



## THE PUBLIC SECTOR

### California Supreme Court ruling discourages SLAPP lawsuits

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An unfortunate element of the litigiousness of our society is the fact that lawsuits can be used to squelch the right of citizens to speak out on matters of public concern. In 1992, the California Legislature enacted legislation to nip such litigation—called strategic lawsuits against public participation (SLAPPs)—in the bud. California's "anti-SLAPP" statute was designed to enable defendants in SLAPP lawsuits to have the cases dismissed early in the judicial process by filing an anti-SLAPP motion rather than having to go through the expense, time, and risk of litigation. Anti-SLAPP motions have further bite and provide more than an ounce of prevention because they require plaintiffs to pay attorneys' fees if the motion is successful.

Until the California Supreme Court decided *Baral v. Schnitt* in early August of this year, districts of the California Court of Appeal disagreed on an important aspect of the anti-SLAPP statute. This case resolved the difference of opinion in a manner favorable to anti-SLAPP practitioners.

#### California's anti-SLAPP statute

A SLAPP is a lawsuit designed to chill the valid exercise of constitutionally protected speech and burden the opposing side with the cost of legal defense. A SLAPP action can take many different forms, ranging from allegations of defamation to discrimination.

Under California's anti-SLAPP statute, defendants who are sued for constitutionally protected speech or conduct relating to matters of public interest can file a special motion to strike the suit. Anti-SLAPP motions are potent weapons for defendants confronted with SLAPP suits. By filing an anti-SLAPP motion, a defendant will freeze discovery (which can often be expensive, intrusive, and harassing) and force the plaintiff to produce concrete evidence in support of his claims. As a further incentive to prevent SLAPP lawsuits, if an anti-SLAPP motion is granted, the underlying lawsuit or claims will be dismissed and the prevailing defendant will receive a mandatory award of attorneys' fees and costs.

#### Addressing scope of anti-SLAPP motions

In *Baral v. Schnitt*, the issue before the California Supreme Court was whether the anti-SLAPP statute

can be used to strike a "mixed" claim—one that alleges both protected speech as well as nonprotected activity. Robert Baral and David Schnitt owned a company called IQ BackOffice, LLC. After a fraud investigation, Baral filed a complaint against Schnitt alleging breach of fiduciary duty, fraud, negligent misrepresentation, and declaratory relief. In part, Baral's complaint alleged that Schnitt's initiation of an audit that occurred during the fraud investigation was part of his wrongful conduct. In response, Schnitt filed an anti-SLAPP motion seeking to strike references to the audit but not seeking to strike any entire claim.

The trial court and appellate court decided that an anti-SLAPP motion couldn't be used piecemeal to carve out limited aspects of a court complaint. Instead, they held that the anti-SLAPP motion was available only when an entire claim or complaint covered protected activity and was therefore, in our word, "SLAPPable."

In a nod toward protected speech and conduct, the California Supreme Court overturned the lower courts' decisions. The court concluded that an anti-SLAPP motion can be used to strike parts of a claim or complaint. The court emphasized that the anti-SLAPP procedures are designed to shield a defendant's constitutionally protected conduct from the undue burden of frivolous litigation. Accordingly, the court reasoned that the form or arrangement of a plaintiff's claims shouldn't provide a loophole under the anti-SLAPP statute. *Baral v. Schnitt* (California Supreme Court, 8/1/16).

#### Bottom line

Anti-SLAPP motions are becoming more and more common. *Baral v. Schnitt* broadens the scope and application of the anti-SLAPP statute. Defendants who are hit with a SLAPP action can use the anti-SLAPP motion to target portions of a claim and simultaneously gain advantages typically associated with such a motion. This will make it more difficult, challenging, and potentially costly for plaintiffs' lawyers who use artful pleading for SLAPP purposes.



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