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Sue 1st, Negotiate Later; When a California Landlord

Risks Being Sued After Settling a Dispute With Their Tenant

In a recent case in San Francisco, the landlord served a three-day notice, but never filed an unlawful detainer. The parties entered a settlement agreement, and the Landlord was sued by the Tenant for fraud and other claims relating to the pre-settlement conduct. Seems that the landlord was attempting to transform the property into condominiums, and there were other complicating facts.

The Landlord then filed a motion to have the claims of the Tenant stricken under the Anti-SLAPP (“strategic lawsuit against public participation”) statute. This statute was enacted to prevent parties from filing a lawsuit to discourage others from exercising their free speech rights.

An anti-SLAPP motion requires showing that the challenged claims are based on “protected activity;” that is, for our purposes, activity in furtherance of the right of free speech before a judicial proceeding, or in connection with an issue under consideration by a judicial body. (Protected activity is broader than this, but this article concerns only court-related activity.)

The pivotal distinction is whether an actual or contemplated unlawful detainer action by a landlord (unquestionably a protected petitioning activity) merely ‘preceded’ or ‘triggered’ the tenant's lawsuit, or whether it was instead the ‘basis’ or ‘cause’ of that suit.

Here, the settlement agreement did not settle any ongoing lawsuit- if it had, it could have been covered by the SLAPP statute. But there was no prior litigation, or threat of litigation (even with service of a three-day notice) by the landlord to bring it under the statute.

The court concluded that this landlord's conduct *does not* constitute the sort of activity encompassed by the SLAPP statute, and allowed the tenant's lawsuit to proceed.

What does this tell landlords? If the stakes are high enough, or the negotiations likely to be complicated (beyond a move-out date and dealing with rent), it may be wise, and cost-effective, to go ahead and file the unlawful detainer. It does not have to be served, and a trail date is not set until the landlord files a request for one. The negotiations are then protected activity, subject to the anti-SLAPP statute.

Delois v. Barrett Block Partners (2009) 177 Cal.App.4th 940