

COMMONWEALTH OF MASSACHUSETTS

[REDACTED]

[REDACTED]

[REDACTED]

Plaintiffs

vs.

DECISION ON DEFENDANTS'
"SPECIAL 'ANTI-SLAPP' MOTION
TO DISMISS"

[REDACTED]

Defendants

This is an action which is difficult to characterize. The prose Complaint talks of Defendants "COOK[ing] UP A BIG SCAM AGAINST THE PLAINTIFFS (caps, in original), filing a lawsuit against the plaintiffs, harassing the plaintiffs and "making our lives miserable over the last three years." It seeks damages and an order from this court to force Defendants (who are attorneys) to drop a case brought on behalf of Defendants' client in Superior Court. Defendants have brought this special motion to dismiss under the Anti-SLAPP statute (G.L. 231, Sec. 59H).

Based on a review of the pleadings and on the documents filed in support of and in opposition to this Special Motion, and the arguments made on the date of the hearing on the motion, I conclude that Plaintiffs' Complaint falls squarely within the purview of the Anti-SLAPP statute and should be dismissed, with attorneys fees to be awarded to Defendants against Plaintiffs, including the costs of prosecuting this Special Motion. As more fully explained below, Defendants' Special Motion to Dismiss is ALLOWED.

I. The Superior Court Action

In September 2012 a person whom I shall refer to as "the Tenant" brought an action in [REDACTED]

[REDACTED]. The Tenant alleged that the Banerjees (Tenant's now-former landlords) rented her an apartment that was uninhabitable, and in general alleged breach of the implied covenant of habitability, interference with quiet enjoyment, retaliation, violation of lead paint laws, discrimination, Chapter 93A Violations and other claims often asserted by tenants against landlords. The [REDACTED] counterclaimed for unpaid rent, breach of contract, unjust

enrichment, malicious prosecution and defamation. By stipulation all of the [REDACTED] counterclaims against the Tenant in the Superior Court case have been dismissed. The [REDACTED] are apparently represented by counsel in the Superior Court case. The Tenant's claims in the Superior Court case remain open and are scheduled for trial in January 2016.

II. The Banerjees' Action in District Court (The Instant Case)

This action, filed pro se, makes assertions virtually identical to many of the dismissed Counterclaims in the Superior Court case, except it names as the Defendant not the Tenant but the Tenant's attorneys, [REDACTED].

The Complaint claims of "extortion, deceptive and unfair practice" by [REDACTED]. The acts by the Defendant Attorneys complained of essentially include filing the Superior Court action and a complaint in the MCAD on behalf of the Tenant, and pursuing those actions zealously. About half of the Complaint details claims not against the Attorney Defendants but against the Tenant herself (the Superior Court Plaintiff). The substance of any such matters may await adjudication in the Superior Court, presumably, but not here since the Tenant is not a party in this case.

In their prayer for relief the [REDACTED] ask for money damages due to time and effort spent on the Superior Court litigation, as well as the purported emotional costs of the litigation. It also asks for an order from this court directing [REDACTED] to withdraw their case in Superior Court. (The Superior Court case is not "their" case, of course, but their client's.) It is thus seeking to have this Court order that the Defendant Attorneys take action against their own client in Superior Court.

At oral argument on the instant motion, the [REDACTED] conceded that the District Court case was identical to some of the dismissed Superior Court Counterclaims with the sole exception that the District Court case is against the Tenant's attorneys rather than against the Tenant.

This presents a classic example of SLAPP litigation.

III. Applicability of the Anti-SLAPP statute

The [REDACTED] Complaint is manifestly directed at two lawyers solely because those lawyers are representing a party bringing proceedings adverse to the [REDACTED] in Suffolk Superior Court and the MCAD. There is no other basis asserted for the complaint. Bringing a lawsuit in Superior Court or a complaint in the MCAD is

exercising "a right of petition" to a judicial or administrative body. G.L. c. 231, sec. 59H. See generally *Duracraft Corporation v. Holmes Products Corporation*, 427 Mass 156 (1998) and the lower court decision in the Appeals Court in the same case, 42 Mass. App. Ct. 572 (1997). There is no other basis for the [REDACTED] Complaint against [REDACTED] in this case than alleged actions of [REDACTED] in representing their client in the Superior Court or MCAD.

Under G.L. c. 231, sec. 59H, and *Duracraft Corporation v. Holmes Products Corporation*, supra, 427 Mass. at 168, the burden therefore shifts to the [REDACTED] to show that (1) "[REDACTED] [REDACTED]'s exercise of [their] right to petition was devoid of any reasonable factual support or any arguable basis in law" and (2) "[REDACTED] caused actual injury to the [REDACTED]." As to item (1), suffice it to say that after three years in the Superior Court the Tenant's claim in Superior Court has not been dismissed, nor Summary Judgment entered against it, and it is now scheduled for trial in early January 2016. This Court does not presume that the Superior Court would expend three years of its judicial resources on utterly unsupported and legally baseless claims.

Accordingly the Special Motion to Dismiss under G.L. c. 231, sec. 59H, should properly be and is ALLOWED, and this action shall be DISMISSED.

Under G.L. c. 231, sec. 59H, Defendants are entitled to an award of their attorneys fees and costs. The Court will schedule a date for a hearing to assess those fees and costs. Unless unusual circumstances are shown, the court will not award attorneys' fees for legal services performed prior to the date of the commencement of this action (September 23, 2015). The parties may, but need not, file further affidavits and written argument as to those fees and costs.

This Court's order entered 11/10/15 temporarily precluding the parties from further filings in this matter is vacated.

[REDACTED]