

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
HALL OF JUSTICE
TENTATIVE RULINGS - September 17, 2020

EVENT DATE: 09/18/2020 EVENT TIME: 08:30:00 AM DEPT.: C-65
JUDICIAL OFFICER: Ronald F. Frazier

CASE NO.: 37-2019-00032336-CU-OE-CTL

CASE TITLE: MAAS VS MCKINNON BROADCASTING CO KUSI-TV 51 [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Other employment

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED:

Defendant McKinnon Broadcasting Company's Motion for Attorneys' Fees and Costs Pursuant to Code of Civil Procedure Section 425.16 is DENIED. (ROA 69.)

The anti-SLAPP statute provides the prevailing defendant on such motion "shall" be entitled to recover attorney's fees and costs. (Code Civ. Proc. § 425.16(c)(1).)

The court's ruling on Defendant's anti-SLAPP motion was somewhat unusual, though not unprecedented, in that it technically *granted* the motion while at the same time allowing Plaintiff leave to amend. In so doing, the court found that Plaintiff had sufficiently met her burden of proof on the second prong of the anti-SLAPP analysis. Specifically, the court found Plaintiff had submitted evidence sufficient to support her allegation that she had suffered an adverse employment action on the grounds Defendant had failed to rehire her on the basis of a discriminatory motive, and that therefore Plaintiff's claims had at least minimal merit.

Under these circumstances, the court finds Defendant is not a "prevailing defendant" within the meaning of the statute, as the court's ruling was tantamount to a denial. The court's ruling is akin to the trial court's ruling in Nguyen-Lam v. Cao (2009) 171 Cal.App.4th 858. Defendant incorrectly asserts the trial court in Cao denied the anti-SLAPP with leave to amend; in fact, the Fourth District stated the trial court "effectively denied" the motion in granting leave to amend, and further characterized the ruling as "tantamount" to a denial. (Cao at pp. 865, 869-70, 874; see also Robert E. Weil, et al., Cal. Practice Guide: Civ. Proc. Before Trial ¶ 7:1076.5 (The Rutter Group 2020) (discussing the court's authority to *grant* an anti-SLAPP but allow amendment based on evidence of a plaintiff's probability of prevailing on the merits, citing Cao.)

Here, the court's ruling was tantamount to denial of Defendant's anti-SLAPP motion. Accordingly, Defendant is not entitled to recovery of fees and costs under the statute.