S235735

# SUPREME COURT OF THE STATE OF CALIFORNIA

**RAND RESOURCES, LLC et. al.,**

*Plaintiffs and Appellants,*

*v.*

**CITY OF CARSON, et. al.,**

*Defendants and Respondents.*

# PETITIONERS' OPENING BRIEF ON THE MERITS

AFTER A PUBLISHED DECISION BY THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE CASE No. B264493

Appeal from the Superior Court of Los Angeles County Honorable Michael L. Stern, Judge Presiding, Dept. 62 Superior Court Case No. BC564093

**TAMBORELLI LAW GROUP**
**JOHN V. TAMBORELLI (BAR No. 134027)**
**21700 0XNARD STREET, SUITE 1590**
**WOODLAND HILLS, CALIFORNIA 91367**
**(818) 710-3696 • (818) 710-3695 (FAX)**
**Jtamborelli@lawtlg.com**
**ATTORNEYS FOR DEFENDANTS AND RESPONDENTS LEONARD BLOOM AND U.S. CAPITAL LLC**

S235735

# SUPREME COURT OF THE STATE OF CALIFORNIA

---

**RAND RESOURCES, LLC et. al.,**

*Plaintiffs and Appellants,*

*v.*

**CITY OF CARSON, et. al.,**

*Defendants and Respondents.*

---

# PETITIONERS' OPENING BRIEF ON THE MERITS

---

AFTER A PUBLISHED DECISION BY THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE CASE No. B264493

---

Appeal from the Superior Court of Los Angeles County Honorable Michael L. Stern, Judge Presiding, Dept. 62 Superior Court Case No. BC564093

---

Table of Contents

## TABLE OF AUTHORITIES

### Cases



### Statutes

**Regulations**

## ISSUES PRESENTED

(1) Did plaintiffs' causes of action alleging the breach of and interference with an exclusive agency agreement to negotiate the designation and development of a National Football League stadium and related claims arise out of a public issue or an issue of public interest within the meaning of *Code of Civil Procedure* section 425.16?

Answer: Yes. The designation and development of a National Football League stadium is a public issue or an issue of public interest within the meaning of *Code of Civil Procedure* § 425.16.

(2) Did plaintiffs' causes of action arise out of communications made in connection with an issue under consideration by a legislative body?

Answer: Yes. The designation and development of a National Football League stadium involves conduct "made in connection with an issue under consideration or review by a legislative body ... or any other official proceeding authorized by law." *Code of Civil Procedure* § 425.16(e)(2).

## INTRODUCTION

On August 1, 2016, this high court unanimously ruled in *Baral v. Schnitt* 2016 DJDAR 7799 (although with slightly different facts and analyzing Anti-SLAPP under the second step), Plaintiffs cannot rely on "artful pleading" to avoid a California law enacted to protect defendants' free speech rights and discourage meritless lawsuits (i.e. "mixed cause of action"). The particular issue in that decision involved whether a plaintiff could withstand Anti-SLAPP scrutiny by combining allegations of activity protected under the statute with allegations of unprotected activity. This Court ruled you cannot as a matter of law.

An analogous situation is occurring in this matter. Petitioners U.S. Capital LLC and Leonard Bloom (collectively "Bloom") are understandably of the view the facts, even as alleged in the First Amended Complaint ("FAC"), albeit in an in-artful pleading and notwithstanding all the activity alleged in this matter being protected under the applicable statutes, support a finding of the *Public Issue* or *An Issue of Public Interest* within the meaning of *Code of Civil Procedure* 425.16.

The Trial Court properly found that "an action for breach of an exclusive commercial development with a public entity (containing causes of action for inducing breach of contract, intentional and negligent interference and Business and Professions Code section 17200) is subject to anti-SLAPP on the basis of rights of petition and free speech in connection with a public issue." *Tuchscher Development Enterprises Inc. v. San Diego Unified Port District*, 106 Cal. App. 4th 1219, 1232-1235

(2003).

The Trial Court further determined "[a]s stated in *Tuchscher*, communications involving the proposed development of such commercial property fall into the 'matter of public interest' portion of the [anti-SLAPP] statute and, as such, they need not be made in connection with an issue under consideration or review by a legislative, executive, or judicial body. [*Code of Civil Procedure* section 425.16 (e)(2)]; *Id.* 106 Cal App 4th at 1233; *Ludwig v. Superior Court,* 37 Cal App 4th 8, 17 (1995). Therefore both these defendants meet their initial burdens and the burned shifts to the Plaintiffs."

The Court of Appeal Decision ("Opinion") however, misapplied *Code of Civil Procedure* section 425.16 by narrowly and incorrectly focusing on the premise that "[t]he identity of the City's representative is not a matter of public interest." Hence the Anti-SLAPP protections therefore do not apply. That narrow construction of what was alleged in multiple pages of an unverified FAC pleading raises serious questions about the meaning and application of *Public Interest* or *An Issue of Public Interest* in a commercial development negotiation between the Public entity and Private sector.

Indeed, the repeated theme by the Opinion is so long as the focus is on the alleged unverified identity of an alleged "agent" and at times claimed "*de facto* agent" for the City of Carson, then Anti-SLAPP does not apply. That is not the law. Tying the hands of both the Public Entity (in this case the City of Carson and then Mayor Dear collectively "City"), and the Private developer U.S. Capital LLC and Leonard Bloom,

concerning simple communications involving the proposed development of a commercial property fall into the *Matter of Public Interest* or *An Issue Of Public Interest* portion of the Anti-SLAPP statute.

In addition to the protections afforded under *Code of Civil Procedure* section 425.16 based on the *Matter of Public Issue* or *An Issue of Public Interest*, are the protections afforded to statements that were made *In Connection with a Legislative Proceeding.*

The Trial Court found as it related to statements that were alleged to constitute the fraud that they were made "in connection with a legislative proceeding" as used in the anti-SLAPP context, "[t]hus the statements in this case were made in connection with a legislative proceeding. Such statements are protected by Civil Code section 47 (b). Plaintiffs have not posed objections to the moving parties evidence and are precluded from presenting contrary evidence. For this reason, the Bloom defendants' motion to strike the fraud cause of action is granted." (AA:IV:24:1123).

*Civil Code* § 47, subdivision (b) provides immunity for statements made "in any ... legislative proceeding ... or, ... *in the initiation or course of any other proceeding authorized by law*...." Statements can be either verbal or written. *Silberg v. Anderson*, 50 Cal. 3d 205, 212 (1990). (emphasis added).

"*The privilege embraces preliminary conversations attendant upon such proceeding so long as they are in some way related to or connected to the pending*" proceeding. *Cayley v. Nunn*, 190 Cal. App. 3d 300, 304 (1987). (emphasis added).

Plaintiffs Rand Resources, LLC, and Carson El Camino, LLC, (collectively "Rand") admit that the statements alleged to have been made as alleged in the FAC were in made in connection with a legislative proceeding. Rand acknowledges that the EAA was not only the subject of multiple public discussions leading up to its formation, but was also the subject of future legislative and other official proceedings. (AA:I:2:27-29,32-34,36:¶¶24,26,30,39,40-41,45,59). In fact, Rand specifically pleads that these statements ***caused*** the City Council to vote to not extend the EAA. (AA:I:2:32-38:¶¶40-42,56,61,67). Cleary this was a legislative proceeding both legally and factually and as judicially admitted by Rand.

Consequently, the Opinion must be reversed.

## STANDARD OF REVIEW

A court's ruling on an Anti-SLAPP motion to strike is reviewed de novo. See, e.g. *Flatley v. Mauro*, 39 Cal.4th 299, 325-326 (2006); *State Farm Mut. Auto. Ins. Co. v. Fue Lee*, 193 Cal.App.4th 34, 40 (2011) ("We review an order granting an anti-SLAPP motion de novo."). Thus, "[w]hether [the anti-SLAPP statute] applies and whether the plaintiff has shown a probability of prevailing are both legal questions which [this court] review[s] independently on appeal." *Seltzer v. Barnes*, 182 Cal.App.4th 953, 961 (2010).

# STATEMENT OF THE CASE

## A. Factual Background

### i. The Alleged Exclusive Agency Agreement

In 2008, Rand and the City's ex-redevelopment agency entered into an alleged exclusive negotiating agreement, whereby Rand was provided with the exclusive right to negotiate a $100 million dollar mixed-use retail project on the property subject to this lawsuit. (AA:I:2:28-29:¶¶ 23-24, 26).1 The redevelopment agency was dissolved by Governor Brown and due to the dissolution, the City and Rand allegedly entered into an EAA. (AA:I:2:29:¶30).

Under the EAA, Rand "would become the exclusive agent of the City for the purpose of 'coordinating and negotiating' with the NFL for the designation and development of an NFL football stadium in the City." (AA:I:2:29-30¶31). This football stadium would involve a "new, state-of-the-art sports and entertainment complex within the City" where "one of more National Football League ("NFL") franchises" would "play its home games."

The City's Economic Development Commission reviewed and voted to extend the EAA. (AA:I:2:32:¶39). However, the City independently reviewed the EAA and voted "within the sole and unfettered discretion of the City" in 2014 to not extend the EAA. (AA:2:32,39:¶¶ 40-41, 49).

---

1 Citations are to Appellants' Appendix unless otherwise noted. Citations to the Appellants' Appendix are cited as AJ\:Volume:Tab:Page;Paragraph.

### ii. The Unsupportable Allegations of Fraud

Rand and its alleged assignee, another suspended corporation El Camino, filed the FAC, after the original Complaint which only named Leonard Bloom (AA:1:1), by adding U.S. Capital LLC and City as co-defendants. The FAC alleges against Bloom three causes of action against for 4) Fraud; 5) Intentional Interference with Contract; and 6) Intentional Interference with Prospective Business Advantage (which are misnumbered as 3rd, 4th and 5th causes of action in the FAC). The Cause of Action for Fraud includes City as co-defendants. (AA:I:2:23-49).

Importantly, Rand's tortious interference and fraud claim is based on the alleged communications between Defendant Bloom and certain unnamed NFL officials, and between certain unnamed Carson officials, including Carson Mayor James Dear ("Dear") in connection with the City and Dear's communications relating to whether the EAA should be extended. (AA:2:37-38:¶¶63-68).

Even though Rand asserts that Bloom and/or the City should have disclosed such communications to Rand, Rand nowhere identifies what duty Bloom had to Rand, what statute this duty is based on, or even alleges that either had such a duty or pleads facts in support that such a duty existed. That is because the law is to the contrary, notwithstanding the immunity provided under *Civil Code* §47 (b).

**B. Procedural Background – Trial Court**

On April 9, 2015, Bloom filed the anti-SLAPP Motion to Strike ("Motion"), which was set for hearing on May 7, 2015. (AA:7:430-454). Bloom moved to strike all Three causes of action alleged against him. The City filed its separate Motion to Strike which was also set to be heard on the same date.

On May 7, 2015, the Trial Court, after hearing oral argument from all parties, granted the Motion in its entirety. (AA:IV:24:1116-1126). The Trial Court found that "an action for breach of an exclusive commercial development with a public entity (containing causes of action for inducing breach of contract, intentional and negligent interference and Business and Professions Code section 17200) is subject to anti-SLAPP on the basis of rights of petition and free speech in connection with a public issue." *Tuchscher Development Enterprises Inc. v. San Diego Unified Port District*, 106 Cal. App. 4th 1219, 1232-1235 (2003)."

The Trial Court further determined "[a]s stated in Tuchscher, communications involving the proposed development of such commercial property fall into the 'matter of public interest' portion of the [anti-SLAPP] statute and, as such, they need not be made in connection with an issue under consideration or review by a legislative, executive, or judicial body. *Code of Civil Procedure* section 425.16 (e)(4); *Id.* 106 Cal App 4th at 1233; *Ludwig v. Superior Court*, 37 Cal App 4th 8, 17 (1995). Therefore both these defendants meet their initial burdens and the burned shifts to the Plaintiffs." (AA:IV:24:1123).

Although the Trial Court found Rand a suspended corporation had standing (not conceded by Bloom herein), it went on to find as it related to statements that were alleged to constitute the fraud that they were made "in connection with a legislative proceeding" as used in the anti-SLAPP context, "[t]hus the statements in this case were made in connection with a legislative proceeding. Such statements are protected by *Civil Code* Section 47 (b). Plaintiffs have not posed objections to the moving parties evidence and are precluded from presenting contrary evidence. For this reason, the Bloom defendants' motion to strike the fraud cause of action is granted." (AA:IV:24:1123).

The Trial Court then determined Rand failed to meet their burden of presenting competent admissible evidence substantiating the probability that they will prevail at trial regarding the causes of action for intentional interference with contract and intentional interference with prospective business advantage, in part based on the ruling on the objections. Rand did file objections to Bloom's evidence as Bloom filed objections to Rand's evidence, and the trial court ruled on the Bloom's objections to Rand's alleged evidence and Rand's objections to Bloom's evidence. (AA:24:1141-1160).

**C. The Incorrect Court of Appeal Decision.**

The Opinion goes to great lengths to claim the Trial Court's reliance upon *Tuchscher*, supra, 106 Cal.App.4th at 1219, and *Ludwig v. Superior Court* 37 Cal.App.4th 8 (1995) is misplaced. The Opinion incorrectly fabricates a created

distinction that communications pertaining to an actual planned development is not a *Public Interest*. The Opinion continues with the spurious claim that the identity of the agent representing a party in negotiating matters that might lead to a development is not a matter of *Public Interest* and in *Tuchscher*, the plaintiff conceded that the development in controversy was an issue of *Public Interest*.

The Appellate Court stated in the Opinion, "[w]e need not consider whether respondents' communications were made with an issue under consideration or review by a legislative, executive or judicial body, because there appears to be no dispute that the proposed development of Crystal Bay is a matter of public interest, and thus respondent's statements and writings fall within subdivision (e) (4) of section 425.16. (106 Cal.App.4th at p. 1233.) Here, there is no such concession and the subject of the FAC is not communications pertaining to the actual development of real estate, but who represented the City in luring an NFL team to move to the City—a condition precedent to the development."

What the Opinion fails to recognize is that the FAC is also replete with all the references to City and Bloom discussing the commercial development of property for the purposes of building a multifunctional stadium. Obviously parties need to talk before any agreement is reached. Indeed there is no evidence that any agreement was ever entered into between Bloom and the City or that the City did not renew the EAA because of Bloom, notwithstanding Rand at all times was a suspended Corporation and could not legally operate nor even

have the EAA renewed.

The Opinion continues on its incorrect analysis by claiming the holding in *Ludwig* was not applicable as in *Ludwig* it did not do an extensive analysis. "The Ludwig court summarily concluded, without analysis, that development of an outlet mall, 'with potential environmental effects such as increased traffic and impaction on natural drainage, was clearly a matter of public interest.'(37Cal.App.4th at p. 15.) Here, the FAC does not pertain to a real estate development project with such environmental or traffic effects, even though a redevelopment of contaminated land was an ultimate potential consequence of luring an NFL team to Carson. Thus, neither Tuchscher nor Ludwig supports, much less mandates, a conclusion that the subject matter of any cause of action in the FAC is a protected free speech or petitioning activity within the scope of section 425.16, subdivision (e)(4)."

And finally the Opinion goes on to "...also disagree with the City's contention that this cause of action (as well as each of Plaintiffs' other claims) alleges speech or conduct falling within the scope of section 425.16, subdivision (e)(2). The FAC alleges that the defendants' breach began soon after April 2013. The expiration, and thus the issue of renewal, of the EAA was more than one year away. Thus, the communications and conduct alleged in the cause of action were made solely in connection with the breach of the EAA, and not in connection with the issue of its renewal or any other issue under consideration or review by the City."

The Opinion makes multiple assumptions not supported

by fact or law to draw these distinctions to preclude the application of Anti-Slapp. Who is to say when discussions should begin? That is not the standard to defeat the intent and purpose of Anti-SLAPP protections.

The Opinion must be reversed.

## THE COURT OF APPEAL MISAPPLIED THE PUBLIC INTEREST STANDARD

The Opinion clearly erodes the *Public Interest* protections afforded under section 425.16 to the Public Entity and Private sector in commercial development negotiations. *Tuchscher Development Enterprises Inc. v. San Diego Unified Port District*, supra, 106 Cal. App. 4th at, 1232-1235. The Opinion ruled that unverified claims in the FAC were legally and factually tenable to overcome and prevent the very statutory protections afforded under Anti-Slapp even though (a) the statute does not provide a definition for "an issue of public interest" and (b) Three general categories of cases have been held to concern an issue of public interest or a public issue: "(1) The subject of the statement or activity precipitating the claim was a person or entity in the public eye. [Citations.] [¶] (2) The statement or activity precipitating the claim involved conduct that could affect large numbers of people beyond the direct participants. [Citations.] [¶] (3) The statement or activity precipitating the claim involved a topic of widespread public interest." *Commonwealth Energy Corp. v. Investor Data Exchange, Inc.* 110 Cal.App.4th 26, 33 (2003).

Both the Opinion and the Trial Court in reading the FAC

actually agree that factually the City was the subject of the activity, the activity of potentially building an NFL stadium in the City was conduct that would affect large numbers of people beyond the direct participants and this activity involved a topic of widespread public interest. Yet the Opinion sought to carve out an exception by claiming if there is an alleged fraud or interference claimed in a complaint (even if just alleged and unverified in the complaint) then the Anti-SLAPP protections no longer exist.

The Court of Appeal has not only created an otherwise non-existent exception to the protections of Anti-SLAPP, the Opinion creates a conflict with the decision in *Tuchscher Development Enterprises Inc. v. San Diego Unified Port District*, supra 106 Cal. App. 4th at 1232-1235. While the Appellate court and Rand try to parse out certain facts and create others, in its simplest of terms, *Tuchscher* held that, "Commercial and residential development of a substantial parcel of bayfront property, with its potential environmental impacts, is plainly a matter of public interest." *Id.*

An Exclusive Agency Agreement for the Development of an NFL stadium is a *Public Issue* and is *An Issue of Public Interest.*

The Trial Court correctly found that "an action for breach of an exclusive commercial development contract between a private developer and a public entity (containing causes of action for inducing breach of contract, intentional and negligent interference and Business and Professions Code section 17200) is subject to anti-SLAPP on the basis of rights of petition and free

speech in connection with a public issue." In support of its finding, the Trial Court relied on *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* 106 Cal.App.4th, at 1232-1235.

There can be little doubt that the real estate development alleged in the FAC meets the "broad" standard that it is a public issue or issue of public interest. The anti-SLAPP statute encompasses "any other conduct ... in connection with a public issue or an issue of public interest." *Code of Civil Procedure* § 425.16(e)(4). "The definition of 'public interest' within the meaning of the anti-SLAPP statute has been broadly construed to include ... private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental agency." *Damon v. Ocean Hills Journalism Club,* 85 Cal. App. 4th 468, 479 (2000). Developmental projects such as a discount mall "with the potential environmental effects such as increased traffic and impact[s] on natural drainage [are] clearly a matter of public interest." *Ludwig v. Superior Court*, supra, 37 Cal. App. 4th at 15; See also, *Tuchscher Dev. Enters., Inc. v. S.D. Unified Port Dist.*, supra, 106 Cal. App. 4th at 1234. ("[C]ommercial and residential development of a substantial parcel of bayfront property, with its potential environmental impacts, is plainly a matter of public interest.")

The Opinion holds, instead, that if there is an alleged fraud or interference claimed in a complaint (even if just alleged and unverified in the complaint) then the Anti-SLAPP protections no longer exist as such actions are not a matter of public interest lawsuits (i.e. "mixed cause of action"). That is now not the law.

See, *Baral v. Schnitt* 2016 DJDAR 7799.

This newly created approach undercuts the protection afforded by the broad interpretation of "an issue of public interest". The Opinion also encourages civil actions in any case where an individual or entity does not have a public contract renewed and then they can decide to sue the public entity and the party awarded the new contract (not the case presently) to create delay and unnecessary expense.

What the Opinion fails to recognize is that the FAC is also replete with all the references to City and Bloom discussing the commercial development of property for the purposes of building a multifunctional stadium. Obviously parties need to talk before any agreement is reached. Indeed there is no evidence that any agreement was ever entered into between Bloom and the City or that the City did not renew the EAA because of Bloom and as noted Rand at all times was a suspended Corporation and could not legally operate nor even have the EAA renewed.

And finally the Opinion goes on to "...also disagree with the City's contention that this cause of action (as well as each of Plaintiffs' other claims) alleges speech or conduct falling within the scope of section 425.16, subdivision (e)(2). The FAC alleges that the defendants' breach began soon after April 2013. The expiration, and thus the issue of renewal, of the EAA was more than one year away. Thus, the communications and conduct alleged in the cause of action were made solely in connection with the breach of the EAA, and not in connection with the issue of its renewal or any other issue under

consideration or review by the City." The Opinion makes multiple assumptions not supported by fact to draw these distinctions to preclude the application of Anti-SLAPP. Who is to say when discussions should begin? That is not the standard to defeat the purpose of Anti-SLAPP.

California's Anti-SLAPP statute is designed to give defendants the ability to ensure the "prompt exposure and dismissal of SLAPP suits" designed to chill the exercise of free speech. *Ludwig v. Superior Court*, 37 Cal. App. 4th supra, at 16. (Section 425.16 was intended to "provid[e] a fast and inexpensive unmasking and dismissal of SLAPPs."); *Code of Civil Procedure* § 425.16(b).

In order to prevail on its Motion, Bloom needed only make a prima facie showing that the acts or statements at issue were made "in furtherance of" its rights of free speech "in connection with a public issue." *Code of Civil Procedure* § 425.16(b)(1); *Navellier v. Sletten*, 29 Cal. 4th 82, 88 (2002).

In determining whether a prima facie showing has been made, the California Legislature expressly commanded that the statute be construed "broadly." *Code of Civil Procedure* § 425.16(a); *Navellier*, supra 29 Cal. 4th at 124.

Therefore, the designation and development of a National Football League stadium is a *Public Issue* or *An Issue of Public Interest* within the meaning of *Code of Civil Procedure* § 425.16 and the Opinion must be reversed.

## THE CITY AND BLOOM COMMUNICATIONS WERE PROTECTED FREE SPEECH DURING A LEGISLATIVE PROCEEDING

The gravamen of the fraud-based causes of action attacks are the communications between City and Bloom on the one hand, and between City and Rand on the other. However, each of these communications were "made in connection with a public issue." *Code of Civil Procedure* § 425.16(b)(1).

In *Tuchscher*, supra, the plaintiff-developer sued a city, public entity and its then-commissioner, and a rival developer, contending that the defendant public officials and rival developer interfered with the developer's exclusive negotiating agreement relating to the commercial development of certain bayfront property. This interference took place by means of communications with other public officials and the rival developer, such as "closed door meetings, telephone calls and emails" designed to take away the exclusivity rights from the plaintiff-developer to the rival developer. *Id.* at 1228.

> The gist of [the plaintiff's] complaint was that respondents conspired with [the rival developer] to deprive [the plaintiff-developer] of the benefits of the negotiating agreement by disrupting the City's staff from negotiating the development agreement and inducing the City to cease negotiations. [The plaintiff-developer] alleged respondents furthered conspired by (1) communicating with the mayor and other agents and employees of the City ..., and (2) facilitating communications and meetings between [the rival developer] and a [city] representative, and that respondents' objective was to secure

the rights to develop both the ... project and [the respondents'] own commercial property...."*Id.*

"Under these circumstances, the fact that the defendants ceased negotiations with a particular developer and sought advice from a rival developer was protected action under the anti-SLAPP statute." *Id.* at 1228, 1233-34.

The parallels between *Tuchscher* and here go beyond the mere fact that a developer under an exclusivity agreement is suing both a city and a rival developer for communications relating to negotiations of whether the current exclusivity arrangement should be extended. (AA:I:2:31¶36). Just as the communications that were the target in Tuchscher were "closed door meetings, telephone calls and emails," here, Rand alleges the communications that are the heart of the fraud claims consisted of "clandestine meetings," "talk(s) by the phone or through text messages," and "confidential emails." (AA:I:2:31,35-37:¶¶36,54,63). Moreover, the gist of the communications were designed to "induc[e] the City to cease negotiations" to end the exclusive negotiation agreement (in *Tuchscher* at 1228) just as they were designed here "to cause[] the City to breach its prior representations and agreement to extend the EAA" (AA:I:2:33:¶42). Such communications are clearly encompassed by the anti-SLAPP statute per *Tuchscher* regardless of whether they were legitimate, or fraudulent as Rand and the Opinion contend. *Navellier*, supra, 29 Cal. 4th at 94. ("Any claimed illegitimacy of the defendant's acts is an issue which the plaintiff must raise and support in the context of the discharge of the plaintiff's secondary burden to provide a

prima facie showing of the merits of the plaintiff's case.").

Here, the legislative process of determining whether to renew the EAA was not collateral to the allegedly improper communications, in fact it was the very purpose of the alleged communications. Rand acknowledges that the EAA was the subject of legislative deliberation; after all, Rand requested the City Council to extend the EAA, and Rand complains the City Council did not extend it. (AA:2:32-33,35:¶¶40-41,49). Leading up to the decision about whether the City should continue to retain Rand, the City engaged in communications with Bloom about whether they could take over as agents once the EAA expired. (AA:I:2:31¶36). Even if the City was allegedly prohibited from actually engaging another agent to seek out an NFL stadium deal during the EAA term, (not that this is conceded) nothing in the EAA prevented the City from communicating with others regarding possible future alternatives to the EAA once the EAA expired. (AA:I:2:4-49).

This suit thus is tantamount to an attempt to freeze the City's right to explore these alternatives with third parties to fully inform itself prior to a very important decision about who should be the City's NFL agent after the EAA expires. Accordingly, the alleged wrongful communications were a necessary and essential part of the legislative process, activity that is protected under the anti-SLAPP statute. See *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106, 1115 (1999) (observing that communications preparatory to or in anticipation of official proceedings are protected).

Alternatively, the FAC involves alleged conduct "made

in connection with an issue under consideration or review by a legislative ... or any other official proceeding authorized by law." *Code of Civil Procedure* § 425.16(e)(2). The FAC concedes that the EAA and the project as a whole were the subject of multiple legislative and other official proceedings. The exclusive negotiating agreement that was the alleged predecessor to the EAA was entered into between the City's redevelopment agency and Rand. Multiple extensions were granted by the redevelopment agency. The EAA itself was entered into by City Council. More importantly, the City's Economic Development Commission reviewed and voted on whether to extend the EAA, and the City voted on whether to extend the EAA. (AA:I:2:24-34). Given each of these circumstances, the property, agreement, and potential development at issue were all issues "under consideration or review by a legislative ... or ... other official proceeding," and thus properly encompassed by the anti-SLAPP statute. *Code of Civil Procedure* § 425.16(e)(2).

**i. Bloom and U.S. Capital's Immunity**

*Civil Code* § 47, subdivision (b) provides immunity for statements made "in any ... legislative proceeding ... or, ... in the initiation or course of any other proceeding authorized by law...." Statements can be either verbal or written. *Silberg v. Anderson*, supra 50 Cal. 3d at 212. "The privilege embraces preliminary conversations attendant upon such proceeding so long as they are in some way related to or connected to the pending" proceeding. *Cayley v. Nunn*, supra 190 Cal. App. 3d at 304; *accord Royer v. Steinberg*, 90 Cal. App. 3d 490, 503

(1979). "The privilege is denied to any participant in [the] proceedings only when the matter is so palpably irrelevant to the subject matter that no reasonable man can doubt its irrelevancy and impropriety." *Id.* This immunity can be found as a matter of law "if the complaint herein shows on its face that the privilege was applicable...." *Tafoya v. Hastings Coll.*, 191 Cal. App. 3d 437, 443 (1987) (affirming sustaining of demurrer).

Here, Rand admits that statements alleged to have made were in connection with a legislative proceeding. Plaintiffs acknowledge that the EAA was not only the subject of multiple public discussions leading up to its formation, but was also the subject of future legislative and other official proceedings. (AA:I:2:27-29,32-34,36:¶¶24,26,30,39,40-41,45,59).

In fact, Rand specifically plead that these statements ***caused*** the City Council to vote to not extend the EAA. (AA:I:2:32-38:¶¶40-42,56,61,67). Because each of the statements that form the basis the causes of action are connected to the EAA and its non-extension, both the Bloom and U.S. Capital are immune. *See Cayley*, supra, 190 Cal. App. 3d at 304.

### ii. At All Times the Communications Between Bloom and City Were Made in Connection with an Issue Under Consideration by the City's Legislative Body.

Rand clearly understood Paragraph 18 of the EAA which stated unequivocally that the EAA does not constitute development approval and requires further government approval if it were to be renewed or any project were built:

"9. No Predetermination of City Discretion. The parties agree and acknowledge that this Agreement does not obligate either the City or the Agent to enter into any agreement or other instrument for development of the Project, and approval of any such agreement or instrument for development of the Project shall require the approval of both parties *with City's City Council granting its approval, if at all, only after consideration of the agreement or other instrument for development of the Project at a regular meeting of the City Council and following all other proceedings required by law.*

*City hereby expressly reserves its constitutional and statutory obligations to conduct an independent review of and retain its governmental discretion and oversight duties ...*" (emphasis added.) (AA:I:2:25;¶8).

Notwithstanding the clear language of the EAA and the alleged facts in the FAC showing the communications between Bloom and City were made in connection with "*an issue under consideration or review by a legislative...body...*", the City at all times had the right and in fact the obligation to exercise its governmental statutory discretion to renew or not renew the EAA with Rand or decide to contract with another party. This was the very issue under consideration by the City in its communications and review by the City's legislative body (e.g. Mayor Dear) and his and other's official obligations to protect the public fisc, which mandated that all options be explored. Indeed the very EAA states, "*City hereby expressly reserves its constitutional and statutory obligations to conduct an independent review of and retain its governmental discretion*

*and oversight duties...*" (emphasis added).

At the time of the alleged misconduct, the City Council had to and was considering to grant approval to a General Plan, a Specific Plan, and other entitlements necessary for a Carson - NFL Stadium Project to proceed. The Property's then existing zoning did not permit the uses contemplated in the prospective development for a NFL Stadium.

Approval of the general plan amendment, the Specific Plan and the changes to the property's zoning were legal prerequisites for a development project to exist. See, e.g., *Government Code* § 65453(a) ("[a] specific plan shall be prepared, adopted, and amended in the same manner as a general plan, except that a specific plan may be adopted by resolution or by ordinance and may be amended as often as deemed necessary by the legislative body"); *Government Code* § 65301.5 ("[t]he adoption of the general plan or any part or element thereof or the adoption of any amendment to such plan or any part or element thereof is a legislative act."). Similarly, government approval of the Carson-NFL Project required the City's certification of an EIR. See 14 *Cal. Code Regs*, § 15090.

As such, the very language of the EAA states the City is "...to conduct an independent review of and retain its governmental discretion and oversight duties..." and any and all actions for the development of a stadium in the City were required to follow a myriad of Government Codes, amongst others to proceed. Under any analysis, the actions alleged in the FAC, were issues under consideration by the City's legislative body and the Anti SLAPP protections apply to

Bloom as any communications were "made in connection with an issue under consideration or review by a legislative body ... or any other official proceeding authorized by law." *Code of Civil Procedure* § 425.16(e)(2).

## CONCLUSION

The Court of Appeal failed to properly apply the protections of Anti-SLAPP. It has created an otherwise non-existent exception, created conflicts of published opinions and takes away free speech rights.

For the foregoing reasons, Bloom prays that the Opinion be reversed and this court uphold and reinstate the Trial Court grant of the Bloom Anti-SLAPP Motion and award Bloom costs and fees.

Dated: November 18, 2016

Respectfully submitted,

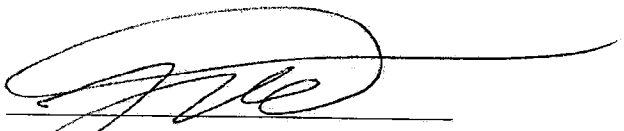
Tamborelli Law Group
John V. Tamborelli

By: _____
**John V. Tamborelli**
Attorneys for Defendants and Petitioners
Leonard Bloom and U.S. Capital LLC

**CERTIFICATE OF WORD COUNT**
**(Cal. Rules of Court, rule 8.520(c)(1).)**

The text of this Brief on the Merits consists of 5,635 words as counted by the Microsoft Word version 2010 word processing program used to generate this Brief on the Merits.

Dated: November 18, 2016



John V. Tamborelli, Esq.

PROOF OF SERVICE:

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 21700 Oxnard Street, Suite 1590, Woodland Hills, California, which is located in the county in which the within-mentioned mailing occurred.

On November 18, 2016, I served true copies of the following document(s) described as **PETITIONERS' OPENING BRIEF ON THE MERITS** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Tamborelli Law Group's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 18, 2016, at Woodland Hills, California.

Ronnie Gipson

SERVICE LIST

| | |
|---|---|
| California Supreme Court<br>350 McAllister Street<br>San Francisco, California 94102 | Original plus 13 Copies<br>(Sent via overnight delivery) |
| Honorable Michael L. Stern,<br>Trial Judge<br>Department 62<br>Superior Court of the State of California<br>County of Los Angeles<br>111 N. Hill Street<br>Los Angeles, CA 90012 | 1 Copy (Case BC564093) |
| JOSEPH YBARRA<br>AARON M. MAY<br>HUANG YBARRA SINGER & MAY LLP<br>550 South Hope Avenue, Suite 1850<br>Los Angeles, CA 90071-1560<br>Attorneys for Plaintiffs and Respondents<br>RAND RESOURCES, LLC AND CARSON ELCAMINO, LLC | 1 Copy |
| ANTHONY TAYLOR<br>SUNNY K. SOLTANI<br>CHRISTINE BURROWS,<br>ALESHIRE & WYNDER, LLP<br>2361 Rosecrans Ave., Suite 475<br>El Segundo, California 90245<br>Attorneys for Defendants and Petitioners CITY OF CARSON and<br>JAMES DEAR | 1 Copy |
| Second District Court of Appeal<br>Division One<br>Ronald Reagan State Building<br>300 S. Spring Street<br>2nd Floor, North Tower<br>Los Angeles, CA 90013 | 1 Copy (Case B 264493) |