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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

MICHAEL BOYD,

Plaintiff and Respondent,

v.

JEFFREY HARSTEDT,

Defendant and Appellant.

B265489

(Los Angeles County  
Super. Ct. No. SC121852)

APPEAL from an order of the Superior Court of Los Angeles County. Craig D. Karlan, Judge. Affirmed.

Brian R. Condon for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Michael Boyd sublet a room in Jeffrey Harstedt's apartment. Boyd sued Harstedt, alleging various tort and breach of contract claims after Harstedt initiated an unlawful detainer action against him. Harstedt moved to strike Boyd's complaint pursuant to the anti-SLAPP (strategic lawsuit against public participation) statute. (Code of Civ. Proc., § 425.16.)<sup>1</sup> The trial court denied the anti-SLAPP motion and we affirm.

### **FACTS**

Harstedt lives in a rent-controlled apartment in Santa Monica. He posted an advertisement for a roommate on Craigslist in September 2013. The advertisement specified the rent for a room would be \$1,100 plus utilities and other shared expenses. Boyd responded to the advertisement on October 1, 2013, and agreed to rent it after viewing the apartment. Harstedt provided Boyd with a "Roommate Agreement," which outlined the conditions of renting the room from him. Boyd paid Harstedt the first month's rent for October 2013, and an equivalent security deposit. After he moved in, Boyd paid \$1,100 for rent in November 2013, but refused to pay any rent or related expense thereafter. Harstedt initiated an unlawful detainer action against Boyd on December 16, 2013, after giving Boyd a three-day notice to vacate.

Boyd, in turn, filed a complaint against Harstedt on December 31, 2013, alleging Harstedt fraudulently induced Boyd to rent the room by misrepresenting the living conditions and his ability to sublet the premises. Boyd alleged he suffered at least \$3,300 in damages, representing the amount he paid to Harstedt in consideration of the sublease.

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<sup>1</sup> All further section references are to the Code of Civil Procedure unless otherwise specified.

In his 38-page second amended complaint, Boyd alleged a litany of atrocities committed against him by Harstedt, including, stalking and threatening him, vandalizing his property, depriving him of heat, stealing from him, using his bedroom for sex, and defaming him at his workplace and to the other tenants in the building. Boyd also claimed Harstedt charged him rent in excess of the maximum allowable rent as set by the Santa Monica Rent Control Board and lacked permission from the landlord to sublet the apartment. Boyd alleged Harstedt used illegal drugs in the apartment on a regular basis. Further, Harstedt had frequent overnight guests, who failed to clean up after themselves, leaving behind spatters of feces, blood, and urine in the apartment's only bathroom. Harstedt also threatened him with a kitchen knife. Boyd believed Harstedt's conduct was intended to "constructively evict" Boyd.

Harstedt moved to strike Boyd's second amended complaint under the anti-SLAPP statute (§ 425.16), contending the causes of action arose from protected activity, namely, Harstedt's unlawful detainer action against Boyd. In support of the motion, Harstedt requested the trial court take judicial notice of the case file in the unlawful detainer action, including the complaint, demurrer, and request to consolidate. He also included a declaration describing the events leading to his unlawful detainer action against Boyd. Harstedt sought \$16,235 in attorney's fees and costs associated with the anti-SLAPP motion.

Boyd opposed the motion and also moved to consolidate the unlawful detainer action with his fraud complaint. Boyd moved out of the apartment on March 18, 2014, and the unlawful detainer action was converted to a civil matter. On July 7, 2015, the trial court denied Harstedt's special motion to strike under

the anti-SLAPP statute. It also found the unlawful detainer action and Boyd’s fraud complaint to be related actions within the meaning of Los Angeles Superior Court Local Rule 3.3, subdivision (f), with the civil action as the lead case. Harstedt appealed the trial court’s denial of his anti-SLAPP motion.

## **DISCUSSION**

Among other things, Harstedt contends Boyd’s causes of action “arise from” protected activity, that is, his prosecution of the unlawful detainer proceeding against Boyd. As a result, the trial court should not have been swayed by Boyd’s “smokescreen” of pleading unprotected acts. We conclude Harstedt has failed to demonstrate Boyd’s complaint is directed at his protected activity.

### **I. The Anti-SLAPP Statute**

The Legislature enacted the anti-SLAPP statute to prevent and deter “lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.” (§ 425.16, subd. (a).) “Because these meritless lawsuits, [commonly referred to as SLAPP’s] seek to deplete ‘the defendant’s energy’ and drain ‘his or her resources’ [citation], the Legislature sought “to prevent SLAPPs by ending them early and without great cost to the SLAPP target” [citation]. Section 425.16 therefore establishes a procedure where the trial court evaluates the merits of the lawsuit using a summary-judgment-like procedure at an early stage of the litigation. [Citation.]” (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 192; *Moriarty v. Laramar Management Corp.* (2014) 224 Cal.App.4th 125, 132-133 (*Moriarty*).)

Under the anti-SLAPP statute, “[a] 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 Constitution or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” (§ 425.16, subd. (b)(1).) “A two-step process is used for determining whether an action is a SLAPP. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity, that is, by demonstrating that the facts underlying the plaintiff’s complaint fit one of the categories spelled out in section 425.16, subdivision (e). If the court finds that such a showing has been made, it must then determine the second step, whether the plaintiff has demonstrated a probability of prevailing on the claim. [Citation.]” (*Moriarty, supra*, 224 Cal.App.4th at p. 132.)

In order for a complaint to be subject to the anti-SLAPP statute, the “critical consideration is whether the cause of action is based on the defendant’s protected free speech or petitioning activity.” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89, italics omitted.) To make that determination, courts look to the “principal thrust or gravamen of the plaintiff’s cause of action.” (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 188, italics omitted.)

“With these principles in mind, we turn to a review of the issues before us, a review that is de novo. [Citation.]” (*Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450, 464.)

## II. Boyd's Causes of Action Do Not Arise From Protected Activity

Harstedt argues that Boyd's complaint is "a SLAPP that seeks to chill Harstedt's protected activities as follows: 1) Harstedt's right to demand rent in consideration of Boyd sharing possession; 2) Harstedt's right to petition the Superior Court to enforce this property right; and 3) Harstedt's right to live freely, associate with whomever he pleases, and to make 'lifestyle' choices that Boyd improperly seeks to turn into breach of contract or tort."<sup>2</sup> Harstedt explains, "[i]n landlord/tenant law recourse to an unlawful detainer court is the only way to achieve a remedy for a failure to pay rent, and any 'counter-suit' for money that seeks to negate the monetary obligation necessarily 'arises from,' and in opposition to, the claim for rent." We disagree.

It is true that the prosecution of an unlawful detainer action solely resolves the issue of possession of the premises and is "indisputedly protected activity" within the meaning of the anti-SLAPP statute. (*Moriarty, supra*, 224 Cal.App.4th at p. 133.) However, it is not the case that every lawsuit tangentially related to an unlawful detainer action falls within the purview of the anti-SLAPP statute.

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<sup>2</sup> We note that of the three "protected activities" described by Harstedt, only one appears to be a protected activity under the anti-SLAPP statute. Harstedt provides no authority for the proposition that his lifestyle choices or right to collect rent are protected activities under the anti-SLAPP statute.

The court in *Moriarty*, for example, found a tenant's complaint against his landlord fell outside of the anti-SLAPP statute because it was not based on protected activity. There, the tenant complained to the landlord of water intrusion and surface and airborne contaminants throughout the premises. (*Moriarty, supra*, 224 Cal.App.4th at p. 129.) When the landlord's efforts at remediation failed to correct the problems, the tenant moved out to allow the landlord to conduct extensive repairs. (*Id.* at p. 129.) Almost a year later, the landlord filed an unlawful detainer action against the tenant. The court entered a default against the tenant, who unsuccessfully tried to set aside the default. (*Id.* at p. 130.)

The tenant sued the landlord, alleging the landlord refused to perform necessary repairs and allowed the premises to fall into a substandard condition in an effort to force the tenant out. He also alleged the landlord harassed and intimidated him to prevent him from asserting his legal rights and refused to return possession of the premises after completion of the repairs. (*Moriarty, supra*, 224 Cal.App.4th at p. 130.) The landlord moved to strike on anti-SLAPP grounds, arguing the tenant's lawsuit was based on the unlawful detainer action. The court disagreed, finding "[t]he sole issue in an unlawful detainer action is possession of the premises" and the range of the tenant's claims is "far wider than that," encompassing habitability, harassment, and wrongful eviction allegations. (*Id.* at p. 141.)

The *Moriarty* court discussed whether the unlawful detainer action by the landlord (unquestionably a protected petitioning activity) merely triggered or preceded the tenant's lawsuit, or whether it instead formed the basis or was the cause of the tenant's lawsuit. (*Moriarty, supra*, at pp. 137-138.) The

court concluded the landlord failed to demonstrate that the tenant's wrongful eviction cause of action or any other cause of action was based in whole or in part on an unlawful detainer suit that was nowhere referenced in the complaint. Indeed, the landlord failed to show the unlawful detainer suit was even incidental to the tenant's claims. (*Ibid.*; *See also Copenbarger v. Morris Cerullo World Evangelism* (2013) 215 Cal.App.4th 1237, 1240 ["while the three-day notice might have triggered the complaint, the evidence in the record demonstrates the complaint was based on an underlying dispute over . . . repair and maintenance obligations under the sublease and other unprotected activities"]; *Oviedo v. Windsor Twelve Properties, LLC* (2012) 212 Cal.App.4th 97, 110-111 (*Oviedo*) ["appellant's first cause of action is based, not on the unlawful detainer action and prior communications, but on respondent's alleged violation of the [rent stabilization ordinance, thus] respondents 'were not sued for their conduct in exercising . . . constitutional rights' but for the underlying conduct of illegally raising appellant's rent"].)

We likewise reject Harstedt's arguments on appeal.

The unlawful detainer action may have preceded Boyd's lawsuit, but it is not the basis or cause of his suit. As in *Moriarty*, Boyd's claims are "far wider than that." (*Moriarty, supra*, at p. 141.) Boyd's complaint alleges 14 causes of action as follows: fraud (causes of action 1-4), breach of contract (causes of action 5-6), invasion of privacy (cause of action 7), trespass (cause of action 8), defamation (cause of action 9), civil conspiracy (cause of action 10), breach of implied warranty of habitability (cause of action 11), deprivation of quiet enjoyment (cause of action 12), violation of Santa Monica rent control law (cause of action 13), and tenant



harassment in violation of Santa Monica Municipal Code, section 4.56.040 (cause of action 14).

The principal thrust of Boyd's complaint does not involve the unlawful detainer lawsuit; instead, it stems from Harstedt's alleged conduct against Boyd. Boyd's first four causes of action for fraud are based on alleged misrepresentations Harstedt made to induce Boyd to rent a room in his apartment. These are tort claims which have nothing to do with the unlawful detainer action and indeed, the alleged misrepresentations preceded it.

Further, like the tenant in *Moriarty*, Boyd complains of the conditions of the apartment and Harstedt's conduct, which resulted in Boyd's harassment and an effort to "constructively evict" him from the premises. These allegations support Boyd's fifth through twelfth causes of action as well as his fourteenth cause of action. They do not arise from protected activity, namely, the unlawful detainer action. While an unlawful detainer action solely involves the issue of possession of the premises, Boyd's complaint alleges a wide array of tortious conduct and habitability issues. Indeed, there is no mention of the unlawful detainer action in the complaint.

Neither do the causes of action implicate any claim for unpaid rent which may have been part of the unlawful detainer action. Contrary to Harstedt's contention, Boyd's complaint does not seek to avoid payment of the rent that was due. Boyd's complaint instead seeks to recover the \$3,300 he had already paid for the rent and the security deposit as well as additional damages to be proven. As to Boyd's thirteenth and fourteenth causes of action for violation of Santa Monica's rental laws, cases involving violations of rent ordinances have been found not to fall within the anti-SLAPP statute. (*See Moriarty, supra*, 224

Cal.App.4th at p. 133; *Oviedo, supra*, at pp. 110-111; *Marlin v. Aimco Venezia, LLC* (2007) 154 Cal.App.4th 154.)

In short, Harstedt has failed to demonstrate Boyd's complaint is directed at protected activity under the anti-SLAPP statute. Accordingly, we need not consider the second prong of the analysis—whether Boyd has shown a probability of prevailing. Neither need we credit Harstedt's remaining arguments: that the two prong test is not an effective tool in the context of unlawful detainer, that the economics of all landlord/tenant cases create potential for SLAPPs, and that the economics of this case are indicative of a SLAPP. The application of the anti-SLAPP statute in landlord-tenant disputes is well-established. We decline to overturn sound precedent. (*See Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

#### **DISPOSITION**

The order denying the anti-SLAPP motion is affirmed. Respondent is awarded costs on appeal.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.