

Finding That an Anti-SLAPP Motion is Frivolous Justifies Fee Award

Posted on October 26, 2010 by [David J. McMahon](#)

In *Baharian-Mehr v. Glenn Smith, et. al.* 2010 DJDAR 15946 (2010) the [Fourth District of the California Court of Appeal](#), held that the special motion to strike procedure set forth in [CCP § 425.16](#) was not applicable to a business dispute. The court also affirmed the grant of an attorney fee award rendered against the Defendant. The court granted fees after finding the Defendants' motion was frivolous.

Baharian-Mehr (Mehr) formed a business entity with the Glenn Defendants. Mehr thereafter discovered alleged accounting irregularities in the business and he sued his partners for an accounting, fraud and related business torts. In response to the complaint, the Defendants filed a special motion to strike pursuant to Code of Civil Procedure Section 425.16, the anti-SLAPP statute. The court denied the motion, finding that the subject matter of the litigation of the case was a business dispute, which was not a proper subject for an anti-SLAPP motion.

In addition to denying the motion to strike, the lower court ordered the Defendants to pay Plaintiff \$1,500 in attorney fees because the motion was frivolous. The Defendants filed an appeal of the decision. In addition, on appeal, Mehr also argued that the court of appeal should not review the fee award except on review from a final judgment.

The Fourth District affirmed the court rulings below. The court of appeal stated that under Section 425.16, if a court finds that an anti-SLAPP motion is frivolous, it shall award reasonable attorney fees to a party who prevails on such a motion. The court also ruled that an order denying a special motion to strike is appealable and that the appeal of the attorney fees issue was the proper subject of an appeal.

The court also confirmed that Glenn's motion was frivolous, stating that any reasonable attorney would be aware that a business dispute of this kind is not subject to the anti-SLAPP statute.

On this basis, the court held that the award of attorney fees to Plaintiff was appropriate.