlord. (*Id.* at pp. 653-655.) In arriving at its holding, the *Thomas* court found it particularly significant that the tenant "did not act alone, but in conjunction with planned demonstrations against [the landlord] by a nonprofit group purportedly dedicated to upholding tenant rights. Thus, [the court concluded,] while [the tenant's] private interests were certainly in issue, there were much broader community interests at stake in the protests." (*Id.* at p. 661.)

The majority attempts to distinguish *Thomas* on its facts, arguing there was evidence the landlord there was accused of wrongful behavior beyond the tenant in question. The attempt is unpersuasive. There is likewise evidence in this case that Wedgewood was named in complaints filed by other homeowners, which the majority mentions in a footnote, and quibbling about precisely how much other wrongful conduct evidence there is here as compared to *Thomas* unjustifiably elevates insignificant

factual distinctions over the many salient factual similarities between that case and this one.[4]

I see no need to elaborate further. Our Supreme Court has granted review in a case that will likely provide further guidance on the scope of the Code of Civil Procedure section 425.16, subdivision (e)(3) category of protected activity (*Rand Resources, LLC v. City of Carson* (2016) 247 Cal.App.4th 1080, review granted Sept. 21, 2016, S235735 (*Rand*)), and the decision in *Rand* may well require us to reconsider the result here. It suffices for present purposes to state (a) the majority correctly rejects Geiser's challenges to the attorney fees award the trial court made pursuant to Code of Civil Procedure section 527.6, (b) the trial court's determination that the anti-SLAPP motions would not have succeeded for lack of statutorily protected activity should be reversed, and (c) the case should be remanded so that the trial court can consider in the first instance the question that

---

[4] Insofar as the result reached by the majority can be attributed to a concern about the need for appropriate limits on the "issue of public interest" criterion (Code Civ. Proc, § 425.16, subd. (e)(3))—i.e., foreclosing the possibility that "public interest" might be defined so broadly that essentially any speech in public would be swept in for protection—the concern is unfounded on these facts. It is undisputed that, in addition to Wedgewood's own press release, several established media organizations reported on the controversy involving the Caamals' home. There is no suggestion this media attention was attributable to anything other than editorial judgments that the matter involving Wedgewood's practices and the Caamals represented an "*issue in which the public is interested*" (*Nygård, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1042). The evidence of such attention cabins the scope of Code of Civil Procedure section 425.16, subdivision (e)(3).

arises at the second step of anti-SLAPP analysis—and to recalculate the attorney fees award if it finds Geiser had no probability of prevailing on the civil harassment suits he opted to dismiss.

BAKER, Acting P. J.