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Party-by-Party Analysis Adopted for Anti-SLAPP Motions to Dismiss

California Court of Appeal Applies Anti-SLAPP Statute to Some Causes of Action and City Defendants



A party-by-party analysis was adopted by an appellate court for the California anti-SLAPP statute, significantly narrowing the scope of a lawsuit brought against the City of Alameda and its employees. In an opinion published last week, the First District Court of Appeal found that some

causes of action brought against the individual defendants should be dismissed because the causes of action were based on speech protected by the anti-SLAPP (Strategic Lawsuit Against Public Participation) statute. However, under the party-by-party analysis, the court allowed certain causes of action brought against the City to survive the motion to dismiss because the alleged wrongful conduct was not based on protected speech.

In *Area 51 Productions, Inc. v. City of Alameda et al.*, the City of Alameda terminated a long-standing ground lease with Area 51, a special events operator. In turn, Area 51 sued the City and some individual City employees for various causes of action stemming from alleged breach of the City's lease agreement. During the course of the contract, there were communications from City employees asking Area 51 to meet one of the conditions of the agreement or the City would withdraw from the agreement. When Area 51 did not comply with all of the conditions of the agreement, a City employee emailed Area 51 to inform it that the City was exercising its right to unilaterally terminate the agreement. Area 51 then filed a lawsuit for various causes of action all premised on an alleged breach of contract and one cause of action for negligent misrepresentation of facts. In response, the City and the individuals filed a motion to dismiss under California's anti-SLAPP statute.

The court emphasized the importance of analyzing the application of each separate cause of action against each separate defendant. In doing this, the court concluded that the breach of contract cause of action against the City was not premised on protected speech and instead premised on government action

People



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— termination of a contract. Therefore, those causes of action survived the anti-SLAPP motion. However, the court concluded that the causes of action premised on the alleged breach of contract against individual city employees as defendants should be dismissed because they involved the employees' protected speech. The court concluded that, because the employees were not parties to the lease, the only way to hold them liable for breach arose from their communications with Area 51. The court concluded that the causes of action against the individual employees should be dismissed because the employees' communications with Area 51 were communications "made in connection with an issue under consideration...by a[n]..executive body" and therefore protected by the anti-SLAPP statute.

This opinion shows that public agency defendants can use anti-SLAPP statutes to narrow the scope of lawsuits brought against the agency and its officials, officers and employees, if not having the lawsuit dismissed all together. As this case illustrates, an anti-SLAPP motion in response to a lawsuit arising from a single distinct governmental act may yield favorable results as to some, if not all, the named municipal or public entity defendants.

For more information on this decision and how it may affect your agency, please contact the author of this Legal Alert to the right in the firm's [Municipal Law](#) practice group, or your [BB&K attorney](#).

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