



The court of appeal held that an attorney's actions in filing and prosecuting a meritless challenge to construction of a single-family home supported a claim for malicious prosecution. *Jenkins v. Brandt-Hawley*, No A162852 (1st Dist., Dec 28, 2022).

The underlying lawsuit challenged permits issued by the Town of San Anselmo allowing the Jenkins family to demolish a small home and accessory cottage and to build a new home and detached studio on their property. The petition for writ of mandate alleged that the town had violated CEQA, its Municipal Code, and its general plan. After a hearing on the petition, the trial court upheld the town's actions. The Jenkinses subsequently filed a

complaint for malicious prosecution against petitioners' attorney and law firm. The defendants responded with a motion to strike the complaint under the "anti-SLAPP" statute asserting the claims in the underlying case amounted to protected speech on a matter of public concern. The court of appeal upheld the trial court's decision denying the motion, finding the Jenkinses had shown a probability they would prevail on their claim for malicious prosecution.

The underlying lawsuit had been decided in the Jenkinses' favor; the evidence showed that probable cause to file the underlying lawsuit was absent; and the record contained abundant evidence that the attorney for the plaintiff knew the claims in the petition were "untenable." In its concluding observations, the court rejected suggestions in several amicus briefs that CEQA litigation should be essentially insulated from malicious prosecution claims because CEQA is too uncertain and complicated to support such a claim, finding no basis for such a "carve out." The court also pointed to its opinion in another CEQA case, *Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700 (summarized below), in which it described the possible misuse of CEQA actions and the harm they can cause as "a formidable tool of obstruction." The suit against the Jenkinses, the court observed, had "nothing to do with environmental protection and everything to do with the privacy and aesthetic design concerns of several of the Jenkinses neighbors."

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