*Medallion Film, LLC, v. Loeb & Loeb, LLP*
**2024 DJDAR 2825**

**A law firm's letter responding to a company's request to avoid litigation and resolve a contractual issue amicably which was not directed to the firm's client, was not protected activity under the anti-SLAPP statute and could subject the firm to liability for misrepresentation.**

## FACTS

In 2014, William Sadleir managed Clarius Capital Group which was looking to obtain funding for film projects. Sadleir entered into a consulting agreement with Plaintiffs Medallion Film and Pelican Point. Plaintiffs were to introduce Clarius to its contacts and assist with obtaining funding. Clarius was contractually prohibited from conducting direct transactions with Plaintiffs' contacts and was to pay Plaintiff a portion of any funding obtained. Plaintiff introduced Clarius to one of their contacts, Randy Robertson at BlackRock.

In 2015, Sadleir allegedly dissolved the Clarius entities and with the assistance of law firm Loeb & Loeb ("Defendant law firm"), formed and transferred Clarius's assets to a new set of corporate entities called Aviron Capital Group to continue marketing Clarius's film properties. Aviron allegedly obtained funding from BlackRock in 2015 with a credit extension in 2017. Plaintiffs allegedly learned of this in 2017 and contacted Sadleir who denied any affiliation between the entities or personal ownership interest in Aviron, claiming he was only an employee.

On March 25, 2018, one of Plaintiffs' co-founders emailed Randy Robertson at BlackRock:

> Randy hope all is well. [¶] We have a fee agreement with Bill Sadle[i]r based upon monies raised from Blackrock thru my introduction to you. What can you do to assist us here in collecting what is due to us. [¶] Jesse [Kennedy, of Medallion] will provide a reconciliation. As you know our financial models were provided to you and Blackrock on the P&A. [¶] Let us know so we don[']t have to litigate and can resolve the matter in an amicable fashion. [¶] Thx.

Defendant law firm learned of the email and on March 28, 2018, a partner wrote a letter to Plaintiffs on behalf of Aviron, stating:

> Aviron has no legal connection to Clarius Capital Group, LLC whatsoever. It is not a successor in interest and there is no common ownership between the two companies. Mr. Sadleir, who signed the referenced agreement on behalf of Clarius Capital Group, is an Aviron employee with no ownership interest in Aviron. Had Mr. Sadleir left Clarius to work at Sony Pictures Entertainment, for example, your claim for payment to you by Sony, had it received funding from BlackRock, would be equally without merit. [¶] Any further communication by you to Randy Robertson or anyone else at BlackRock regarding this matter will be considered by Aviron to constitute tortious interference.

Plaintiffs allege the partner knew these representations were false when written because the firm assisted in forming the Aviron entities, registered them, and represented Aviron when it obtained funding from BlackRock. Plaintiffs allegedly justifiably relied on the letter in concluding they were not entitled to payment. Meanwhile, BlackRock sued Aviron and Sadleir, and Plaintiffs allegedly learned in 2019 that the letter's representations were false from documents produced in the BlackRock litigation.

In 2021, Plaintiffs sued Defendant law firm for fraudulent misrepresentation, deceit by concealment, negligent misrepresentation, and aiding and abetting fraud. Defendant filed a special motion to strike

Plaintiff's first amended complaint as a strategic lawsuit against public participation ("anti-SLAPP" motion). Defendant contended that its partner's March 2018 letter was in response to Plaintiffs' threat of legal action and constituted protected activity under the anti-SLAPP statute. The trial court granted the motion, finding for Defendant under both prongs of the anti-SLAPP analysis. However, at the hearing the court noted that it did not like the result which was probably not fair because Plaintiffs should be able to sue if the partner did knowingly lie. The court encouraged Plaintiffs to appeal, and they did so.

## SECOND APPELLATE DISTRICT'S RULING

The Appellate Court reversed. The purpose of anti-SLAPP motions is to strike meritless lawsuits that potentially chill speech and to protect a defendant's free speech and petition rights regarding matters of public concern. An anti-SLAPP analysis has two steps. First, the defendant must show that the complained of activity it engaged in was "protected activity." If the defendant cannot make this showing, the trial court will deny the motion. Second, if the showing is made then the burden shifts to the plaintiff to show a minimal probability of success on the merits. If the plaintiff cannot make this showing, the trial court will strike the claims, but if the plaintiff can then the motion will be denied even though the first step was met. The Court found against Defendant law firm on both steps.

### *The Anti-SLAPP's Analysis's First Step*

Defendant law firm contended that all of Plaintiffs' claims arose from the 2018 letter Defendant's partner wrote to Plaintiffs and that this letter was protected activity. The anti-SLAPP statute identifies four categories of protected activity. (Code Civ. Proc., § 425.16(e).) Defendant argued its letter fell under the category for a "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." (§ 425.16(e)(2).) Courts have held that prelitigation communications may fall under this category if they:

> (1) concern the subject under dispute; and
>
> (2) are made in anticipation of litigation contemplated in good faith and under serious consideration.

Defendant law firm argued that the second element is not required, citing a prior decision (which was the finding made by the trial court). The Court was not persuaded by Defendant's interpretation of the decision and reiterated that it is a requirement. Because the purpose of anti-SLAPP is to protect petitioning activity, prelitigation communications made when litigation is merely a negotiating tactic, a hypothetical possibility or a hollow threat, as opposed to seriously contemplated, are not protected.

Here, Plaintiffs' misrepresentation and deceit claims arose out of the partner's letter regarding Plaintiffs' email to BlackRock. However, the email was not a litigation threat or demand letter, or even directed to the firm's client, Aviron. Plaintiffs' email to their pre-existing BlackRock contact asking for help collecting payment they thought was due to them so they didn't have to litigate and could amicably resolve the matter was the exact opposite of a litigation threat. A remote possibility of theoretical eventual litigation is not enough. The firm's letter was not protected conduct.

Separately, Plaintiff's fourth claim for Defendant allegedly aiding and abetting Sadleir's fraud in avoiding his contractual obligation to pay Plaintiffs arose out of conduct pre-dating the letter. Defendant didn't attempt to demonstrate this conduct was protected activity.

Although the finding that the claims did not arise from protected activity was dispositive, the Court also found that the motion should've been denied under the second prong of the analysis.

***The Anti-SLAPP's Analysis's Second Step***

Regardless of whether claims arise out of protected activity, if a plaintiff makes a prima facie factual showing that the claims arising out of protected activity have at least minimal merit, they cannot be struck. Akin to a summary judgment motion, the court does not weigh evidence or resolve factual conflicts. The plaintiff's evidence is accepted as true, and the defendant must defeat the plaintiff's showing of minimal merit as a matter of law.

Here, Defendant law firm argued that Plaintiffs couldn't show the claims had minimal merit because they were barred by the litigation privilege (as the trial court found) and the statute of limitations, and the claims' justifiable reliance element couldn't be met. The Court found Defendant did not defeat Plaintiffs' showing as a matter of law on any argument.

The litigation privilege is absolute and broadly interpreted, and if applicable, bars a plaintiff from showing a probability of prevailing to defeat an anti-SLAPP motion. (Civ. Code, § 47.) A prelitigation communication is privileged when it relates to litigation that is contemplated in good faith and under serious consideration. For the reasons discussed above, Defendant's letter was in response to Plaintiffs' attempt to avoid litigation and was not privileged.

Regarding the statute of limitations, Defendant argued that they began to run when Plaintiffs suspected Sadleir controlled Aviron when it asked him about payment in 2017, and with a reasonable online investigation they could've discovered that he did control Aviron, etc. The Court found that this might be relevant to accrual of an action against Sadleir but not Defendant law firm. Plaintiffs' suspicion that they might be owed money was insufficient to place them on notice that Sadleir's law firm included misrepresentations in its letter, particularly as Plaintiffs did not file suit until documents were made available as evidence in the BlackRock case and the partner who wrote the letter declared that he believed his representations were accurate when written.

Finally, in what the Court termed "a rather bleak argument," Defendant argued Plaintiffs couldn't show they justifiably relied on the letter's representations because is unreasonable as a matter of law for a party to accept opposing counsel's representations without independent inquiry.