Definition of a SLAPP Action Much Broader Than Most Attorneys Realize

By Aaron Morris, Partner at Morris & Stone

One of our latest anti-SLAPP victories provides a beautiful illustration of a "stealth" SLAPP suit that the plaintiff's attorney failed to recognize, to the great expense of his client.

In this case our (future) client's business partner, we'll call him Freddy Fraudster, opened a credit card account at a local bank using our client's personal information. When our client discovered what Freddy had done, he contacted the bank and informed the personnel there that Freddy had committed fraud, and based on this report the bank closed the account and reported the matter to the police. Our client also filed a police report, and filed for a restraining order against Freddy.

Freddy was not happy. He had a long term relationship with the bank, and based on the report by our client, the bank closed his accounts and would have nothing further to do with him. Apparently thinking the best defense is a good offense, and hoping that winning the race to the courthouse might give him some leverage, Freddy filed an action against our client. He claimed that our client had authorized him to open the account, and that the report to the bank was therefore defamatory since it accused him of fraud.

Do you see why Freddy's action in Superior Court was a SLAPP suit? Opposing counsel didn't, but we recognized that this was a SLAPP suit and successfully brought an anti-SLAPP motion. You see, a SLAPP suit is one that tries to block a person's right of petition. Freddy's attorney realized that the report to the police and the application for the restraining order were protected rights of petition, but he mistakenly thought that the report to the bank, requesting that the credit card be cancelled, was not a petition for redress and therefore did not fall under the SLAPP statute because it did not involve any government agency. No doubt, he thought that by suing our client for defamation, he could make all his evil deeds go away and get back in good stead with the bank by offering to dismiss the case if our client would withdraw his remarks to the bank, court and police. Now it sounds like a SLAPP, doesn't it?

The interpretation of the SLAPP statutes by Freddy's attorney was far too narrow. Consider. One day you run a credit report on yourself and you find that someone has fraudulently opened a credit card in your name. What is the first thing you are going to do? Call an official government agency? You might do that eventually, but first you are going to call the credit card company and tell them to cancel the card. Thus, contacting the credit card company, or in our case the bank, is a natural part of the entire "right of petition."

It's very similar to the litigation privilege. I occasionally see cases where a defendant tries to sue the plaintiff and his attorney, claiming that the demand letter sent by the attorney was defamatory because it falsely claimed the defendant did something illegal. But under Civil Code section 47, anything said in conjunction with litigation is privileged and therefore not defamatory. The demand letter from the attorney takes place before legal action is ever filed, but it is still part of the litigation process.

So it was here. The report to the bank occurred before any “right of petition” was pursued with a government agency, but calling to cancel the credit card was a natural part of that process. If a plaintiff were permitted to SLAPP a defendant by focusing on the activities leading up to the actual right of petition, then the intent of the anti-SLAPP statutes would be subverted. We explained that to the court, and our motion was granted.