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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

PEGGY J. SOUKUP, Plaintiff and Respondent, v. LAW OFFICES OF HERBERT HAFIF et al., Defendants and Appellants.	B152759 (Super. Ct. No. BC247941)
TERRY HUTTON, Plaintiff and Respondent, v. LAW OFFICES OF HERBERT HAFIF et al., Defendants and Appellants.	(Super. Ct. No. BC249367)

APPEALS from orders of the Superior Court of Los Angeles County, Gregory O'Brien, Judge. Affirmed.

Law Offices of Herbert Hafif, Jeanne A. Sterba; Law Offices of James J. Moneer and James J. Moneer for Defendants and Appellants.

Law Offices of Gary L. Tysch and Gary L. Tysch for Plaintiff and Respondent Peggy J. Soukup.

Cheong, Denove, Rowell, Antablin & Bennett, John F. Denove, John Rowell and Drew R. Antablin for Plaintiff and Respondent Terry Hutton.

I. INTRODUCTION

In these consolidated appeals, the Law Offices of Herbert Hafif (the firm), Herbert Hafif, Cynthia D. Hafif, and Greg K. Hafif (all collectively defendants) appeal from orders denying their special motions to strike pursuant to Code of Civil Procedure, section 425.16 (section 425.16). The motions were directed at the complaints filed by Peggy J. Soukup (case No. BC247941) and Terry Hutton (case No. BC249367) (plaintiffs). Defendants previously had sued Ms. Soukup and Mr. Hutton's wife in an underlying action. Defendant's underlying lawsuit was dismissed in response to section 425.16 special motions to strike. An appellate court affirmed the dismissal. Plaintiffs then filed the present malicious prosecution actions against the defendants. Defendants sought to dismiss the present malicious prosecution actions pursuant to section 425.16. The trial court concluded defendants' underlying action did not fall with the purview of section 425.16. In other words, the trial court found the present lawsuits did not arise out of defendants' *valid* exercise of their constitutional rights in bringing the underlying action because that litigation was dismissed pursuant to section 425.16. We agree. Accordingly, we affirm the orders.

II. BACKGROUND

In May 1994, the firm and the Hafifs brought a lawsuit against *Terrie* Hutton (Mr. Hutton's wife), a former client, and Ms. Soukup, a former employee, among others. The underlying lawsuit was filed in Orange County Superior Court. Defendants alleged a conspiracy to harm their professional reputations and business interests. They asserted causes of action for: malicious prosecution; defamation; fiduciary duty breach (as to Ms. Soukup); tortious interference with business relationships; and privacy invasion. In 1996, Ms. Hutton and Ms. Soukup successfully moved to strike the second amended complaint filed by the firm and the Hafifs pursuant to section 425.16. The firm and the Hafifs appealed. The Court of Appeal for the Fourth Appellate District, Division Three, affirmed the dismissal order entered after the special motion to strike was granted in a nonpublished opinion holding the claims of the firm and the Hafifs fell within the purview of section 425.16 and they failed to establish a probability of success at trial. (*Law Offices of Herbert Hafif v. Soukup* (April 27, 2000, G020977 [nonpub.opn.], typed opn. pp. 4-6.)

In April 2001, Mr. Hutton sued the firm and the Hafifs alleging he had suffered damages, emotional and otherwise, as a result of the six-year defense of their lawsuit against his wife. Defendants, the firm and the Hafifs, filed a section 425.16 special motion to strike Mr. Hutton's complaint. The trial court denied the special motion to strike brought by the firm and the Hafifs. The trial court concluded: the underlying action was dismissed pursuant to section 425.16; because it was dismissed in response to a special motion to strike, it was not the type of proceeding the Legislature sought to protect under section 425.16; and therefore, the present special motion to strike must be denied . Two days after the ruling, Mr. Hutton voluntarily dismissed his complaint. Defendants, the firm and the Hafifs, have nevertheless appealed from Judge O'Brien's order. No argument has been made that the appeal is moot.

Also in April 2001, Ms. Soukup sued defendants for abuse of process and malicious prosecution (case No. BC247941). Defendants filed a section 425.16 special motion to strike. Judge O'Brien denied the motion and defendants appealed.

III. DISCUSSION

A. The Standard of Review

A special motion to strike may be filed in response to '"a meritless suit filed primarily to chill the defendant's exercise of First Amendment rights."' (*Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 783, quoting *Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 815, fn. 2.) Section 425.16, which was enacted in 1992, authorizes a court to summarily dismiss such meritless suits. (Stats. 1992, ch. 726, § 2, pp. 3523-3524.) The purpose of the statute was set forth in section 425.16, subdivision (a) as follows: "The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process . . . ."

Under section 425.16, any cause of action against a person "arising from any act . . . in furtherance of the . . . right of petition or free speech . . ." in connection with a public issue must be stricken unless the court finds a "probability" that the plaintiff will prevail on whatever claim is involved. (§ 425.16, subd. (b)(1); *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1415; *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman, supra,* 47 Cal.App.4th at p. 783.) Section 425.16, subdivision (e) provides: "As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1)

any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." In order to protect the constitutional rights of petition and free speech, the statute is to be construed broadly. (§ 425.16, subd. (a); *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1119-1121; *Averill v. Superior Court* (1996) 42 Cal.App.4th 1170, 1176.)

When a special motion to strike is made, the trial court must consider two components. First, the court must consider whether the moving party has carried its burden of showing that the lawsuit falls within the purview of section 425.16. The moving party has the initial burden of establishing a prima facie case that plaintiff's cause of action arises out of a defendant's actions in the furtherance of petition or free speech rights. (§ 425.16, subd. (b)(1); *Mission Oaks Ranch, Ltd. v. County of Santa Barbara* (1998) 65 Cal.App.4th 713, 721, overruled on another point in *Briggs v. Eden Council for Hope & Opportunity, supra,* 19 Cal.4th at p. 1123, fn. 10; *Macias v. Hartwell* (1997) 55 Cal.App.4th 669, 673; *Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036, 1042-1043; *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman, supra,* 47 Cal.App.4th at p. 784; *Wilcox v. Superior Court, supra,* 27 Cal.App.4th at pp. 819-821.) Second, once the defendant meets this burden, the obligation then shifts to the plaintiff to establish a probability that she or he will prevail on the merits. (§ 425.16, subd. (b)(1); *Briggs v. Eden Council for Hope & Opportunity, supra,* 19 Cal.4th at p. 1115; *Kyle v. Carmon* (1999) 71 Cal.App.4th 901, 907; *Conroy v. Spitzer* (1999) 70 Cal.App.4th 1446, 1450; *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman, supra,* 47 Cal.App.4th at pp. 784-785.) In reviewing a trial court's order denying a special motion

to strike, we use our independent judgment to determine whether the litigation arises out of protected activity. (*Mission Oaks Ranch Ltd. v. County of Santa Barbara, supra,* 65 Cal.App.4th at p. 721; *Foothills Townhome Assn. v. Christiansen* (1998) 65 Cal.App.4th 688, 695) and a plaintiff has met the burden of establishing a probability of prevailing on a claim in the complaint. (*Monterey Plaza Hotel v. Hotel Employees & Restaurant Employees* (1999) 69 Cal.App.4th 1057, 1064; *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 653.)

B. The Present Orders Will Be Affirmed

Plaintiffs argue that the special motion to strike was correctly denied because the underlying lawsuit did not arise out of an act in furtherance of the petition rights of the firm and the Hafifs. (§ 425.16, subd. (b)(1).) Plaintiffs reason that since the underlying suit was dismissed pursuant to section 425.16, it cannot be an act arising from an act in furtherance of a valid petition right. We agree.

In *Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, 1359-1367, it was undisputed the defendants had engaged in illegal campaign money laundering in violation of the Political Reform Act. The defendants "effectively conceded" as much. (*Id.* at p. 1367.) In an opinion authored by our colleague Associate Justice H. Walter Croskey, the Court of Appeal held as a matter of law the defendants' illegal conduct was not protected under section 425.16; it was not a *valid* exercise of the defendants' constitutional rights. (*Id.* at pp. 1365-1367.) Associate Justice Croskey observed: "[T]he probability that the Legislature intended to give defendants section 425.16 protection from a lawsuit based on injuries they are alleged to have caused by their *illegal* campaign money laundering scheme is as unlikely as the probability that such protection would exist for them if they injured plaintiff while robbing a bank to obtain the money for the campaign contributions or while hijacking a car to drive the campaign contributions to the post office for mailing." (*Id.* at p. 1366.)

In *Wilcox v. Superior Court, supra,* 27 Cal.App.4th at page 820, the Court of Appeal for this appellate district, Division Seven, made a similar observation. Our colleague, Associate Justice Earl Johnson stated: "[T]he statute requires the defendant to make a prima facie showing the plaintiff's suit arises 'from any act of [defendant] in furtherance of [defendant's] right of petition or free speech under the United States or California Constitution in connection with a public issue.' (§ 425.16, subd. (b).) . . . Thus, if the defendant's act was a lawsuit against a developer the defendant would have a prima facie First Amendment defense. [Citation.] But, if the defendant's act was burning down the developer's office as a political protest the defendant's motion to strike could be summarily denied without putting the developer to the burden of establishing the probability of success on the merits in a tort suit against defendant." (*Ibid.*)

We reach the same conclusion. It is undisputed defendants' underlying lawsuit did not arise from a protected exercise of the petition right. The trial and appellate courts have so held. That conclusion is final. The underlying lawsuit was brought in order to punish plaintiffs for exercising their constitutional rights. It was not brought to vindicate defendants' legally cognizable rights. It was not a *valid* exercise of defendants' constitutional petition rights. As a result, defendants' conduct in the underlying litigation is not entitled to section 425.16 protection.

The firm and the Hafifs argue that because they have been sued for malicious prosecution, section 425.16 necessarily applies to the present lawsuit. In *Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087, the Court of Appeal held a malicious prosecution lawsuit "may" be subject to a special motion to strike. (Accord *Stroock & Stroock & Lavan v. Tendler* (2002) 98 Cal.App.4th 521, 534-536.) However, *Chavez* did not involve an underlying lawsuit which was dismissed pursuant to section 425.16. *Chavez* did not address the present situation where the underlying lawsuit did not arise from the valid exercise of petition rights. *Chavez* is not controlling.

IV. DISPOSITION

The November 16, 2001, (case No. BC247941) and November 27, 2001, (case No. BC249367) orders denying defendants' motions to strike under Code of Civil Procedure section 425.16 are affirmed. Plaintiff, Peggy J. Soukup (case No. BC247941), is to recover her costs on appeal, jointly and severally, from defendants, the Law Offices of Herbert Hafif, Herbert Hafif, and Cynthia D. Hafif. Plaintiff, Terry Hutton (case No. BC249367), is to recover his costs on appeal, jointly and severally, from defendants, the Law Offices of Herbert Hafif, Herbert Hafif, Cynthia D. Hafif, and Greg K. Hafif.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P.J.

I concur:

ARMSTRONG, J.

MOSK, J., Dissenting.

I respectfully dissent. I believe that plaintiffs' lawsuits are subject to the provisions of Code of Civil Procedure, section 425.16 (section 425.16) and that plaintiffs have not demonstrated a reasonable probability that they would prevail on their claims. Accordingly, the trial court should have granted defendants' section 426.16 motions (also known as SLAPP motions).[1]

Section 425.16 provides in relevant part: "A cause of action against a person arising from any act of the 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 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." (Code Civ. Proc., § 425.16, subd. (b)(1).) Under this statute, the party moving to strike a cause of action (here, defendants) has the initial burden to show that the cause of action "arises from [an] act . . . in furtherance of the [moving party's] right of petition or free speech." (*Ibid.*; *Mattel, Inc. v. Luce, Forward, Hamilton & Scripps* (June 28, 2002, B151826) ___ Cal.App.4th ___ [<http://www.courtinfo.ca.gov/opinions> at p. 9] (*Mattel*).) Once that burden is met, the burden shifts to the opposing party (here, plaintiffs) to demonstrate the "probability that the plaintiff will prevail on the claim." (Code Civ. Proc., § 425.16, subd. (b)(1); *Mattel*, at p. 9.)

In this case, plaintiffs' causes of action for malicious prosecution arise from defendants' filing of a lawsuit – apparently an unmeritorious lawsuit, but a lawsuit just the same. Filing a lawsuit is an act in furtherance of the constitutional right of petition.

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[1] I refer to plaintiffs Peggy J. Soukup and Terry Hutton as plaintiffs, and to defendants the Law Offices of Herbert Hafif, Herbert Hafif, Cynthia D. Hafif, and Greg K. Hafif collectively as defendants.

(See, e.g., *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115; *Mattel*, *supra*, at p. 9; *Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087 (*Chavez*).) This is so *regardless of whether or not the lawsuit has merit*. (See *Mattel*, *supra*, at p. 9; *Chavez*, *supra*, 94 Cal.App.4th at pp. 1087-1088.) Plaintiffs have a constitutional right to file a lawsuit """even if it is extremely unlikely that they will win."" (*Wilson v. Parker, Covert & Chidester* (Aug. 1, 2002, S097444) ___ Cal.4th ___ [<http://www.courtinfo.ca.gov/opinions> at p. 5] (*Wilson*).) Section 425.16 does not distinguish between different acts in furtherance of the constitutional right of petition, i.e., by recognizing some acts but not others. Thus, there is no distinction between the type of lawsuit filed or in what manner the lawsuit was resolved or terminated. A lawsuit dismissed by summary judgment, demurrer, or a SLAPP motion is still a lawsuit in furtherance of a person's right of petition covered by section 425.16.

The issue of whether defendants' underlying lawsuit had merit – and thus whether defendants' act in filing it is constitutionally protected as a matter of law – is not relevant to defendants' initial burden on a SLAPP motion. (*Chavez*, *supra*, 94 Cal.App.4th at p. 1089; *Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 305 ["The Legislature did not intend that in order to invoke the special motion to strike the defendant must first establish her actions are constitutionally protected under the First Amendment as a matter of law"].) Instead, the merits of the underlying lawsuit are relevant only to the second step of the SLAPP motion, i.e., plaintiffs' burden to show a reasonable probability of prevailing on their malicious prosecution claims. (*Chavez*, *supra*, 94 Cal.App.4th at pp. 1089-1090.) "Otherwise, the second step would become superfluous in almost every case, resulting in an improper shifting of the burdens. [Citation.] A limited exception to the rule precluding a court from determining the validity of the asserted constitutional right in the first step of the anti-SLAPP analysis applies only where the *defendant indisputably concedes* the claim arose from illegal or constitutionally unprotected activity." (*Id.* at p. 1090, italics added.)

In this case, unlike *Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, defendants do not concede that the underlying lawsuit was illegal or constitutionally unprotected, even though the trial court dismissed it under section 425.16 and the appellate court affirmed the dismissal. Accordingly, I would hold that defendants met their burden to show that plaintiffs' claims arise from an act in furtherance of defendants' constitutional right of petition. Thus, under my conclusion, it would be necessary to determine whether plaintiffs met their burden to show a reasonable probability of prevailing on their claims.

The process used to determine whether parties opposing a SLAPP motion have met their burden is similar to the process used to determine whether parties opposing a motion for summary judgment have met their burden: "a probability of prevailing is established if the plaintiff presents evidence establishing a prima facie case which, if believed by the trier of fact, will result in a judgment for plaintiff." (*Mattel*, *supra*, at p. 9.) Whether plaintiffs have established their prima facie case is a question of law. (*Wilson*, *supra*, at p. 11 ["In deciding the question of potential merit, the trial court considers the pleadings and evidentiary submissions of both the plaintiff and the defendant (§ 425.16, subd. (b)(2)); though the court does not *weigh* the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim"].)

Section 426.16 by its own terms is to be "construed broadly" (Code Civ. Proc., § 425.16, subd. (a)), and there is a "general disfavor in the law for claims of malicious prosecution" (*Loomis v. Murphy* (1990) 217 Cal.App.3d 589, 594). It is difficult to determine the role these principles should play in coming to a conclusion as to whether a party has submitted enough evidence to show a probability of prevailing on the merits in a malicious prosecution action. Here, as I shall discuss, plaintiffs have not made such a showing, whatever the role of these general principles. But those principles may, to some, give justification to my conclusion.

To establish a claim for malicious prosecution, plaintiffs must show that the underlying action (1) was commenced by or at the direction of defendants and was pursued to a legal termination in favor of plaintiffs, (2) was brought without probable cause, and (3) was initiated with malice. (*Mattel*, *supra*, at p. 11, citing *Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 50.) The second element — whether defendants had probable cause to bring the underlying lawsuit — is a question of law. (*Wilson*, *supra*, at p. 5, citing *Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 874-877 (*Sheldon Appel*).)

That defendants' case against Terrie Hutton survived a summary judgment motion establishes in this case that defendants had probable cause to bring the underlying lawsuit such that Terry Hutton could not prevail in his malicious prosecution action, unless Hutton can show that defendants' summary judgment was procured by fraud. (*Wilson, supra,* at p. 16.) Hutton did not make such a showing in opposition to the SLAPP motion.

As to the claims of both plaintiffs, there were facts before the trial court that are sufficient to establish that defendants had probable cause to file the underlying action. These include the number of cases and claims filed in close proximity with each other against defendants and their disposition generally in favor of defendants; the press coverage that might seem orchestrated by plaintiffs; apparent communication among the claimants, all of whom were former clients and employees of defendant; an apologetic acknowledgement from a lawyer representing the claimants that the claims lacked merit; and an apparent effort to have defendants relinquish claims for fees and costs from clients taken by former employees. These facts, even though later contested, were adequate to give defendants the right to bring the claim. This is so even where "it is very doubtful the claim will ultimately prevail." (*Wilson, supra,* at p. 16.)

Relying upon these facts, a trial court ruled in favor of defendants in a malicious prosecution action brought against them by one of the parties whom defendants sued in the same underlying action at issue here and arising out of that underlying action. The

trial court determined that defendants had probable cause to bring the action against all of the parties sued in the underlying action, including Peggy Soukup and the wife of Terry Hutton. Although not binding on this court, such a ruling is consistent with and supportive of defendants' position that they had probable cause to file the underlying action against plaintiffs.

Also supporting defendants' position that there was probable cause is the following statement by the Court of Appeal for the Fourth District in affirming the dismissal of defendants' underlying lawsuit: "The basis for the complaint's allegations against Hutton and Soukup was the newspaper articles. The articles accurately reflected that complaints had been made to the State Bar and to the Department of Labor and the contents of those complaints. The only evidence potentially showing merit in Hafif's claims came from Hutton's diaries, which were prepared for transmission to her lawyer. The trial court properly concluded they were inadmissible. Hafif failed to meet their burden of establishing a probability of succeeding in the claims against Hutton and Soukup." The appellate court's statement that Hutton's diaries "potentially show[ed] merit" in defendants' claims in the underlying lawsuit supports defendants' assertion that they had probable cause to bring the lawsuit.[2] In fact, the trial court in the underlying lawsuit relied upon those diaries to deny Hutton's summary judgment motion (a different judge subsequently granted plaintiffs' SLAPP motion).

That plaintiffs submitted evidence contradicting defendants' allegations in the underlying action does not establish a lack of probable cause. First, in determining "probable cause," — i.e., whether the prior action was "objectively tenable" (*Sheldon Appel, supra,* 47 Cal.3d at pp. 883, 878) — the court views the facts known to the party at the time of the filing of the action and reasonable inferences therefrom, because the

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[2] Admittedly, the statement that this was the "only evidence" might be viewed as helpful to plaintiffs' position, although the trial court in the instant case suggested that the appellate court's statement may answer the probable cause question in defendants' favor.

probable cause issue rests on whether defendants had probable cause to *initiate* the lawsuit. (See *Vanzant v. DaimlerChrysler Corp.* (2002) 96 Cal.App.4th 1283, 1290-1291.) Second, even if defendants were aware of contradictory evidence at the time they filed the underlying lawsuit, plaintiffs cannot establish lack of probable cause unless that evidence *negates* the evidence upon which defendants relied when they filed the lawsuit – if plaintiffs' evidence simply contradicts defendants' evidence and raises a triable issue of fact on the underlying claims, plaintiffs cannot prevail on a malicious prosecution claim unless they can show that defendants' evidence is false. (See *Roberts v. Sentry Life Ins.* (1999) 76 Cal.App.4th 375 [holding that denial of summary judgment motion brought by a defendant who later prevailed at trial precludes malicious prosecution by defendant against plaintiff when summary judgment motion was denied on the ground that there was a disputed issue of material fact, unless it is shown that the evidence in opposition to summary judgment motion was false].)

In addition, defendants, when they filed the underlying action, were represented by attorney Wylie Aitken and relied upon Mr. Aitken's legal advice in filing the action. Good faith reliance on the advice of counsel when all the facts are transmitted to counsel generally establishes probable cause. (*Brinkley v. Appleby* (1969) 276 Cal.App.2d 244, 247.) While defendants themselves are lawyers, a fact that may be relevant to the element of good faith reliance, there is no indication of a lack of such good faith reliance or that Mr. Aitken did not review the necessary facts and the law and advise defendants of their rights.

For those reasons, based on the record before the court,[3] I conclude that defendants have established that they had probable cause to bring the underlying action and that plaintiffs have not carried their burden to show they would prevail on their

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[3] The trial court did not reach the issue of probable cause and did not rule on various evidentiary objections.

malicious prosecution claims.[4] Moreover, I conclude that plaintiffs did not establish a probability that they will prevail on their other cause of action for the abuse of process as pleaded. The plaintiffs have not pleaded facts sufficient to state a cause of action. Filing an action for an improper purpose does not constitute an abuse of process. (*Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc.* (1986) 42 Cal.3d 1157, 1169.) Plaintiffs have not alleged or set forth facts showing "some substantial use or misuse of the judicial process beyond the mere filing of the prior action" (*Loomis v. Murphy*, *supra*, 217 Cal.App.3d at p. 595) necessary for an abuse of process claim.

For the above reasons, I conclude that defendants' SLAPP motion should have been granted. Therefore, I respectfully dissent.

MOSK, J.

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[4] My determination regarding probable cause is based on the record on the SLAPP motion, which motion was filed with defendants' answer to the complaint. As the case proceeds, plaintiffs may be able to provide additional material to support their contention that defendants did not have probable cause.