

When Aggressive Settlement Tactics Go Too Far: California Appellate Court Holds Counsel's Threat to Reveal Opponent's Alleged Illegal Activity was Extortion

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Feb 8, 2022

Falcon Brands, Inc. v. Mousavi & Lee, LLP, No. G059477 (Cal. Ct. App. Jan. 27, 2022)

Brief Summary

Cross-Complainants/Appellants, Falcon Brands, Inc. and Coastal Harvest II, LLC (Falcon), claimed that Cross-Defendants/Respondents, attorney Amy Mousavi and her law firm, Mousavi & Lee, LLP (Mousavi), engaged in extortion and intentional interference with a contract when Mousavi sent increasingly aggressive emails to Falcon in attempting to settle a dispute between Falcon and her client, Nick Honard (Honard). Mousavi argued that her statements were protected by California's "anti-SLAPP law".^[1] The trial court agreed with Mousavi on both counts, but the appellate court reversed regarding the extortion claim.

Complete Summary

Honard worked for Falcon both as a contractor and an employee. When Falcon fired Honard, he retained Mousavi for potential claims of wrongful termination, retaliation, and failure to pay compensation, among other things. Mousavi emailed Falcon to request certain employment records on September 6, 2019. When Falcon did not respond, Mousavi sent another email on October 8, 2019, stating that if she did not receive a response by the next day, she would contact Harvest Health & Recreation Inc. (Harvest), a company with which Falcon was contemplating a merger. In that same correspondence, Mousavi accused Falcon of various illegal activities such as instructing Honard to sell their products on the black market, bribing a deputy district attorney, and changing and re-labeling products. Mousavi's email did not link any of this alleged illegal conduct to her settlement demand of \$490,000.

Falcon's counsel responded by advising Mousavi not to contact Harvest, to which Mousavi said she would notify them nonetheless. In a follow-up phone call, Mousavi allegedly added that if Falcon did not settle with Honard, she would inform Harvest that Falcon had engaged in illegal activities. The parties continued to exchange communications until Mousavi eventually sent Harvest copies of the various inflammatory settlement demands she had made to Falcon. Harvest then sued to rescind its merger agreement with Falcon. When Mousavi filed Honard's complaint against Falcon, Falcon filed a cross-complaint in May 2020 for extortion and intentional interference with a contract. Mousavi successfully moved to strike the cross-complaint pursuant to the anti-SLAPP law. Falcon appealed.

The appellate court reversed regarding the extortion claim, holding that Mousavi's statements were in fact extortion and thus not protected activity covered by the anti-SLAPP law. Extortion is "obtaining of property [...] from another by a wrongful use of force or fear."^[2] In turn, wrongful use of force or fear includes a threat "to expose, or to impute [...] a deformity, disgrace or crime."^[3] The appellate court noted that *attempted* extortion is also illegal.^[4]

Citing *Flatley v. Mauro*, 39 Cal. 4th 299 (2006), the appellate court explained that "threats to do the acts that constitute extortion [...] are extortionate whether or not the victim committed the crime [...] and whether or not the person making the threat could have reported the victim to the authorities or arrested the victim." Thus, whether or not it was permissible for Mousavi to share information about Falcon with Harvest, Mousavi's threat, or implicit threat to do so if Falcon did not pay to settle with Honard was extortion. The appellate court emphasized that "it is the fact that the threat is directly linked to the monetary demand that is the critical factor." According to *Flatley*, "It is the means employed [to obtain the money] which the law denounces, and though the purpose may be to collect a just indebtedness arising from and created by the criminal act for which the threat is to prosecute the wrongdoer, it is nevertheless within the statutory inhibition."

The appellate court concluded that Mousavi's initial communication with Falcon was permissible. Her October 8, 2019 communication was also permissible, but a "closer call when considered by itself" as it contains Mousavi's demand calculations along with an unnecessary discussion of Falcon's alleged illegal activity. However, in an email dated October 11, 2019, Mousavi stated that she "put the attorneys for [Harvest] on notice about Mr. Honard's claim for wages without disclosing other issues mentioned in my letter of October 8, 2019. [...] I am planning to email [the demand letters to Harvest] on Tuesday." This, in conjunction with the October 8, 2019 email, stated what the appellate court paraphrased as: "settle the case now or Harvest will become aware of Falcon's alleged criminal misconduct next week." Mousavi's statements, therefore, exceeded the limits of representing her client. "The law," the appellate court concluded, "does not contemplate the use of criminal process as a means of collecting a debt."

As for Falcon's accusation that Mousavi also interfered with a contract, Falcon made no distinct arguments relating to that cause of action. Thus, it waived any contention that the trial court erred in granting the motion to strike on that count.

Significance of Decision

This decision should remind attorneys that there is a line past which zealous advocacy for a client's interests can become unlawful. When engaging in settlement negotiations, take care not to make threats conditioned upon payment of a settlement amount. Even if your threat is to do something entirely legal, combining it with a demand for money can qualify as extortion.

[1] California Code of Civil Procedure §425.16(b)(1) “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.”

California Code of Civil Procedure §425.16(e) “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: [...] (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 [...]”

[2] California Penal Code, §518(a)

[3] *Id.*

[4] California Penal Code, §524

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