

[Anti-SLAPP Statute Does Not Authorize an Award of Attorney Fees Against Plaintiff's Counsel](#)

Posted on November 4, 2010 by [David J. McMahon](#)

In *Moore v. Kaufman*, 2010 DJDAR 16212 (2010), the [California Court of Appeal for the second district](#) decided an important issue concerning the interpretation of [Code of Civil Procedure Section 425.16](#), the anti-SLAPP statute. The case had a complex procedural history.

Frances Diaz (Diaz) represented Sheila Moore (Moore) in an action against Barry Kaufman. Kaufman filed an anti-SLAPP motion to strike the complaint under Code of Civil Procedure Section 425.16, and sought an award of attorney fees against Moore and Diaz.

The trial court granted the motion, and awarded attorney fees against both Moore and her attorney Diaz, jointly and severally.

After a series of complex procedural maneuvers, the trial court issued an order awarding fees and costs in the sum of \$41,223.75. Moore appealed, but Diaz did not. The court's order did not specify whether the award was against Moore, Diaz, or both and to complicate the record, thereafter numerous procedural errors were committed both by the litigants and the court.

Thereafter Diaz brought an *ex parte* application for an order correcting the judgment to reflect that fees were awarded only against Moore. The court denied the application and awarded Kaufman attorney fees against Diaz. Kaufman then moved to enforce the judgment and noticed an order of examination. Diaz refused to answer questions at the judgment debtor examination, resulting in an order to show cause ("OSC") by the court directing her to explain why she should not be held in contempt of court. Diaz filed an anti-SLAPP motion to strike the OSC. The court denied the motion and found her in contempt. Diaz then filed a writ petition, arguing that the underlying judgment and the order of contempt were void and not enforceable.

The court of appeal granted the petition.

The court of appeal stated that pursuant to Section 425.16, an award of attorney fees to a prevailing party is not discretionary. However, Section 425.16 has no provisions allowing for award of fees against the losing attorney, such as Diaz. The court stated that because Diaz was a nonparty, no fees should have been awarded against her, and the judgment against her was void. The court concluded that a void order cannot be the basis for a valid contempt judgment. Thus the order requiring her to answer questions at her judgment debtor examination was void too.