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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL - SECOND DIST.

DIVISION THREE

FILED

ROBERT WALSH,

B279949

JAN 11 2019

Plaintiff and Appellant,

JOSEPH A. LANE Clerk

(Los Angeles County Deputy Clerk
Super. Ct. No. BC620249)

v.

LEAH ANESTA et al.,

Defendants and Respondents.

APPEAL from an order of the Superior Court of Los Angeles County, Richard E. Rico, Judge. Reversed in part with directions and affirmed in part.

Pacific Atlantic Law Corporation and Chinye Uwechue for Plaintiff and Appellant.

Morris Polich & Purdy, Clark Hill, Lane E. Webb and Micah Hoffman for Defendants and Respondents.

Plaintiff and appellant Robert Walsh (Walsh) appeals an order granting a special motion to strike (Code Civ. Proc., § 425.16) brought by defendants and respondents Leah Anesta (individually and as trustee for the Allen Trust Dated June 20, 1991, and the Lifetime Benefit Trust for Leah Anesta) and Thomas Anesta (sometimes collectively referred to as the Trust or Anesta). The trial court's ruling eliminated Walsh's eighth and ninth causes of action, for malicious prosecution and abuse of process, respectively.¹

We reverse in part, concluding that Walsh's malicious prosecution claim arising out of the Trust's bringing an unlawful detainer (UD) action against him has the requisite minimal merit to withstand anti-SLAPP scrutiny, and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Lessee Walsh prevails in the underlying UD action.

In July 2013, Walsh entered into two leases with John Allen, Leah Anesta's now deceased father and the predecessor trustee. One of the leases was for a one-bedroom house located at 10416 Scenario Lane in Los Angeles (the residential property), for a monthly rent of \$1,800, plus cost of living increases. The other lease was for an adjacent commercial property, located at 2181 North Beverly Glen Boulevard, at a rent of \$12,000 per month, with the premises to be utilized for a restaurant.

On October 22, 2014, the Trust filed a UD complaint against Walsh with respect to the residential property. The UD action "was based on the allegation that [Walsh] was required to

¹ An order granting a special motion to strike, or anti-SLAPP motion, is appealable. (Code Civ. Proc., §§ 425.16, subd. (i), 904.1, subd. (a)(13).) All further statutory references are to the Code of Civil Procedure, unless otherwise specified.

obtain Plaintiff's prior written consent before any construction, modifications, alterations or improvements to the premises, located at 10416 Scenario Lane . . . could be commenced and that [Walsh] failed to fulfill this requirement."

The matter was tried to a jury, which returned a verdict that Walsh was entitled to retain possession of the residential property. The judgment, entered March 27, 2015, sets forth the jury's finding that the Trust "waived, by conduct or otherwise, the requirement that [Walsh] obtain [the Trust's] prior written consent before any construction, modifications, alterations or improvements to the premises . . . could be commenced."

2. Anesta files a claim in Walsh's bankruptcy proceeding with respect to the commercial lease; the claim is disallowed.

On October 22, 2014, the same day that the Trust filed the UD action, Walsh filed a Chapter 7 bankruptcy petition.

On March 9, 2015, the Trust filed a claim in Walsh's bankruptcy proceeding, followed by an amended claim on October 20, 2015. The basis of the Trust's claim was Walsh's alleged default on the commercial lease. The Trust sought \$144,000 (representing one year's rent under the commercial lease), as well as \$59,169 for repairs and restoration.

On December 9, 2015, the bankruptcy court sustained Walsh's objections and disallowed the Trust's claim.

On January 19, 2016, the bankruptcy court entered a discharge order. On May 11, 2016, the bankruptcy court closed Walsh's bankruptcy case. Walsh commenced the instant lawsuit the following day.

3. *Walsh's instant action for malicious prosecution and abuse of process.*

On May 12, 2016, Walsh filed this action against Anesta. The complaint set forth nine causes of action.

Only the eighth cause of action (malicious prosecution) and the ninth cause of action (abuse of process) are relevant to this appeal. Both causes of action were predicated on (1) Anesta's having filed the failed UD action against Walsh, and (2) Anesta's having filed the failed claim in Walsh's bankruptcy proceeding.

4. *Anesta's special motion to strike.*

On October 6, 2016, Anesta filed a special motion to strike (§ 425.16) Walsh's eighth and ninth causes of action. Anesta contended both the malicious prosecution and abuse of process claims arose out of the Trust's protected activity in filing the UD action against Walsh and filing a claim in Walsh's bankruptcy proceeding.

As for the merits of Walsh's claims, i.e., the second prong of the anti-SLAPP analysis, Anesta asserted that Walsh could not establish a probability of prevailing on his malicious prosecution claim because Walsh could not show that the Trust lacked probable cause to bring the UD action or that the Trust acted with malice. Further, the superior court had no jurisdiction to hear any claims arising out of the Trust's actions or filings in the bankruptcy proceeding. Also, Walsh could not prevail on his abuse of process claim because the complaint failed to allege a misuse of the tools of litigation otherwise available in the regular conduct of court proceedings.

In addition to a memorandum of points and authorities, Anesta's moving papers were supported by a request for judicial notice of various court records, including the unlawful detainer

complaint and judgment, and filings in Walsh's bankruptcy court case.

5. *Walsh's opposition to the anti-SLAPP motion.*

In opposition to Anesta's special motion to strike, Walsh asserted that illegal conduct by the Trust took this matter outside the ambit of the anti-SLAPP statute. Specifically, Walsh contended that the Trust engaged in perjury in both the UD action and the bankruptcy proceeding, and that the Trust committed insurance fraud by falsely presenting to Farmers Insurance a claim alleging that Walsh damaged the property by making repairs without the landlord's consent.

Walsh's opposing papers also addressed the merits and argued he had a probability of prevailing on his claims. In support, Walsh submitted various exhibits, as well as the following two declarations relevant to the issues under consideration.

a. *The Walsh declaration.*

Walsh's own declaration stated in relevant part:

In July 2013, he entered into a 20-year lease for the house, which was in disrepair. In July and August of 2013, he spoke with Allen about the condition of the property and requested permission to repair it and to make improvements. Allen was "delighted" and orally agreed to allow Walsh to make repairs and improvements, and to reimburse Walsh for his expenses. With "Allen's knowledge and permission," Walsh started working on the project in August 2013 and continued repairing and improving the property until late 2013 or early 2014. Walsh spent \$18,000 of his own funds, apart from his time and labor. Because he intended to occupy the premises for 20 years, "it made sense to fix it up." In 2013, he invited Allen to view the

improvements. Allen “approved and praised my work. He encouraged me to keep working on the property, telling me it was looking good.” Throughout 2013, Allen never complained about the work that Walsh was doing on the property. Despite agreeing to reimburse Walsh, Allen did not do so. In January 2014, Walsh received a letter from the landlord’s lawyers “falsely accusing [him] of effecting repairs and improvements without the landlord’s consent.” In early 2014, Walsh learned that Allen had filed a fraudulent insurance claim alleging that Walsh had altered the property without permission and that the modifications constituted damage to the property.

Further, sometime in 2014 or 2015, before the UD action was filed, Walsh observed a for sale sign on the adjacent restaurant property that he was leasing. He called the real estate agency and was informed that someone had offered \$3 million to purchase both the residential property and the commercial property that were the subject of his lease.

b. *The Fligsten declaration.*

The opposition papers were also supported by the declaration of Dan Fligsten, an attorney who defended Walsh in the UD action. Fligsten stated that in September 2014, before the UD action was filed, he informed Leah Anesta that Walsh received permission in 2013 to make the improvements, and that “pursuant to the doctrine of waiver, the UD lawsuit was not meritorious.”²

² Walsh also submitted a declaration by Gary Barton, who stated: He worked for Allen as a handyman. During 2013 and 2014, he, Barton, occasionally accompanied Allen on visits to the property. Allen encouraged Walsh to continue to work on the improvements and Allen told Walsh he was doing a “great job.”

6. *Trial court's ruling granting Anesta's special motion to strike.*

On November 10, 2016, the matter came on for hearing. The trial court disallowed most of Walsh's exhibits as well as the Barton declaration, and granted Anesta's request for judicial notice.

On the first prong of the anti-SLAPP analysis, the trial court found both the malicious prosecution and abuse of process claims arose out of protected activity by the Trust in filing the UD action and the bankruptcy court claim.

On the second prong, the trial court stated that in light of its evidentiary rulings, the motion "is effectively unopposed."³ There is no evidence that the UD action [or] Bankruptcy claims were brought without probable cause and/or initiated with malice. Plaintiff cannot meet his burden and the motion is GRANTED."

Walsh filed a timely notice of appeal from the order.

However, the trial court disallowed the Barton declaration, apparently on the trial court's own motion. The trial court stated the declaration was "without merit" because its caption failed to state the name of the declarant and failed to specify the motion that it supported or opposed, as required by California Rules of Court, rule 3.115. Because appellant's opening brief did not raise a claim of evidentiary error, we do not consider the Barton declaration as part of our analysis.

³ It appears the trial court overlooked the Walsh and Fligsten declarations, which came in without objection.

CONTENTIONS

Walsh contends the anti-SLAPP statute does not protect Anesta's criminal activity, and in any event, he demonstrated a probability of prevailing on his claims.

DISCUSSION

1. *General principles.*

"The anti-SLAPP statute does not insulate defendants from *any* liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity. Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success. [The Supreme Court has] described this second step as a 'summary-judgment-like procedure.' [Citation.] The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a *prima facie* factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. [Citation.] '[C]laims with the requisite minimal merit may proceed.' [Citation.]" (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384–385, fn. omitted (*Baral*).)

For the benefit of litigants and courts, *Baral* summarized "showings and findings required by section 425.16(b). At the first step, the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief

supported by them. When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage. If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached. There, the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated. The court, without resolving evidentiary conflicts, must determine whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment. If not, the claim is stricken. Allegations of protected activity supporting the stricken claim are eliminated from the complaint, unless they also support a distinct claim on which the plaintiff has shown a probability of prevailing." (*Baral, supra*, 1 Cal.5th at p. 396.)

Our review of the trial court's order granting the special motion to strike is de novo. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.)

2. *Anesta satisfied the first step of the anti-SLAPP analysis, with respect to both the eighth and ninth causes of action.*

Protected activity is defined as including "(1) any written or oral statement or writing made before a legislative, executive, or *judicial* proceeding . . ." (§ 425.16, subd. (e)(1), italics added.) We readily conclude the malicious prosecution and abuse of process claims against Anesta arose from Anesta's protected petitioning activity in bringing the underlying UD action against Walsh in superior court, as well as filing a claim in Walsh's bankruptcy court proceeding. (See, e.g. *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 734–735 (*Jarrow*) [malicious

prosecution action arose from protected petitioning activity in filing the underlying lawsuit].)

Walsh, however, contends that insurance fraud by Anesta, as well as Anesta's perjury in the UD action and the bankruptcy proceeding, bars Anesta from invoking the protections of the anti-SLAPP statute. The cases cited by Walsh in support of this argument are inapposite. In *Flatley v. Mauro* (2006) 39 Cal.4th 299 (*Flatley*), the activity forming the basis of defendant's special motion to strike, i.e., a demand letter and subsequent phone calls, constituted criminal extortion as a matter of law and therefore did not amount to constitutionally protected activity. (*Id.* at pp. 330–333.)⁴ In *Gerbosi v. Gaims, Weil, West & Epstein, LLP* (2011) 193 Cal.App.4th 435 (*Gerbosi*), involving privacy-related causes of action, the anti-SLAPP statute did not apply because defendants allegedly engaged in illegal wiretapping of plaintiff's telephone conversations, and such wiretapping does not fall within the protective ambit of section 425.16. (*Gerbosi*, at pp. 446–447.) In *Lefebvre v. Lefebvre* (2011) 199 Cal.App.4th 696 (*Lefebvre*), where plaintiff alleged that defendants conspired to bring a false criminal report against him (*id.* at p. 701), the anti-

⁴ *Flatley* held “that where a defendant brings a motion to strike under section 425.16 based on a claim that the plaintiff's action arises from activity by the defendant in furtherance of the defendant's exercise of protected speech or petition rights, *but either the defendant concedes, or the evidence conclusively establishes*, that the assertedly protected speech or petition activity was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff's action.” (*Flatley, supra*, 39 Cal.4th at p. 320, italics added.) Here, Anesta does not concede illegality, nor does the evidence conclusively establish illegality as a matter of law.

SLAPP statute did not apply because the act of making a false police report is “an illegal activity, not a constitutionally protected exercise of the right of petition or free speech.” (*Lefebvre*, at p. 706.)

Flatley, *Gerbosi*, and *Lefebvre* are all distinguishable because Anesta is *not* being sued for having filed the allegedly fraudulent Farmers insurance claim or for perjury. Rather, Anesta is being sued for malicious prosecution and abuse of process for having filed both the UD action and the bankruptcy claim. Those filings clearly were protected petitioning activity, so as to shift the burden to Walsh.

Therefore, the issue becomes whether Walsh met his burden to establish a likelihood of prevailing on his malicious prosecution and abuse of process claims. (§ 425.16, subd. (b)(1).)

3. *Walsh met his burden to show a reasonable probability of success on his malicious prosecution claim arising out of the UD action.*

a. *Elements of the tort of malicious prosecution.*

To establish “ ‘a cause of action for the malicious prosecution of a civil proceeding, a plaintiff must plead and prove that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination in his, plaintiff’s, favor [citations]; (2) was brought without probable cause [citations]; and (3) was initiated with malice [citations].’ ” (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 676.)

b. *Favorable termination of the UD action.*

The UD action was resolved by a judgment in Walsh’s favor, following a jury finding that the Trust waived the requirement that Walsh obtain prior written consent “before any

construction, modifications, alterations or improvements to the premises . . . could be commenced.”

Accordingly, Walsh established a probability of prevailing on the essential element that the underlying UD action terminated in his favor.

c. Lack of probable cause for bringing the UD action.

The UD action “was based on the allegation that [Walsh] was required to obtain Plaintiff’s prior written consent before any construction, modifications, alterations or improvements to the premises, located at 10416 Scenario Lane . . . could be commenced and that [Walsh] failed to fulfill this requirement.”

In opposing the special motion to strike, Walsh made a prima facie showing that the Trust lacked probable cause to allege that Walsh had made alterations to the property without the Trust’s consent. As indicated, Walsh’s opposing declaration stated:

In July and August of 2013, he spoke with Allen about the condition of the property and requested permission to repair it and to make improvements. Allen was “delighted” and orally consented to the suggestion and agreed to reimburse Walsh for his expenses. With “Allen’s knowledge and permission,” Walsh began working on the project in August 2013. In 2013, he invited Allen to the property to show him the improvements. Allen “approved and praised my work. He encouraged me to keep working on the property, telling me it was looking good.” Throughout 2013, Allen never complained about the work that Walsh was doing on the property.

In addition, Walsh made a prima facie showing that Anesta was advised that Allen had given Walsh his consent. Specifically, the Fligsten declaration stated that in September 2014, before

the UD action was filed, Fligsten informed Leah Anesta that Walsh received permission in 2013 to make the improvements, and that “pursuant to the doctrine of waiver, the UD lawsuit was not meritorious.”

In view of the above declarations, Walsh made a prima facie showing that Anesta lacked probable cause in the UD action to allege that Walsh had violated the lease agreement by altering the property without consent.

d. *Malice in bringing the UD action.*

“The ‘malice’ element of the malicious prosecution tort relates to the subjective intent or purpose with which the defendant acted in initiating the prior action.” (*Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 874.) To support a finding of malice, the defendant’s motive “‘must have been something other than that of . . . the satisfaction in a civil action of some personal or financial purpose. [Citation.] The plaintiff must plead and prove actual ill will or some *improper* ulterior motive.’ Improper purposes can be established in cases in which, for instance (1) the person bringing the suit does not believe that the claim may be held valid; (2) the proceeding is initiated primarily because of hostility or ill will; (3) the proceeding is initiated solely for the purpose of depriving the opponent of a beneficial use of property; or (4) the proceeding is initiated for the purpose of forcing a settlement bearing no relation to the merits of the claim.” (*Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 224 (*Daniels*)). Since parties rarely admit an improper motive, malice is usually proven by circumstantial evidence and inferences drawn from the evidence. (*Id.* at p. 225.)

Although a lack of probable cause is a factor that may be considered in determining if the claim was prosecuted with

malice, the lack of probable cause must be supplemented by other, additional evidence. (*Silas v. Arden* (2012) 213 Cal.App.4th 75, 90.)

In this regard, Walsh's opposing declaration stated that in 2014 or 2015, before the UD action was filed, he observed a for sale sign on the adjacent restaurant property. He called the real estate agency and was informed that someone had offered \$3 million to purchase both the residential property and the commercial property.

Based thereon, a trier of fact could conclude that the Trust's motive in bringing the UD action was to terminate Walsh's tenancy so as to be able to sell the subject real property vacant, unencumbered by a 20-year residential lease. Stated another way, Walsh presented evidence that the Trust improperly sought to deprive him "of a beneficial use of the property." (*Daniels, supra*, 182 Cal.App.4th at p. 224.) Accordingly, Walsh made a prima facie showing that the Trust acted with malice in bringing the UD action.

In sum, Walsh showed a reasonable probability of prevailing on his claim that the Trust maliciously prosecuted the UD action against him. Therefore, the trial court erred in granting Anesta's special motion to strike the malicious prosecution claim arising out of the UD action.

4. *Walsh failed to make a prima facie showing with respect to his claim of abuse of process arising out of the UD action.*

Walsh's complaint also asserted a claim for abuse of process arising out of the UD action.

"Abuse of process differs from malicious prosecution in that the gist of the tort is not commencing an action or causing process to issue without justification, but misusing or

misapplying process justified in itself for an end other than that which it was designed to accomplish. . . .’” (*Spellens v. Spellens* (1957) 49 Cal.2d 210, 232.) The common law “tort of abuse of process arises when one uses the court’s process for a purpose other than that for which the process was designed.” (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056.) To “succeed in an action for abuse of process, a litigant must establish that the defendant (1) contemplated an ulterior motive in using the process, and (2) committed a willful act in the use of the process not proper in the regular conduct of the proceedings.” (*Id.* at p. 1057.)

However, the “ ‘mere filing or maintenance of a lawsuit – even for an improper purpose – is not a proper basis for an abuse of process action. [Citations.]’ [Citation.] ‘ “ ‘Some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process, is required; and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.’ ” ’ [Citation.]” (*Silver v. Gold* (1989) 211 Cal.App.3d 17, 24; see generally, 5 Witkin, Cal. Procedure (10th ed. 2005) Torts, § 523, p. 773.)

For example, abuse of process may arise where a party causes a writ of attachment to issue that covers property exempt from execution or that covers property in excess of the amount owed. (*Pimentel v. Houk* (1951) 101 Cal.App.2d 884, 886.) Another example of abuse of process occurs where a creditor files consumer debt collection actions in an improper venue, knowing that the venue is improper, for the purpose of impairing the debtors’ ability to defend themselves. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 98.)

On the other hand, the mere act of filing an appeal, even if meritless and for an improper motive, does not provide a basis for filing an action for abuse of process. (*Coleman v. Gulf Ins. Group* (1986) 41 Cal.3d 782, 792–793 [no facts to support a finding that use of process was done in an unauthorized manner].) Likewise, the mere filing of a motion to disqualify counsel, even if done with an ulterior motive, fails to provide a basis for an action for abuse of process—the plaintiff must show that the defendant used process in an unauthorized manner. (*Silver v. Gold, supra*, 211 Cal.App.3d at pp. 24–25.)

Here, although Walsh presented evidence that the Trust had an ulterior motive in bringing the UD action, Walsh did not show that the Trust “committed a willful act in the use of the process not proper in the regular conduct of the proceedings.” (*Rusheen v. Cohen, supra*, 37 Cal.4th at p. 1057.) Merely maintaining a lawsuit, even for an improper purpose, without more, is not a proper basis for an abuse of process action. (*Silver v. Gold, supra*, 211 Cal.App.3d at p. 25.) Accordingly, Walsh failed to make a prima facie showing that the Trust engaged in abuse of process merely by bringing the UD action against him.

5. *Walsh failed to make a prima facie showing with respect to his causes of action for malicious prosecution and abuse of process relating to Anesta’s creditor’s claim in his bankruptcy proceeding.*

The next issue is whether Walsh showed a reasonable probability of prevailing on his malicious prosecution and abuse of process claims arising out of Anesta’s filing a creditor’s claim in his bankruptcy proceeding. We conclude Walsh cannot prevail on these claims.

Case law has determined “that no authorized bankruptcy proceeding can properly support a state-law claim for malicious prosecution or abuse of process. Such state-law tort claims impermissibly intrude upon exclusive federal authority over bankruptcy proceedings and threaten the uniformity of federal bankruptcy law regardless of the nature of the underlying proceeding.” (*Pauletto v. Reliance Ins. Co.* (1998) 64 Cal.App.4th 597, 605–606, and cases cited therein (*Pauletto*)). *Pauletto* “reject[ed] ‘a world where the specter of additional litigation must haunt virtually every actor in a bankruptcy proceeding.’ [Citation.] A party aggrieved by bad faith and malicious filings in bankruptcy court is limited to the remedies provided by the Federal Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.” (*Id.* at p. 606; accord, *Idell v. Goodman* (1990) 224 Cal.App.3d 262, 271; *Saks v. Parilla, Hubbard & Militzok* (1998) 67 Cal.App.4th 565, 568–572.)

Walsh’s reliance on the *Pauletto* court’s subsequent decision in *Satten v. Webb* (2002) 99 Cal.App.4th 365 (*Satten*), is misplaced. The *Satten* decision “represents an exception to the normal rule of preemption in the bankruptcy context.” (*Id.* at p. 369.) There, the underlying action against Satten “was originally commenced in state court on fraud theories, but was removed to bankruptcy court due to the allegations made about the participation of the bankruptcy trustee, as well as Satten, in the alleged fraud.” (*Id.* at p. 368.) Although “the underlying fraud proceeding was ultimately resolved in bankruptcy court, it did not amount to an ‘authorized bankruptcy proceeding,’ because it was not grounded in a federal statutory provision, but rather represented a common law fraud action (removed for different reasons involving the trustee’s participation). . . . [In *Satten*], the

underlying case sounded in state common law fraud and tort. Thus, *Pauletto* is distinguishable.” (*Id.* at p. 385.) *Satten* reasoned, “A malicious prosecution case based on an underlying common law fraud action, even if the underlying action was removed to bankruptcy court and then resolved there on state law grounds, does not raise the concerns that require a federal preemption finding.” (*Id.* at p. 387.)

Here, the bankruptcy proceeding was initiated by Walsh, who filed a voluntary petition under Chapter 7 in the bankruptcy court; the Trust then filed a creditor’s claim in that proceeding. Given the procedural history of Walsh’s bankruptcy proceeding, Walsh’s reliance on *Satten*’s exception to the normal rule of preemption is unavailing.

Accordingly, the trial court properly granted Anesta’s special motion to strike Walsh’s malicious prosecution and abuse of process claims arising out of Anesta’s filing a claim in Walsh’s bankruptcy proceeding.

6. *Attorney fees and costs.*

Walsh contends the award of attorney fees and costs to Anesta was improper. However, the November 10, 2016 order granting the anti-SLAPP motion, the order which is the subject of this appeal, did not award attorney fees and costs to Anesta. Further, Walsh’s briefs do not even disclose what ruling, if any, the trial court made with respect to the issue of attorney fees and costs. Therefore, this contention requires no discussion.

DISPOSITION

The order granting Anesta's special motion to strike is reversed with directions to reinstate the malicious prosecution claim (eighth cause of action) only to the extent that the malicious prosecution claim is predicated on the UD action. With respect to the balance of the eighth cause of action, as well as the entire ninth cause of action, the order is affirmed. The parties shall bear their respective costs on appeal. (*Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1267.)

**NOT TO BE PUBLISHED IN THE OFFICIAL
REPORTS**

EDMON, P. J.

We concur:

LAVIN, J.

STONE, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

