Peabody & Arnold Prevails in Appeal of Partial Denial of Special Motion to Dismiss Pursuant to the Anti-SLAPP Statute

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Related Practices

Professional Liability Litigation

By Peabody & Arnold on April 12, 2022

Peabody & Arnold attorney Susan Silva successfully argued an appeal before the Massachusetts Appeals Court on behalf of a number of lawyers. She was assisted by Allen David.

The sole issue before the Massachusetts Appeals Court was whether the plaintiff's claim for intentional infliction of emotional distress should have been dismissed pursuant to M.G.L. c. 231, § 59H, the so-called anti-SLAPP statute. "SLAPP" is short for strategic lawsuits against public participation. The anti-SLAPP statute enacts broad protection for petitioning activities, including litigation conduct at issue in this case.

The plaintiff filed his SLAPP lawsuit against six defendants who were either opposing counsel, opposing parties, or a forensic expert accountant in two prior litigations filed against the plaintiff and his companies. The plaintiff claimed that the defendants were liable to him for obtaining and using certain bank records in violation of an ex parte discovery order entered in the first underlying litigation, and then using those records in the second underlying litigation to successfully obtain summary judgment. The plaintiff's SLAPP lawsuit against the six defendants complained only of conduct that had occurred in the two underlying litigations. The Appeals Court correctly held that defendants' alleged violation of the underlying discovery order was petitioning activity protected by the anti-SLAPP statute. The underlying discovery order was derivative of the first underlying action and, if there was a violation, it should have and could have been addressed in the underlying case. The Appeals Court reversed the lower court's partial denial of defendants' special motion to dismiss and awarded the defendants attorneys' fees for drafting and arguing the appeal.

