

## **Threat By Employer And Its Legal Counsel To Report Former Employee To Government Agencies Unless The Employee Made Payment To Employer Was Extortion And Was Not Protected By The Anti-SLAPP Statute**

Section 425.16 of the California Code of Civil Procedure permits a special motion to strike any cause of action against a person “arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States or California Constitution in connection with a public issue.” These types of lawsuits and claims are referred to as Strategic Lawsuits Against Public Participation, aka “SLAPP suits.” Bringing an early motion to strike a SLAPP suit can be a powerful weapon to quickly end these types of cases. Section 425.16 also allows for the recovery of attorneys’ fees by those defendants who are successful on a motion to strike.

The California Court of Appeal was recently asked to decide whether a trial court erred in denying defendant’s anti-SLAPP motion and finding a communication by the defendant employer to its former employee was not covered by the anti-SLAPP statute. In Mendoza v. Hamzeh, 215 Cal. App. 4th 799 (2013), the California Court of Appeal held that a threat to report a former employee to enforcement agencies unless he made certain payments to his employer was extortion and was not protected by the anti-SLAPP statute.

Plaintiff Miguel Mendoza sued defendant Reed Hamzeh, an attorney, for civil extortion. Mendoza’s action was based on a demand letter Hamzeh sent to Mendoza on behalf of Guy Chow, Mendoza’s former employer who claimed that Mendoza had committed fraud, demanding repayments to settle Chow’s claims. Hamzeh filed a motion to strike Mendoza’s complaint under the anti-SLAPP statute. Hamzeh argued that the letter was a prelitigation communication and therefore Mendoza’s complaint arose from Hamzeh’s exercise of his constitutionally protected right of petition. The trial court denied Hamzeh’s motion.

The California Court of Appeal affirmed. The Court rejected Hamzeh’s argument that because his demand letter did not list specific crimes, and was neither extreme or egregious, it did not constitute extortion. The Court noted that “extortion is the threat to accuse the victim of a crime accompanied by a demand for payment to prevent the accusation from being made.” The Court further noted that the rule is a bright line rule. The Court found that the anti-SLAPP statute does not apply to litigation communication which constitute criminal extortion. Thus, the Court concluded, the trial court did not err in denying Hamzeh’s anti-SLAPP motion because the anti-SLAPP statute did not apply to the threat in Hamzeh’s demand letter on which Mendoza’s complaint is based.

This case underscores some important considerations for employers and their legal counsel. The Court of Appeal emphasized in its ruling that employers and their attorneys are not at liberty to threaten to report criminal action unless money is paid. While attorneys and their clients are free to report a crime to the proper authorities, the threat to report a crime unless money is paid is prohibited, and therefore, the anti-SLAPP statute does not apply to such threats.

For Further Information, Please Contact:  
Nicholas P. Connon, Managing Partner; Tel: +1.626.638.1757  
Email: nconnon@connonwood.com