

California Supreme Court Holds Anti-SLAPP Reaches Distinct Claims

Decision Resolves Split Among Appellate Districts

By Stacey H. Wang

In a watershed opinion, the California Supreme Court resolved a split among appellate districts to make it easier for defendants to win anti-SLAPP rulings when the case involves more than speech.

In [*Baral v. Schnitt*](#), Case No. S225090, 2016 WL 4074081, *1 (Cal. Sup. Ct. Aug. 1, 2016), the Court held that defendants may bring anti-SLAPP motions to strike distinct claims within a cause of action, even if the cause of action itself cannot be dismissed in its entirety.

As a result of the decision, plaintiffs may no longer defeat anti-SLAPP motions by artfully pleading causes of action containing mixed allegations of protected and unprotected activity. The California Supreme Court directed trial courts to scrutinize claims based on protected activity when adjudicating anti-SLAPP motions, and not refuse to dismiss claims, as plaintiffs have commonly argued, because the anti-SLAPP challenge will not dispose of the entire cause of action.

California's Anti-SLAPP Provision

California's statute providing for expedited dismissals of meritless claims constituting "strategic lawsuits against public participation" (SLAPP) states that: "[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 . . . shall be subject to a special motion to strike, unless the court determines . . . there is a probability that the plaintiff will prevail on the claim." Cal. Code Civ. Proc. § 425.16 (b)(1). In practice, the defendant files an early motion, in which it asserts that one or more causes of action brought against it are protected by the right to petition or of speech. Once the defendant establishes that the cause of action falls under the statute's ambit, the burden shifts to the plaintiff to demonstrate the merit of the cause of action by showing a probability of success.

As the *Baral* Court observed, a "cause of action" usually contains specific allegations upon which the plaintiff relies to establish a right to relief. "If the supporting allegations include conduct furthering the defendant's exercise of the constitutional rights of free speech or petition, the pleaded cause of action — 'aris[es] from' protected activity, at least in part, and is subject to the special motion to strike authorized by section 425.16(b)(1)."

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Lower courts have been split on how to handle causes of action supported by allegations of activity that is protected under the anti-SLAPP statute and activity that is not. One line of cases, followed by the lower courts in *Baral*, interpreted the statute to mean that courts may only dismiss an entire “cause of action,” not just the allegation of protected activity. *See, e.g., Mann v. Quality Old Time Service, Inc.*, 120 Cal. App. 4th 90 (2004). By that reasoning, where a cause of action includes both allegations of protected and unprotected activity, the motion must be denied because no cause of action can be stricken.

Other cases have more recently held that the allegations of protected activity may be stricken from a cause of action without affecting the allegations of unprotected activity. *See, e.g., City of Colton v. Singletary*, 206 Cal. App. 4th 751 (2012); *Cho v. Chang*, 219 Cal. App. 4th 521 (2013).

Baral’s Claims and the Lower Court Rulings

The facts of the case are unremarkable, but presented the classic “mixed” cause of action in which protected and unprotected activity are alleged in support. The plaintiff, Robert Baral, owned and managed a company together with the defendant, David Schnitt. Baral’s complaint asserted breach of fiduciary duty, constructive fraud, negligent misrepresentation and declaratory relief. Among the allegations was the accusation that Schnitt hired and gave false information to an accounting firm in its audit and investigation of possible misappropriation of corporate assets by Baral. Baral contended that Schnitt controlled the audit and deliberately prevented Baral from participating in his own defense.

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In response to Schnitt’s anti-SLAPP motion to strike all references to the audit as protected communications in a pre-litigation investigation, the trial court “ruled that the motion to strike applied only to entire causes of action as pleaded in the complaint, or to the complaint as a whole, not to isolated allegations within causes of action...” The California Court of Appeal affirmed the denial of the anti-SLAPP motion to strike. Although it found that the audit arose from protected activity, “anti-SLAPP relief was not available because no cause of action enumerated in the second amended complaint would be eliminated if the allegations of protected activity were stricken.”

The *Baral* Holding and Its Implications

The California Supreme Court reversed, holding that the anti-SLAPP statute should apply. The Court stated in the key language to its decision:

[I]t is not the general rule that a plaintiff may defeat an anti-SLAPP motion by establishing a probability of prevailing on any part of a pleaded cause of action. Rather, the plaintiff must make the requisite showing as to each challenged claim that is based on allegations of protected activity.

In fact, the Court held that an anti-SLAPP motion may operate like a conventional motion to strike, *i.e.*, it may be used to strike parts of a cause of action. In so holding, the Court disapproved of *Mann*.

The Court ended its opinion by providing some guidance to litigants and lower courts. A defendant making an anti-SLAPP motion must first identify “all allegations of protected activity, and the claims for relief supported by them.” At this stage, any allegations of unprotected activity are disregarded. If the relief sought is based on protected activity, then the burden shifts to the plaintiff to “demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated.” If not, the allegations of protected activity are stricken from the complaint, unless they otherwise support another claim on which the plaintiff can show a probability of prevailing.

Baral likely will lead to an increase in anti-SLAPP motions against causes of action supported by both protected and unprotected activity. Its holding could provide more early opportunities to limit discovery in future cases. Moreover, the motion provides the added benefits of staying discovery altogether pending adjudication of the motion while simultaneously forcing the plaintiff to substantiate its claims. Finally, partial wins under the holding in *Baral* may lead to more attorney’s fees awards for defendants, which are mandatory under the anti-SLAPP statute.

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