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# Ninth Circuit Provides Comprehensive Analysis of Anti-SLAPP Statute Application

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*Graham-Sult v. Clainos*, 738 F.3d 1131 (9th Cir. 2013)

**Brief Summary**

Following a comprehensive analysis of the principles governing anti-SLAPP motions, the Ninth Circuit affirmed an anti-SLAPP judgment and a sizeable fee award in favor of a law firm. The action was brought by the sons of deceased rock-music entrepreneur against the executor-trustee and his lawyers, and those who acquired posters and memorabilia from the estate. The court held that the litigation privilege not only applies to statements made to the plaintiff-beneficiaries, but also to information allegedly concealed from them.

As to the fees, the court explained that since the law firm defeated all claims, it was entitled to reimbursement for time "spent on the motion to dismiss, reply, other filings, document review, and preparing initial disclosures." Lastly, the court refused to discount fees attributable to the participation of a second law firm, which had a longstanding relationship with the defendants and prior knowledge of the events at issue.

**Summary**

A successful rock and roll concert promoter, died testate in 1991. His will created trusts for his sons and appointed the estate's executor as trustee to oversee the trusts. Fifteen years after the final order of distribution was entered, the sons sued the trustee/executor, his law firm, and others, seeking recovery for a variety of claims, including fraud, concealment, breach of fiduciary duty, conversion, aiding and abetting, and more. The sons sought *pro rata* distributions of certain intellectual property and posters.

The trustee and his law firm brought a special motion to strike under California's anti-SLAPP statute, which prohibits any cause of action arising from an act in furtherance of the defendant's right to petition or of free

speech. Such acts include statements made in connection with an issue under consideration by a judicial body

In considering the motion to strike, the court first asked whether the claims arose from an act in furtherance of the defendants' rights of petition or free speech. If the defendant makes that showing, the plaintiff then, in order to avoid dismissal, must show that it has a reasonable probability of prevailing on those claims.

The court carefully reviewed a variety of causes of action, concluding activities were protected to the extent they "involved making representations to the probate court, or preparing documents for filing in court." Also protected were statements made to the plaintiffs, who had an interest in the probate proceedings.

However, because taking possession of personal property was not a protected activity, the plaintiffs' conversion claim against the trustee was permitted to proceed. While preparation for a matter not yet under judicial consideration is in some circumstances protected, the court concluded that the preparation of an Assignment after the court finished its consideration of the matter was not protected activity.

Some causes of action arose from both protected and unprotected activity. In such a case, the court determined that where protected activity underlies the cause of action, therefore protecting it, where the plaintiffs could make out a legally sufficient claim based solely on allegations of protected activity.

The court concluded that the claims against the trustee's lawyer's arose entirely from protected activity, including the preparation of court filings, concealing information from or failing to disclose information to the plaintiffs and the court, making statements to the plaintiffs and the court, and assisting in preparing the Assignment.

After that determination, the plaintiffs were required to show that the complaint is both legally and factually sufficient and supported by *prima facie* evidence to support a judgment. In this case, the court analyzed whether the facts asserted by the plaintiffs were sufficient to overcome the three defenses asserted by the defendants: the litigation privilege; the statute of limitations; and *res judicata*. The trustee's lawyers were protected by the litigation privilege and certain statutes of limitation.

The court went on to consider the amount of fees and costs to award to the victorious law firm. It made short work of plaintiffs' argument that the amount of fees was unreasonable because it was much greater than the awards in other cases: "The discrepancy does not make the district court's award unreasonable or a product of applying the wrong standard." Moreover, because the entire action against the law firm was subject to the motion to strike, fees for all activities were properly included in the award amount.

Finally, the court approved an award covering the hiring of two firms. One firm was retained by the defendant law firm's insurance company. The other was a firm with a longstanding relationship with the defendant law firm, and it had a history with the matter and knowledge of the facts and circumstances.

**Significance of Opinion**

This decision is significant because it is one of the most comprehensive discussions and applications of anti-SLAPP statutes yet. For states that have anti-SLAPP legislation, this case will provide a thorough roadmap for

potential motions to strike.

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