

The California Supreme Court (and Court of Appeals) - August 29 - September 2, 2022

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The California Supreme Court issued the following decisions last week:

Hoffmann v. Young, et al., Case No. S266003: Under Civil Code section 846, landowners generally owe no duty of care to keep their property safe for others who may enter or use it for recreational purposes. There is an exception to that statutory negation of duty, however, when a landowner expressly invites someone onto the property. Here, the California Supreme Court considered whether that exception applies when the invitation is extended not by the landowners, but by their live-at-home (adult) child who acts without the owners' knowledge or permission. The trial court ruled the exception did not apply because there was no evidence the landowners personally invited plaintiff to come onto their land. The Court of Appeal reversed, holding an invitation by a landowner's live-at-home child operates to activate the exception unless the child has been prohibited from making the invitation.

The Supreme Court concluded that neither lower court interpreted the statute correctly. The trial court read section 846(d)(3) too narrowly in ruling that the exception could not apply because neither landowner personally invited plaintiff onto their property. The Court of Appeal read section 846(d)(3) too broadly, holding that any invitation by a landowner's live-at home child impliedly operates as an express invitation by the landowner unless the child has been prohibited from extending the invitation. The Court held a qualifying invitation under section 846(d)(3) may be made by a landowner's authorized agent who issued the invitation on the landowner's behalf. Here, the record failed to show the live-at home child was so authorized, and therefore, the Court reversed the Court of Appeal's judgment.

The full opinion is available [here](#).

Geiser v. Kuhns, et al., Case No. S262032: The Legislature enacted Code of Civil Procedure section 425.16 to combat "a disturbing increase" in Strategic Lawsuits Against Public Participation (SLAPPs): "lawsuits brought primarily to chill the valid exercise of the

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constitutional rights of freedom of speech and petition for the redress of grievances.” The California Supreme Court considered whether the statutory protection for “any . . . conduct in furtherance of the exercise of the constitutional right . . . of free speech in connection with a public issue or an issue of public interest.” (Cal. Civ. Proc. § 425.16 (e) (4))—the so-called “catchall” provision—provided anti-SLAPP protection for a sidewalk picket purporting to protest a real estate company’s business practices after the company evicted two long-term residents from their home.

The Court of Appeal held the activity at issue was beyond the scope of anti-SLAPP protection, concluding the picket did not implicate a public issue and concerned only a private dispute between the company and the residents it had evicted. The California Supreme Court granted review to clarify the proper application of the two-part test it articulated in *FilmOn.com Inc v. DoubleVerify Inc.*, 7 Cal. 5th 133, 143 (2019) (*FilmOn*). Under the two-part test articulated in *FilmOn*, the court first asks what public issue or issues the challenged activity implicates, and second, whether the challenged activity contributes to public discussion of any such issue. If the answer to the second question is yes, then the protections of the anti-SLAPP statute are triggered, and the plaintiff in the underlying lawsuit must establish “a probability” of prevailing before the action may proceed.

The Court clarified that *FilmOn*’s first step is satisfied so long as the challenged speech or conduct, considered in light of its context, may reasonably be understood to implicate a public issue, even if it also implicates a private dispute. Only when an expressive activity, viewed in context, cannot reasonably be understood as implicating a public issue does an anti-SLAPP motion fail at *FilmOn*’s first step. The Court also clarified that *FilmOn*’s first step calls for an objective inquiry, without deference to the movant’s framing or personal motivations.

On the second step of the *FilmOn* analysis, the Court noted that while the protest related to a private dispute, it was also about broader issues concerning unfair foreclosures and evictions that served to draw attention to the alleged unfairness in foreclosure and eviction business practices. The Court concluded the context makes clear that the sidewalk protest furthered public discussion of the public issues it implicated, and was a paradigmatic example of “conduct in furtherance of the exercise of the constitutional right of . . . free speech in connection with a public issue or an issue of public interest.”

Therefore, after clarifying and applying both steps of the *FilmOn* analysis, the California Supreme Court held the sidewalk protest at issue constituted protected activity within the meaning of section 425.16(e)(4), and remanded for further proceedings consistent with its opinion.

The full opinion is available [here](#).

In addition, the California Court of Appeal, First District, issued the following decision on August 25th:

Says Siri v. Sutter Home Winery, Inc., Case No. A161923: This appeal (the second in

this wrongful termination action), followed a trial court order granting Sutter Home Winery's (d/b/a Trinchero Family Estates) motion to enforce a settlement agreement under Code of Civil Procedure section 998. Trinchero made plaintiff a section 998 offer to compromise ("998 offer") consisting of a \$500,000 payment in exchange for dismissing all claims with prejudice. Per section 998(b), the offer stayed open for 30 days, during which the parties disagreed on whether plaintiff's acceptance would trigger a right to prejudgment interest. After the 30 days passed, plaintiff served Trinchero a "Notice of *Conditional Acceptance*," purporting to accept the 998 offer subject to the court clarifying her right to prejudgment interest. Plaintiff then filed objections to the 998 offer and a motion asking the court to enter a judgment in her favor "consistent with [her] conditional acceptance" and including prejudgment interest. The court denied plaintiff's motion but granted *Trinchero's* motion to enforce the 998 offer.

The Court of Appeal reversed, clarifying that an acceptance of a 998 offer must be "absolute and unqualified" for a binding settlement, and plaintiff's "acceptance" was clearly not. Plaintiff's Notice of *Conditional Acceptance* denoted that it was just that—conditional. The conditional acceptance also introduced *new* terms to the bargain proposed in the 998 offer, even if the new terms were limited to plaintiff's right to seek the court's clarification on prejudgment interest. As a result, plaintiff's *conditional* acceptance did not create a binding settlement enforceable under section 998. Though inapplicable to this case, the court left open the possibility that a "conditional acceptance" may be a counteroffer, which, if accepted, could create a binding, enforceable settlement under section 998.

The full opinion is available [here](#).