

This Is One Case In Which Muddy Waters Isn't Singing The Blues

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Muddy Waters is a firm engaged in financial analysis and short selling. After taking a short position in the stock of a publicly traded Chinese company, Muddy Waters published two negative reports referring to the company on a website. The Chinese company then sued for unfair competition (Cal. Bus. & Prof. Code § 17200 *et seq.*), trade libel, and intentional interference with prospective economic advantage.

Muddy Waters filed a special motion to strike the complaint under California's Anti-SLAPP statute, Cal. Code Civ. Proc. § 425.16. The trial court, however, declined to grant the motion on the basis that Muddy Waters had failed to establish that the plaintiff's claims arose out of protected speech and the Muddy Waters' reports fell within the "commercial speech" exception to the statute. The Court of Appeal, however, disagreed finding that Muddy Water's publication on a website met the public forum of the law. It also found that the Muddy Waters did not come within the commercial speech exception because there was no evidence that Muddy Waters was a competitor of the plaintiff. *Muddy Waters v. Superior Court*, 2021 Cal. App. LEXIS 294.

Although the Court of Appeal explains short selling in a footnote, this case is not about the short selling per se. However, it does illustrate how some practices of short sellers may be protected by anti-SLAPP statutes.

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