

2d Civ. No. B237804
(Los Angeles Superior Court No. BC466547)

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION TWO**

MIKE MALIN

Plaintiff and Respondant,

v.

MARTIN SINGER et al.,

Defendants and Appellants.

Appeal from Los Angeles County Superior Court
Mary M. Strobel, Judge - Case No. BC466547

**APPLICATION TO FILE BRIEF OF AMICUS CURIAE
AND BRIEF OF AMICUS CURIAE IN SUPPORT
OF DEFENDANTS AND APPELLANTS MARTIN
SINGER et al.**

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APPLICATION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE

Pursuant to Rule 8.200, subdivision (c) of the California Rules of Court, the American Civil Liberties Union of Southern California (ACLU/SC) respectfully requests leave to submit the within amicus curiae brief in support of appellants Lavelly & Singer, Martin D. Singer, Andrew B. Brettler, Shereen Arazm and Oren Koules.

The ACLU is a national organization, founded in the wake of the Palmer Raids after World War I, which is dedicated to protecting the civil rights and civil liberties guaranteed by the Bill of Rights of the United States Constitution. Throughout its history, the organization has vigorously fought to protect freedom of speech and free exercise of religion.

The ACLU/SC is one of three California affiliates of the national ACLU. The ACLU/SC was founded by Upton Sinclair in 1923. It has approximately 40,000 members. As part of its mission, the ACLU/SC has repeatedly participated in matters before this Court as both counsel for a party or an amicus in defense of the freedom of speech guaranteed by the federal and state constitutions. In addition, the ACLU/SC has participated as an amicus in cases such as *Equilon Enterprises v. Consumer Cause, Inc.*, 29 Cal.4th 53, 124 (2002), in support of a broad reading of California's anti-SLAPP statute, California Code of Civil Procedure § 425.16.

The ACLU/SC and its members have a significant interest in a broad

reading of the anti-SLAPP statute so that it can effectuate the statute's purpose of preventing lawsuits designed to chill the exercise of speech. This appeal raises issues of substantial importance about the interpretation of the statute, and the Superior Court's decision and the opinion in *Gerbosi v. Gaimes, Weil, West & Epstein, LLP* (2011) 193 Cal.App.4th 435, on which it relied are inconsistent with both the Legislature's intent that the statute be read broadly, and the California Supreme Court's decision in *Flatley v. Mauro* (2006) 39 Cal.4th 299.

Amicus agrees with the Defendants-Appellants and amicus Association of Southern California Defense Counsel that mere allegations that expressive activity is illegal does not provide a basis to deny an anti-SLAPP motion under *Flatley*, and that the ordinary two-step anti-SLAPP analysis should apply when, as in this case, Defendants have not conceded the illegality of their speech, and its legality is hotly contested.

Amicus ACLU/SC respectfully request that the Court grant leave to file this amicus brief.

March 25, 2013

Respectfully Submitted,



Peter J. Eliasberg
Attorney for amicus ACLU/SC

BRIEF OF AMICUS CURIAE

Amicus ACLU/SC agrees with both Defendants-Appellants and amicus Association of Southern California Defense Counsel (ASCDC) that the Superior Court erred in relying on *Gerbosi v. Gaimes, Weil, West & Epstein, LLP* (2011) 193 Cal.App.4th 435, and Plaintiff's *allegations* in his complaint that Defendants' demand letter was illegal extortion, as the basis to deny the anti-SLAPP motion. ACLU/SC also agree with both Defendants and ASCDC that *Gerbosi* is inconsistent with both *Flatley v. Mauro* (2006) 39 Cal.4th 299, and the long line of cases holding that courts should not address in the first prong of the anti-SLAPP inquiry claims that expressive activity that appears to fall within the ambit of the anti-SLAPP statute is, in fact, illegal or otherwise unprotected. *See, e.g., Episcopal Church Cases* (2009) 45 Cal.4th 467, 477, 198 P. 3d 66, 87 Cal. Rptr. 3d 275, 2009 Cal. LEXIS 1. Thus, ACLU/SC urges the Court to repudiate *Gerbosi* and hold that the allegation in Plaintiff's complaint that Defendants' demand letter was illegal extortion, which

Defendants strongly contest, is not subject to the narrow illegality exception set forth in *Flatley*, but is an issue to be addressed at the second stage of the anti-SLAPP inquiry.

March 25, 2013

Respectfully Submitted,



Peter J. Eliasberg
Attorney for amicus ACLU/SC

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1313 West Eight Street, Los Angeles, California 90017. I am employed in the office of a member of the bar of this court at whose direction the service was made.

On March 25, 2013, I served:

1. AMICUS CURIAE FILE BRIEF OF AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA IN SUPPORT OF DEFENDANTS AND APPELLANTS MARTIN SINGER et al.

2. [Proposed] ORDER

on the parties in this action by placing a true and correct copy of each document thereof, enclosed in a sealed envelope, addressed as follows:

See attached Service List

BY MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, CA in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing of an affidavit.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed on March 25, 2013, at Los Angeles, California.


Christian Lebano

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Malin v Singer, et al.
B337804

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