

Communications in Anticipation of Litigation Held Subject to California's Anti-SLAPP Statute

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[Karnazes v. Ares, 2016 WL 323719 \(Cal. App. Jan. 27, 2016\)](#)

Brief Summary

Plaintiff sued a co-defendant's lawyer for allegedly emailing her and obtaining privileged information to be used to defend against plaintiff's alleged claims. The appellate court affirmed the dismissal of plaintiff's claims and held the allegations arose from protected speech because they occurred within the context of anticipated litigation and settlement.

Complete Summary

Plaintiff alleged that in 2008, she invested assets with the co-defendant, Tyler Ares, the adult son of her friend. Plaintiff alleged Ares and several other co-defendants did not safely and prudently invest her assets. Ares retained the defendant attorney in October 2008 to defend against plaintiff's possible claims. Plaintiff alleged the defendant told her he would help set up a repayment plan for Ares and the other co-defendants to pay back the assets that were lost. However, he instead allegedly duped plaintiff into disclosing privileged information to prevent her from recovering these sums.

After plaintiff filed her complaint and after a series of motions, the trial court granted defendant's anti-SLAPP Motion. The trial court found that defendant made a prima facie showing that the communications arose from protected activity. Specifically, all communications were made in anticipation of litigation. The court rejected plaintiff's arguments that the communications at issue were illegal. The trial court also found that plaintiff failed to establish a probability of prevailing on her claims against defendant. Plaintiff failed to provide any evidence

suggesting that defendant made misrepresentations to her, or that she suffered damage from any statements made by defendant. Plaintiff appealed.

The appellate court affirmed the dismissal. The court held the claims at issue arose from protected activity because all of defendant's communications with plaintiff occurred within the context of anticipated litigation and settlement while defendant was representing his client, Ares. In reaching its decision, the court focused on the fact that: (1) the communications included a review of possible claims and references to the co-defendant (Ares) as defendant's client; and (2) the communications included a request for a copy of any complaint that might be filed in the matter under discussion. Because plaintiff presented no evidence suggesting defendant made any specific misrepresentations to plaintiff or that plaintiff relied on any such statements to her detriment, the trial court's order granting the anti-SLAPP motion was affirmed.

Significance of Opinion

The decision is a reminder that California's anti-SLAPP statute can serve as a powerful tool to attorneys in defeating claims arising from negotiations with opposing parties. Successful anti-SLAPP motions not only entitle the prevailing party attorney's fees and costs incurred, but can also terminate baseless claims early before unnecessary time and money is spent in discovery. The decision also underscores the need to engage experienced counsel to evaluate whether the communications at issue could constitute protected activity, regardless of whether they were made before a formal engagement was in place.

For more information, please contact [Terrence P. McAvoy](#).

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