

## Pro Bono

# PRO BONO WIN FOR ASSAULT VICTIM IN CALIFORNIA SUPREME COURT

Jan 25, 2022

A *pro bono* BCLP team obtained a 7-0 victory in the California Supreme Court on behalf of Jane Doe, a sexual assault and harassment victim.

Ms. Doe alleged that in May 2015 the wealthy developer of a condominium complex where she lived lured her into the unit he kept for himself and attempted to rape her. She filed for a civil harassment restraining order, which resulted in a “keep-the-peace” agreement brokered by a court-appointed mediator requiring both Ms. Doe and her abuser to stay away from each other and “not disparage one another.” After Ms. Doe sued for compensatory damages for the assault, her abuser filed a breach-of-contract counterclaim seeking dismissal of her damages suit and a monetary “penalty” for her alleged breach.

The trial court dismissed the abuser’s counterclaim under California’s Anti-SLAPP statute as well as statutory litigation privilege, which protects a claimant’s ability to petition the courts for redress without fear of retaliatory counterclaims like the abuser’s. The court of appeal reversed, finding that the parties’ agreement to “not disparage one another” waived Ms. Doe’s litigation privilege.

Agreeing with our team (which took over the case after the court of appeal’s decision), reversing the court of appeal, and reinstating the trial court’s dismissal of the abuser’s counterclaims, the California Supreme Court unanimously held that the parties’ non-disparagement agreement did not waive Ms. Doe’s right to sue her abuser and she committed no breach of that agreement as a matter of law. This result was compelled, the court explained, “by the mediation agreement as a whole, the statutory [civil harassment restraining order] context in which it was negotiated, and the fact that it implicates constitutionally protected petitioning activity.”

While constitutionally protected litigation rights can still be waived by a clear and express waiver (such as in trade secret, employment and other forms of contracts designed to fully forestall or terminate a dispute), the mediated stay-away agreement’s short proviso that the parties “not disparage one another” did not encumber Ms. Doe’s fundamental right of access to the courts here. That result was underscored by California’s repeated legislative recognitions of the need for sexual harassment and assault victims to have more rights, protections and remedies – not fewer, as Ms. Doe’s abuser expressly urged and the court of appeal had implicitly found.

The case has brought much media attention, including from Courthouse News Service and the Daily Journal (subscription required). The BCLP team was led by Partner Jean-Claude “J.C.” André, with support from Partner Anne Redcross Beehler and Counsel Kristy Murphy and paralegal assistance from Donna Frandsen.

## MEET THE TEAM



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