

Untimely SLAPP Motion Does Not Support a Fee Award

November 4, 2011 by [David J. McMahon](#)

In [Chitsazzadeh v. Kramer & Kaslow](#), 2011 DJDAR 14689 (2011), the [California Court of Appeal for the Second Appellate District](#) decided an interesting case under [Code of Civil Procedure Section 425.16](#), a special motion to strike under the California anti-SLAPP statute.

The defendant in the case was a law firm, Kramer & Kaslow (“the Kramer firm”), who represented Brake Land Inc. and Abolfalz Sharjari as plaintiffs in a prior action. That case resulted in summary judgment being granted to the defendants, Mohammed Chitsazzadeh and Mansoureh Shajari, in the original action.

In July 2009, the defendants in the original action sued the Kramer firm, alleging malicious prosecution. After submitting a demurrer to the complaint, Kramer also filed a special motion to strike the complaint under Code of Civil Procedure Section 425.16. The firm alleged that the complaint arose from Kramer’s constitutionally protected activity. The Kramer firm also argued that the Plaintiffs could not show a likelihood of prevailing on the merits.

In opposition, the Plaintiffs argued that Kramer failed to file the special motion to strike within 60 days after service, as required by Code of Civil Procedure Section 425.16. The Plaintiffs further asserted that the motion was frivolous. The trial court denied Kramer’s special motion to strike as untimely. The Court also awarded the Plaintiffs attorney fees.

The Court of Appeal reversed in part. The Court of Appeal noted that under Section 425.16, a special motion to strike must be filed within 60 days after service of the complaint on the defendant. A plaintiff prevailing on the motion is entitled to an award of attorney fees and costs only if the trial court finds that the special motion to strike was “**frivolous**” or “**solely intended**” to cause unnecessary delay.

Here, the Court of Appeal concluded that the Kramer firm failed to file the special motion to strike within the 60 days following service of complaint and that it was not timely. However, the court ruled that the fact that a special motion to strike was untimely, alone, did not support a finding that the motion was frivolous or solely intended to cause unnecessary delay.