

## Plaintiff Need Not Substantiate All Theories Presented Within A Single Cause of Action

BY ADRIANOS FACCHETTI

In another post, I discussed the 'minimal merit' standard with respect to a plaintiff's burden in [opposing an anti-SLAPP motion](#). Recently, I saw a brief (which prompted this post) where the defendant in its moving papers argued that the plaintiff was required to prove the claim to the court. This is wrong. "A plaintiff is not required 'to prove the specified claim to the trial court'; rather, so as not to deprive the plaintiff of a jury trial, the appropriate inquiry is whether the plaintiff has stated and substantiated a legally sufficient claim." (Citation omitted). All that is required is to state and substantiate a claim.

But the standard is even more lenient.

According to at least one court, "once a plaintiff shows a probability of prevailing on any part of its claim, the plaintiff has established that its cause of action has some merit and the entire cause of action stands.

Thus, a court need not engage in the time-consuming task of determining whether a plaintiff can substantiate all theories presented within a single cause of action and need not parse the cause of action to so as to leave only those portions it has determined have merit." (Citation omitted).

Let's use an example to flesh this out a bit, as my Civil Procedure professor used to say. Suppose plaintiff brings a lawsuit for slander based on a number of alleged slanderous statements, e.g. that defendant said the plaintiff was a "fraud," "was convicted of grand theft," and that the plaintiff is a "scheming douchebag." As part of its burden to demonstrate a probability of prevailing on the merits, plaintiff would need to show that the statements were either statements of fact, or were opinions that implied provably false facts. The statements that plaintiff is a "fraud" and "convicted of grand theft" would arguably be false statements of fact. However, the more colorful statement regarding the

plaintiff may not be determined to be a statement of fact. It may be viewed as an epithet in context, which is not actionable.

But no matter. Plaintiff need not substantiate every alleged slanderous statement in order to overcome an anti-SLAPP motion. From my perspective, plaintiff need only show that one of the statements is actionable. Once the plaintiff does so, it has met its burden of 'minimal merit.'

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