

*Stenehjem v. Sareen* (2014) 226 Cal.App.4th 1405

**Pre-litigation communication that constitutes extortion as a matter of law is not protected by the anti-SLAPP statute.**

**FACTS AND PROCEDURAL POSTURE**

Plaintiff Jerome Stenehjem sued his former employer, Akon, Inc., and its CEO Surya Sareen for defamation and other causes of action. Sareen cross-complained for civil extortion, alleging that Stenehjem had asserted through counsel a pre-litigation claim for defamation and had, while representing himself, made a written (email) threat to file a false criminal complaint against Sareen unless Sareen paid him to settle the defamation claim. Stenehjem moved to strike the cross complaint on the grounds that the pre-litigation communications on which the cross-complaint was based were protected statements under the anti-SLAPP statute and that Sareen could not establish a probability of prevailing because Stenehjem's communications were subject to the litigation privilege under Civil Code section 47 (b).

The court granted the motion, finding that the cross-complaint arose from protected activities under the anti-SLAPP statute, in that the communications were made in anticipation of litigation. The court also found that Sareen had not established a probability that he would prevail on the cross-complaint. Sareen appealed.

**DISCUSSION**

The anti-SLAPP statute (Cal Code Civ Proc § 425.16) identifies four categories of activities that constitute protected acts. Relevant to the present case is section 425.16(e)(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." Stenehjem's email would seem to fall under this protection, however, the California Supreme Court held in *Flatley v. Mauro* (2006) 39 Cal.4th 299 that because not all speech is constitutionally protected, not all speech is protected by the anti-SLAPP statute. The *Flatley* court held that speech that is extortion as a matter of law is not protected.

Accordingly, if Stenehjem's email constituted extortion, it was not protected speech and the anti-SLAPP motion should have been denied. The email was sent after initial negotiations had failed to result in any settlement. Defendants had repeatedly explained that they believed Stenehjem's claims to have no merit and advised his previous attorney that they would not settle the case, would not mediate the matter, and had no interest in negotiating "bogus claims." In the email Stenehjem accused Sareen of misconduct and raises the possibility of involving federal authorities. He mentioned involving the DOJ, the Attorney General, and that he has consulted an attorney about filing a Qui Tam suit. The court explained that even though the threats were "veiled" and no specific monetary demand was made, threats to expose defendants for violations of the False Claims Act unless they settled constituted extortion as a matter of law. Accordingly the email was not constitutionally protected and the anti-SLAPP motion should have been denied.