

Extortionate Demand Letter Not Protected by Anti-SLAPP Statute

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Jun 26, 2013

Mendoza v. Hamzeh, 215 Cal. App. 4th 799, 155 Cal. Rptr. 3d 832 (2013)

Brief Summary

The California Court of Appeal, Second District, Division 1, held that a demand letter that threatened to report a crime and demanded money constituted criminal extortion and therefore fell outside of the protections of the anti-SLAPP statute, in spite of the litigation privilege and regardless of the egregiousness of the threat involved.

Complete Summary

The attorney for an employer sent a demand letter to a former employee of the employer indicating that the employer would report the former employee's allegedly fraudulent conduct to several public agencies unless the former employee repaid more than \$75,000 in damages related to such conduct.

The former employee sued the employer's attorney for civil extortion among other causes of action. In response, the attorney filed an anti-SLAPP motion, stating that the demand letter was a protected litigation communication and that the former employee could not establish a probability of success on his claims, as required by California's anti-SLAPP statute. The former employee sought attorneys' fees, arguing the attorney's motion was frivolous in light of the controlling anti-SLAPP case, *Flatley v. Mauro* 39 Cal. 4th 299 (2006), in which a lawyer's extortionate demand letter was held to be unprotected by the anti-SLAPP statute.

The trial court denied the anti-SLAPP motion, holding that *Flatley* controlled, and awarded attorneys' fees to the former employee. The court of appeals affirmed the trial court's order, holding that any threat to report a crime coupled with a demand for money is criminal extortion as a matter of law. While the *Flatley* Court had stated that its conclusion was "based on the specific and extreme circumstances of this case," the court of appeals here

concluded that a bright-line rule was appropriate. The court therefore held that all communications that constitute criminal extortion as a matter of law fall outside of the protections of the anti-SLAPP statute, regardless of whether such communications fall under the litigation privilege and regardless of the egregiousness of such communications.

Significance of Opinion

This opinion appears to broaden the holding in *Flatley*. Given that demand letters generally include a demand for money, California lawyers should be careful to avoid language in such letters that could be construed as a threat to report criminal conduct.

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