

*Superior Court of California
County of Los Angeles*

Michael Pitts, et al.

Plaintiffs,

vs.

Financial Management Company,
et al.,

Defendants.

Case **BC644978**
No.:

Tentative Ruling

Hearing Date: March 16, 2017

Department 54, Judge Ernest M. Hiroshige

Special Motion to Strike Pursuant to CCP § 425.16

Moving Party: Defendant Frieda Rentie, individually and dba Financial Management Company ("Defendant")

Responding Party: Plaintiffs Michael Pitts and Karen Pitts ("Plaintiffs")

T/R: THE MOTION IS DENIED.

PLAINTIFFS' REQUEST FOR ATTORNEYS' FEES IS DENIED.

PLAINTIFFS TO NOTICE.

The Court considers the moving papers and opposition.

BACKGROUND

Plaintiffs Michael Pitts and Karen Pitts are a married couple who moved into a property owned by Frieda Rentie, individually and dba Financial Management Company ("Defendant") in June 2009. Plaintiffs allege that Defendant terminated their lease in December 2015 when Defendant learned the couple was expecting their second child. Plaintiffs asserts causes of action for (1) negligence; (2) breach of covenant of good faith and fair dealing; (3) housing discrimination in violation of FEHA; (4) housing discrimination in violation of Unruh Civil Rights Act; (5) intentional infliction of emotional distress; and (6) negligent infliction of emotional distress.

ANALYSIS

In ruling on a special motion to strike pursuant to CCP § 425.16, the court engages in a two-step process. First, the court decides whether defendant has made a threshold showing that the challenged cause of action is one arising from protected activity (i.e., that the act or acts of which plaintiff complains were taken in furtherance of defendant's right of petition of free speech.) If such a showing has been made, the court then determines whether plaintiff has demonstrated a "probability" of prevailing on the claim. (*Equilon Enterprises, L.L.C. v. Consumer Cause, Inc.* (2002) 29 Cal. 4th 53, 66.) A plaintiff opposing a special motion to strike meets his or her burden by making a prima facie showing of facts which would, if proven at trial, support a judgment in the plaintiff's favor. (*Kyle v. Carmon* (1999) 71 Cal. App. 4th 901, 907.) To prevail on an anti-SLAPP motion, the cause of action must satisfy both prongs of the anti-SLAPP statute. (*Dwight R. v. Christy B.* (2013) 212 Cal. App. 4th 697, 709–10.)

Defendant Frieda Rentie, individually and dba Financial Management Company ("Defendant"), moves to strike the complaint under the anti-SLAPP statute (CCP § 425.16). Defendant contends that Plaintiffs' action arises out of service of the 60-day notice to quit—a necessary prerequisite to filing an unlawful detainer actions—and thus falls under the protection of the anti-SLAPP statute. The Court disagrees.

Whether the anti-SLAPP statute applies is determined by the "*principal thrust or gravamen* of the plaintiff's cause of action. . . ." (*Martinez v. Metabolife Intern., Inc.* (2003) 113 Cal. App.4th 181, 188.) "[W]hen the allegations referring to arguably protected activity are only incidental to a cause of action based essentially on nonprotected activity, collateral allusions to protected activity should not subject the cause of action to the anti-SLAPP statute." (*Ibid.*) Here, the *principal thrust or gravamen* of Plaintiffs' complaint is that they were wrongfully evicted from the property for discriminatory reasons. In *Marlin v. Aimco Venezia, LLC*, the court found that although "[t]he filing and service of [eviction] notices may have triggered plaintiffs' complaint. . . they were not the cause of plaintiffs' complaint. Clearly, the cause of plaintiffs' complaint was defendants' allegedly wrongful reliance on the Ellis Act as their authority for terminating plaintiffs' tenancy. Terminating a tenancy or removing a property from the rental market are not activities taken in furtherance of the constitutional rights of petition or free speech." (*Marlin v. Aimco Venezia, LLC* (2007) 154 Cal. App. 4th 154, 160–61.) Similarly here, Plaintiffs' are not challenging the eviction procedure but the eviction decision itself. Thus, while service of the 60-day notice is arguably a protected activity, Plaintiffs' complaint does not arise from this activity and thus is not subject to the anti-SLAPP statute. Accordingly, the motion is DENIED.

Plaintiffs request attorneys' fees pursuant to CCP § 425.16(c)(1), which provides for attorneys' fees where "the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay." Although the motion was unsuccessful, the Court finds that the motion was not frivolous, and that there is insufficient evidence that the motion was brought solely to cause unnecessary delay. Accordingly, the request for attorneys' fees is DENIED.

Date: March 16, 2017



Judge Ernest M. Hiroshige