



IN THE SUPREME COURT OF THE STATE OF NEVADA

JET COMMERCIAL CONSTRUCTION,
LLC, AN OKLAHOMA LIMITED
LIABILITY COMPANY; STEVE RICH,
AN INDIVIDUAL; AND JAKE SHARP,
AN INDIVIDUAL,
Appellants,
vs.
NORTH AMERICAN INSURANCE
AGENCY OF LAWTON, LLC D/B/A
INSURICA OF LAWTON; LORIE A.
WALTERS; MICHAEL W. TOWE; AND
DAVID F. HOOPER,
Respondents.

No. 91604

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying an anti-SLAPP special motion to dismiss. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

This case arises from a construction project dispute between nonparty Forum Shops, LLC and appellant Jet Commercial Construction, LLC. The contract between Forum Shops and Jet required that Jet obtain general liability insurance covering the project and produce a certificate of insurance (COI) proving that it had a compliant policy. Through Jet's insurance broker, respondent Insurica of Lawton, Jet obtained a policy from Mt. Hawley Insurance Company and provided the COI to Forum Shops. After an alleged defect in the project was discovered, Forum Shops submitted an insurance claim, which Mt. Hawley denied because Jet's policy excluded coverage for work performed in Nevada. Forum Shops sued Jet and, among other claims, alleged that Jet negligently misrepresented that its insurance policy covered the Forum Shops project.

While that lawsuit was pending, appellant Jake Sharp, the owner and principal of Jet, and respondent David Hooper, a producer with Insurica, met to discuss the insurance issue. Although the parties dispute what was said at the meeting, Hooper signed a notarized declaration stating: “Unfortunately, I made a mistake when I told [Sharp] that Jet did have insurance coverage for the Las Vegas project and provided Jet the Certificates of Liability Insurance because I was unaware that Jet’s policies excluded coverage for construction work done in Nevada.”

After learning the Hooper declaration was disclosed to Forum Shops in connection with the pending case, Insurica moved to intervene in the Forum Shops litigation and submitted a new affidavit from Hooper. In that affidavit, Hooper asserted that Sharp told him the declaration would be used confidentially to obtain Jet’s multi-million-dollar retention from Forum Shops and would not be used in any court case. The district court allowed Insurica to intervene and, as relevant here, assert crossclaims for fraudulent misrepresentation and abuse of process against Jet, Sharp, and appellant Steve Rich (collectively, Jet) based on allegations that Sharp deceived Hooper into signing a fraudulent declaration and that Jet ratified Sharp’s communications with Hooper by producing the declaration in discovery.

Jet filed an anti-SLAPP special motion to dismiss Insurica’s crossclaims. Jet submitted a declaration from Sharp, wherein Sharp asserted that he explicitly told Hooper about the Forum Shops litigation and Hooper independently reviewed and signed the declaration. The

district court denied Jet’s anti-SLAPP motion because it was not persuaded that the “Jet Parties’ communications were conducted in good faith.” The court found that Insurica’s crossclaims arose from omissions rather than statements such that Jet failed to satisfy the first prong of the anti-SLAPP analysis. Insurica also satisfied the second prong of the anti-SLAPP analysis, the court determined, by showing a probability of prevailing on its crossclaims. Jet appeals.

We review the district court’s denial of an anti-SLAPP special motion to dismiss de novo. *Coker v. Sassone*, 135 Nev. 8, 10, 432 P.3d 746, 749 (2019). “Nevada’s anti-SLAPP statutes provide defendants with a procedural mechanism whereby they may file a special motion to dismiss [a] meritless lawsuit before incurring significant costs of litigation.” *Stark v. Lackey*, 136 Nev. 38, 40, 458 P.3d 342, 345 (2020); NRS 41.650 (immunizing “[a] person who engages in a good faith communication in furtherance of the right to petition”); NRS 41.660(1)(a) (authorizing a party to file “a special motion to dismiss” if an action is brought against them “based upon a good faith communication in furtherance of the right to petition . . .”).

Jet contends that its discovery production of Hooper’s declaration was a communicative act performed by attorneys in connection with a judicial proceeding, which qualifies for protection under NRS 41.650. Jet claims that Sharp’s communication with Hooper directly related to the Forum Shops litigation and that the gist of Sharp’s statements was true, thus entitling Jet to dismissal.

NRS 41.660(2) sets forth “a two-prong analysis to determine the

viability of a special motion to dismiss.” *Stark*, 136 Nev. at 40, 458 P.3d at 344-45. First, the movant must establish by a preponderance of the evidence that “the claim is based upon a good faith communication in furtherance of the right to petition.” NRS 41.660(3)(a). Such protected communications include any “[w]ritten or oral statement made in direct connection with an issue under consideration by a . . . judicial body, or any other official proceeding authorized by law.” NRS 41.637(3).¹ However, “no communication falls within the purview of NRS 41.660 unless it is ‘truthful or is made without knowledge of its falsehood.’” *Shapiro v. Welt*, 133 Nev. 35, 40, 389 P.3d 262, 268 (2017) (quoting NRS 41.637). If prong one is met, the second prong requires the nonmovant to “demonstrate[] with prima facie evidence a probability of prevailing on the claim.” NRS 41.660(3)(b); *Wynn v. Associated Press*, 140 Nev., Adv. Op. 56, 555 P.3d 272, 278 (2024) (explaining that the plaintiff must “make[] a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited” (internal quotation marks omitted)).

We first address Jet’s argument that its production of Hooper’s declaration amounted to communicative discovery conduct protected under NRS 41.637. Though Jet asserts that Insurica seeks to hold Jet liable for

¹Though Jet also argues Sharp’s statements were protected as communications “aimed at procuring any governmental or electoral action, result or outcome,” NRS 41.637(1), Jet fails to meaningfully address how that subsection applies here. *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider issues not adequately briefed, not supported by relevant authority, and not cogently argued).

producing Hooper’s declaration in discovery, Insurica’s crossclaims are not predicated on that act. Per Insurica’s cross-complaint, Jet’s production of Hooper’s declaration merely served as a vehicle to impute Sharp’s statements surrounding the execution of that declaration to Jet and appellant Steve Rich and prompted Forum Shops to notify Insurica about the declaration. The anti-SLAPP analysis, however, centers on “the ‘gist or sting’ of the statements” that form the basis of the plaintiff’s claims. *Rosen v. Tarkanian*, 135 Nev. 436, 441, 453 P.3d 1220, 1224 (2019) (emphasis added). And here, Insurica’s fraudulent misrepresentation and abuse-of-process claims focus squarely on Sharp’s statements and conduct in procuring Hooper’s declaration—not Jet’s discovery production itself. The cases upon which Jet relies are therefore distinguishable, as they involved claims that arose directly from communicative discovery and petitioning conduct in the course of representation. *See, e.g., Cabral v. Martins*, 99 Cal. Rptr. 3d 394, 401-04 (Ct. App. 2009) (holding, in a case where petitioner sued respondents and their attorneys for evading child support obligations, that filing a will with the probate court, defending clients’ interests in the litigation, and making “communications that are intimately intertwined with, and preparatory to, the filing of judicial proceedings qualify as petitioning activity for the purpose of the anti-SLAPP statute”).²

We next turn to Sharp’s communications with Hooper that

²The parties dispute whether this court broadly construes Nevada’s anti-SLAPP statutes to include noncommunicative petitioning conduct. But we need not address this issue because Insurica’s claims do not arise from Jet’s noncommunicative petitioning conduct.

precipitated the declaration, as they form the basis of Insurica's crossclaims. To satisfy prong one of the anti-SLAPP analysis, the statement must (1) relate to the substantive issues in the litigation and (2) be "directed to persons having some interest in the litigation." *Patin v. Lee*, 134 Nev. 722, 726, 429 P.3d 1248, 1251 (2018). We disagree with the district court's determination that Insurica's crossclaims arose solely from omissions because Insurica alleged that Sharp made several affirmative misrepresentations when persuading Hooper to sign the declaration. Those statements directly related to substantive issues in the Forum Shops litigation, as Forum Shops alleged that Jet negligently misrepresented Jet's insurance policy and Sharp's statements were aimed at procuring Hooper's admission that he mistakenly informed Sharp that Jet's policy covered the Forum Shops project. Sharp's conduct was also directed at a person with "some interest" in the Forum Shops litigation. Insurica was Jet's insurance broker for the Forum Shops project and Hooper produced the COI. As evident from Insurica's emails exchanged with the Jet parties and Mt. Hawley in 2021, Insurica was aware that Mt. Hawley had denied Forum Shops' claim based on the Nevada exclusion and that Forum Shops had sued Jet over the COI produced by Insurica. Those communications thus support that Insurica had some interest in that litigation when Sharp and Hooper spoke in 2024. Jet therefore satisfied the two-part test from *Patin*.

However, Jet failed to satisfy NRS 41.637's good-faith-communication requirement. This part of the test examines whether the statement was "truthful or . . . made without knowledge of its falsehood" and "requires consideration of all of the evidence submitted by the defendant in support of his or her anti-SLAPP motion." *Rosen*, 135 Nev. at

439, 453 P.3d at 1223. We clarified in *Sirtos* that we “must evaluate the communication *as it is alleged in the plaintiff’s complaint and in any of the plaintiff’s clarifying declarations.*” *Sirtos v. Yemenidjian*, 137 Nev. 711, 715, 499 P.3d 611, 616 (2021) (emphasis added). There, the plaintiff Armen Yemenidjian alleged that the defendant Nicola Sirtos slandered him in a discussion with a third party about corruption in the Department of Taxation’s licensing scheme for recreational cannabis businesses. *Id.* at 713-14, 499 P.3d at 614-15. Sirtos filed an anti-SLAPP special motion to dismiss and attached a declaration asserting his good faith belief that the Department of Taxation’s licensing process was corrupted. *Id.* at 718, 499 P.3d at 618. But Sirtos’s declaration “contained no factual bases for why he believed *Yemenidjian* was involved in the corruption” and instead denied mentioning Yemenidjian by name altogether. *Id.* “Absent a factual basis for why Sirtos believed his alleged statement regarding Yemenidjian’s involvement in corruption was true, Sirtos necessarily failed to establish by a preponderance of the evidence that his statement . . . was a ‘good faith communication.’” *Id.*

So too here. Jet submitted Sharp’s declaration to support his good faith belief that his statements to Hooper were true. But like in *Sirtos*, Sharp failed to assert any factual basis to support his good faith belief as to the statements alleged in Insurica’s crossclaims. Contrary to Jet’s contentions, Insurica’s version of Sharp’s statements directly contradicts Sharp’s declaration. For example, Hooper’s affidavit states: “Mr. Sharp told me that the declaration had nothing to do with any ongoing litigation and that it would not be used in any litigation. My understanding from this conversation was that if I did not admit fault, Forum Shops, LLC

would not release millions of dollars . . . to Jet.” Sharp, on the other hand, stated in his declaration that he “told [Hooper] that the declaration would be used in the Las Vegas litigation; any suggestion [Hooper] was unaware the declaration might have a relationship with the Las Vegas suit is false. It’s also not true that I told [Hooper] this had something to do with getting money released.” Sharp’s declaration failed to assert a good faith belief that Hooper’s declaration would not be used in litigation or that Hooper admitting fault was tied to Forum releasing millions of dollars to Jet. Sharp instead simply denied ever making those statements, which “has no relevance at step one of the anti-SLAPP evaluation.” *Sirtos*, 137 Nev. at 720, 499 P.3d at 620.

To be sure, we held in *Stark* that the defendant does not always need to “address the individual factual allegations” to satisfy the good faith communication requirement, as “an affidavit stating that the defendant believed the communications to be truthful or made them without knowledge of their falsehood is sufficient to meet the defendant’s [preponderance] burden *absent contradictory evidence in the record*.” 136 Nev. at 43, 458 P.3d at 347 (emphasis added). But here, Insurica presented contradictory evidence via Hooper’s affidavit. Jet thus failed to show by a preponderance of the evidence that Sharp made the alleged statements in good faith as required by NRS 41.637. Accordingly, the district court did not err by denying Jet’s anti-SLAPP motion. *See Milender v. Marcum*, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994) (“[I]t is well established that this court may affirm rulings of the district court on grounds different from those relied upon by the district court.”). Because we conclude that Jet failed to satisfy prong one of the anti-SLAPP analysis under NRS 41.660(3)(a), we

need not address whether Insurica met its burden under prong two related to the merits of the crossclaims.³ We therefore

ORDER the judgment of the district court AFFIRMED.



Stiglich, J.



Cadish, J.



Lee, J.

cc: Hon. Mark R. Denton, District Judge
Michelle L. Morgando, Settlement Judge
Greenberg Traurig, LLP/Las Vegas
Resnick & Louis, P.C./Las Vegas
Gordon Rees Scully Mansukhani LLP/Las Vegas
Eighth District Court Clerk

³Jet also challenges the district court's determination that Jet's anti-SLAPP motion was frivolous and vexatious thus entitling Insurica to attorney fees under NRS 41.670(2). But we decline to consider that argument at this time because the district court did not actually award Insurica any attorney fees in the challenged order; instead, it ordered Insurica to file a separate motion requesting the fees. *Cf. Matter of Guardianship of M.J.M.*, No. 85423, 2023 WL 3052330, at *2 (Nev. Apr. 21, 2023) (Order Affirming in Part and Dismissing in Part) (dismissing a portion of an appeal as "premature where the district court ha[d] not yet determined the amount of fees to be awarded."). Under the circumstances, the challenge to any fee award is premature.