



Alerts

California Court Strikes Malicious Prosecution Claim Based on Anti-SLAPP Motion

November 4, 2010

Lawyers for the Profession® Alert

Antounian v. Malletier, 2010 WL 3751500 (Cal. App. 2d 2010)

Brief Summary

Following a trademark infringement and counterfeiting lawsuit brought by manufacturers against retailers, a retailer filed a malicious prosecution lawsuit against certain of the manufacturers and their law firm. That action was based on the manufacturers' submission of erroneous evidence and their subsequent agreement to dismiss the retailers from the underlying matter and to pay their attorney fees and costs. The California Court of Appeal, Second District, affirmed the trial court's grant of defendants' anti-SLAPP (strategic lawsuit against public participation) motion to strike the malicious prosecution action, because the retailers failed to establish that the underlying trademark and counterfeiting case lacked probable cause.

Complete Summary

The law firm represented the manufacturers in a trademark infringement and counterfeiting suit against the retailers. Midway through the litigation, the firm realized that some of its evidence was erroneous. Although the manufacturers defeated a motion for summary judgment, they ultimately agreed to dismiss the case and pay the retailers' attorney fees and costs. One of the retailers then filed a malicious prosecution action against certain of the manufacturers and the law firm. The manufacturers and law firm moved to strike the malicious prosecution action based on California's anti-SLAPP statute, and the superior court granted the motions.

The California Court of Appeal, Second District, affirmed. In order to overcome an anti-SLAPP motion, a plaintiff must show a probability of prevailing on the merits. The appeals court held that the retailer failed in this regard with respect to the malicious prosecution claim, which required proof that the underlying action was: (1) terminated in the plaintiff's favor, (2) prosecuted without probable cause, and (3) initiated with malice.

The court held that the retailer failed to establish that there was a lack of probable cause, which exists to bring a claim if an objectively reasonable attorney would find the claim arguably tenable. Although the underlying claims were based in part on an erroneous investigative report, the court held that those claims were tenable because the law firm did not know of those errors

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when it initiated the litigation. Moreover, the court stated, overcoming a motion for summary judgment in the underlying litigation normally establishes probable cause unless the denial of summary judgment was procured through fraud (the fraud exception). The court held that the erroneous investigative report did not trigger the fraud exception because there were other unflawed reports, and because there was no evidence that the firm or its clients knew of the erroneous report when they filed their opposition to summary judgment.

Because the court resolved the motion to strike based on the second element of malicious prosecution, it did not rule on the other two elements. Importantly, however, the court did note that regarding the first element (matter terminated in plaintiff's favor), the voluntary dismissal of a defendant in the underlying matter does not establish that the defendant was the favored party when the court's disposition does not reflect an opinion on the merits of the underlying case. In this malicious prosecution case, the appeals court noted that the court in the underlying case made no findings with respect to the merits of that case, and that the dismissal may well have been for tactical reasons.

Significance of Opinion

An action for malicious prosecution remains a very difficult case to prove, and anti-SLAPP motions can provide a potent response to such claims. Mistakes of law and of fact, in and of themselves, rarely can satisfy the elements of a malicious prosecution claim. Defeat of summary judgment in the underlying case may insulate the plaintiffs against a malicious prosecution action unless they obtained the ruling fraudulently. Moreover, as this decision demonstrates, even a voluntary dismissal and payment of a party's attorney fees and costs does not necessarily establish that the case terminated in that party's favor unless there was some concomitant ruling on the merits in favor of the party.

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