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November 24, 2020

Anti-SLAPP Motion May Not Be Based on Speech Activities Merely Incidental to Asserted Claims

An anti-SLAPP motion was properly denied because the claims for damages arose from breach of contract and tort actions, not from any protected First Amendment activity. *Oakland Bulk and Oversized Terminal, LLC v*



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OBOT

filed suit against the City alleging various causes of action for breach of contract and tort. The City filed an anti-SLAPP motion contending that some of the claims arose from protected speech in connection with a public issue. The appellate court held that the anti-SLAPP motion lacked merit, noting that the SLAPP law is concerned with claims *arising from* acts in furtherance of a person's constitutional rights of petition or free speech in connection with a public issue. Here, the court found, the City's activity was not protected under SLAPP law. Plaintiffs' claims arose out of the City's alleged breach of its agreements with OBOT, its refusal to cooperate, its stonewalling, and its tortious conduct. The inclusion of the City's speech-related activities in the complaint provided background and context — the evidence — to support the claims of the City's wrongdoing but were not the gravamen of the causes of action. The communications that led to and followed the alleged misconduct were merely incidental to the asserted claims and hence not protected under the SLAPP law.

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