Blogs
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Neighbor’s Appeal of Planning Commission Decision Did Not Support Anti-SLAPP Motion

The Court of Appeal ruled that the protected speech or petitioning activity on which an anti-SLAPP motion is based must be a target of the suit and not merely an event that triggered claims unrelated to such speech or activity. *Durkin v. City and County of San Francisco*, 90 Cal.App.5th 643 (2023).

After the City Planning Commission approved a mitigated negative declaration for the renovation of a residence, a neighbor, Kaufman, appealed to the Board of Supervisors, which reversed the Planning Commission's decision. The property owner filed suit against the City, naming Kaufman as a real party in interest. Kaufman filed an anti-SLAPP motion alleging that the suit arose out of his speech or petitioning activity and lacked merit.

The Court of Appeal acknowledged that Kaufman's appeal constituted petitioning activity protected under the anti-SLAPP law but held that the suit did not arise from such petitioning activity. The suit challenged the Board's failure to make factual findings in support of its decision; the lack of substantial evidence supporting the Board's decision; and the Board's convening of more than five hearings on the project. All of these were acts or omissions of the Board, not Kaufman, and the petition sought no coercive relief against Kaufman. Accordingly, the petition did not arise from Kaufman's petitioning activity.

It made no difference that Kaufman's appeal directly preceded or even triggered the events leading to the petition's causes of action. A claim may be struck under the anti-SLAPP statute only if the speech or petitioning activity *itself* is the wrong complained of, and not just evidence of liability or a step leading to a different act for which liability is asserted. Thus, at most, the allegation of Kaufman's protected activity merely provided context, without supporting a claim for recovery, and such contextual allegations are not subject to being stricken under the anti-SLAPP statute.

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