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Anti-SLAPP Law Does Not Protect Civil Extortion by Attorneys -- *Miguel Mendoza v. Reed K. Hamzeh*

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As set forth in the just released opinion of *Miguel Mendoza v. Reed K. Hamzeh*, another attorney has learned the painful lesson about going too far in a demand letter.

It is an ethical violation for an attorney to threaten criminal action as a means to extract a civil settlement. For example, California's Rules of Professional Conduct state that "a member shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute." (Rule 5-100.)

Then there are the criminal extortion laws:

"Extortion is the obtaining of property from another, with his consent . . . induced by a wrongful use of force or fear. . . .' (Pen. Code, § 518.) Fear, for purposes of extortion 'may be induced by a threat, either: [¶] . . . [¶] 2. To accuse the individual threatened . . . of any crime; or, [¶] 3. To expose, or impute to him . . . any deformity, disgrace or crime[.]' (Pen. Code, § 519.) 'Every person who, with intent to extort any money or other property from another, sends or delivers to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat such as is specified in Section 519, is punishable in the same manner as if such money or property were actually obtained by means of such threat.'" (Pen. Code, § 523.)

Despite these prohibitions, some attorneys can't resist throwing a threat of criminal action into their demand letters. They apparently think (if they give it any thought at all) that an express or veiled threat of criminal action will be protected under the litigation privilege, but that is not the case. If an attorney includes a demand for money in a letter that threatens to pursue criminal action, he or she has committed extortion, and as *Flatley v. Mauro* held, that is not protected speech because criminal acts are not protected.

The most recent example of this was discussed in *Mendoza v. Hamzeh*. According to the opinion, an attorney named Reed K. Hamzeh was representing a client named Guy Chow, seeking to recover money allegedly owed to Chow by Miguel Mendoza. The dispute concerned Mendoza's employment as the manager of Chow's print and copy business. Hamzeh sent a letter to Mendoza's attorney, which according to the opinion stated:

“As you are aware, I have been retained to represent Media Print & Copy (“Media”). We are in the process of uncovering the substantial fraud, conversion and breaches of contract that your client has committed on my client. . . . To date we have uncovered damages exceeding \$75,000, not including interest applied thereto, punitive damages and attorneys’ fees. If your client does not agree to cooperate with our investigation and provide us with a repayment of such damages caused, we will be forced to proceed with filing a legal action against him, as well as reporting him to the California Attorney General, the Los Angeles District Attorney, the Internal Revenue Service regarding tax fraud, the Better Business Bureau, as well as to customers and vendors with whom he may be perpetrating the same fraud upon [sic].”

The letter goes on to list Mendoza’s alleged transgressions, including failure to pay Media’s employees, sales taxes and bills.

What followed next was *Flatley* all over again, with some additional twists. In May 2011, Mendoza responded to the demand letter by filing an action against attorney Hamzeh, asserting causes of action for civil extortion, intentional infliction of emotional distress and unfair business practices. Just as in *Flatley*, Hamzeh thought his letter was protected under the litigation privilege, and brought an anti-SLAPP motion to strike Mendoza’s complaint. But here, the plaintiff’s counsel had the benefit of the already decided *Flatley*, and wrote to Hamzeh to say that the anti-SLAPP motion would be frivolous since the facts fell squarely under that decision. Hamzeh decided to go ahead regardless, and after the court denied the motion it awarded attorney fees on the grounds that the motion had, indeed, been frivolous. Hamzeh then appealed from the denial of the anti-SLAPP motion, and lost. The action against Hamzeh for civil extortion and the other causes of action will now proceed.

The takeaway from Hamzeh’s experience is that the standard for civil extortion is very low. On appeal, Hamzeh argued that his demand letter was not nearly as egregious as the one utilized in *Flatley*, which was true, but as the court found, the issue is not how far the letter goes, it is whether it amounts to civil extortion as a matter of law. As you can see from the Penal Codes above, that requires only a demand for money in conjunction with a threat to “expose, or impute to him . . . any deformity, disgrace or crime” That standard is incredibly broad. It doesn’t even matter whether or not a crime occurred that can be properly reported. Further, as I just realized in preparing this article, the threat doesn’t even need to concern criminal conduct; it is enough to threaten “disgrace”. If an attorney wrote a letter suggesting that the defendant should settle to avoid having his family realize what he had done, it appears that would constitute civil extortion.