

Menu Practice Areas Directions Contact

call 408-261-4252 email RHRC



Talega Maintenance

By Jill E. Fox

May 7, 2014

Free speech rights aren't typically associated with the business of real estate. But in recent years, California businesses have invoked a unique California law designed to protect First Amendment rights to attack a variety of common real estate claims. Quiet title, foreclosure, and eviction claims have all been scrutinized as potential "strategic lawsuits against public participation," i.e. "SLAPP" suits, which improperly seek to punish a person for constitutionally protected speech.

Last week, a California appellate court considered another common real estate scenario as potentially protected speech: Homeowners' Association meetings. In *Talega Maintenance Corporation v. Standard Pacific Corporation* (2014 WL 1440925), the Fourth District Court of Appeal decided that HOA directors were not automatically shielded from liability simply because they voted for an otherwise improper expenditure of HOA funds.

As guidance, the court looked to a seminal decision finding that a nonjudicial foreclosure sale is not constitutionally protected activity shielded by California's "anti-SLAPP" statute (CCP § 425.16). The anti-SLAPP statute bars lawsuits based on speech "before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law." *Garreston* noted that while a nonjudicial foreclosure sale is governed by statute and includes public notice requirements, it is still fundamentally "a private contractual proceeding, rather than an official governmental proceeding or action." (*Garreston v. Post* (2008) 156 Cal.App.4th 1508, 1520.)

The *Talega* court reasoned that an HOA meeting and vote was likewise private commercial activity. In *Talega*, directors who had been appointed by the developer during the early phases of development voted

to use HOA funds to repair public trails. The directors stated that the HOA was financially responsible for the trails, a statement that later proved false. The HOA sued the directors for breach of their duties to the HOA and fraud. In response, the directors claimed their statements and vote constituted protected speech in an "official proceeding," for which they could not be sued pursuant to the anti-SLAPP law.

The court disagreed: "[A]lthough courts have recognized the similarities between a homeowners association and a local government ... a homeowners association is not performing or assisting in the performance of the actual government's duties." (*Talega* at 5.)

Talega adds to a growing number of decisions excluding some common real estate dealings from the scope of the anti-SLAPP law because they are principally private business transactions. Their reasoning parallels a seldom-used exception to the anti-SLAPP law: commercial speech. The so-called Commercial Speech Exception (CCP § 425.17(c)) clarified that statements made in the course of a business transaction are actionable, even if those statements are also made in an "official proceeding" or otherwise protected.



Laurie and I had two very challenging real estate rights issues that we were advised were going to be difficult to prevail on. The RHRC team engaged with us and helped us understand our rights and prevailing position. RHRC were thoughtful advocates for us from the beginning to conclusion of our cases. We feel fortunate to know we will always be able to call on the firm in the future and that they are our legal counsel.

Albert "Rocky" and Laurie Pimental, President of Global Markets and Customers, Seagate Technology

Office Locations

Rossi, Hamerslough, Reischl and Chuck
1960 The Alameda
Suite 200
San Jose, CA 95126

Phone: 408-261-4252

[Map & Directions](#)

Rossi, Hamerslough, Reischl and Chuck

8 Harris Court

Suite A1

Monterey, CA 93940

Phone: 831-655-3180

[Map & Directions](#)

The California law firm of Rossi, Hamerslough, Reischl & Chuck provides legal representation to real estate and business clients throughout Silicon Valley and the San Francisco Bay Area including San Francisco, San Jose, Palo Alto, Los Altos, Los Gatos, Menlo Park, Gilroy, Hollister, Santa Cruz, Santa Clara, Aptos, Monterey, Carmel, Salinas, Morgan Hill, Saratoga, San Francisco County, Santa Clara County, Santa Cruz County, San Benito County, Alameda County, San Mateo County, Monterey County, and Contra Costa County.

© 2015 by [Rossi, Hamerslough, Reischl & Chuck](#). All rights reserved. [Disclaimer](#) | [Site Map](#)
[Privacy Policy](#) | [Business Development Solutions](#) by [FindLaw](#), a Thomson Reuters business.