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Supreme Court Narrows Scope of Anti-SLAPP Motions

Park v. Board of Trustees of the California State University, California Supreme Court Case No. S229728.

Code of Civil Procedure section 425.16 authorizes a special motion to strike certain lawsuits (known as strategic lawsuits against public participation or SLAPP suits) that are brought to chill the exercise of free speech. The question before the California Supreme Court in Park was how much of a connection must there be between the alleged SLAPP suit and the activity claimed to be protected free speech in order for a defendant to succeed on an anti-SLAPP motion to strike brought pursuant to section 425.16.

In Park, plaintiff Sungho Park was a tenure-track professor at California State University, Los Angeles. He applied for, and was denied, tenure. He filed suit claiming he had been discriminated against on the basis of national origin. Defendant Board of Trustees of the California State University (Board) responded to the suit by filing an anti-SLAPP motion to strike under section 425.16. The Board argued Parks suit arose from the communications made as part of the process used to consider his tenure application, communications the Board contended constituted protected free speech activity. On this basis, the Board brought an anti-SLAPP motion to strike. The trial court denied the Boards motion but the Court of Appeal reversed.

The Supreme Court reversed the decision of the Court of Appeal. It found the Board had not demonstrated a sufficient nexus between Parks suit and protected free speech activity.

Specifically, the Court held a claim is not subject to an anti-SLAPP motion to strike simply because it contests an action or decision that was arrived at following protected free speech activity, or that was thereafter communicated by means of such activity.

Rather, the Court ruled a claim arises from protected activity, and is subject to an anti-SLAPP motion to strike, only when the activity itself underlies or forms the basis for the claim. Prior to the decision in Park, the use of anti-

SLAPP motions to strike had become an increasingly popular tactic for responding to discrimination suits. These motions were based on the argument that activities such as internal workplace investigations or complaints by co-employees constituted protected speech activities and, therefore, a discrimination suit challenging an adverse employment action arising from such activities constituted a SLAPP suit. The decision in Park now makes the potential for successful use of anti-SLAPP motions to strike in discrimination suits unlikely. As the Court stated in Park, [c]ourts presented with suits alleging discriminatory actions [must take] care not to treat such claims as arising from protected activity simply because the discriminatory animus might have been evidenced by one or more communications by a defendant.

Questions

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