

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

Special Set Calendar

Judge: HONORABLE WILLIAM P. BARRY

Department 42

400 County Center, Redwood City

Courtroom 8A

Friday, February 9, 2024

IF YOU **INTEND TO APPEAR** ON ANY CASE ON THIS CALENDAR, YOU MUST DO ONE OF THE FOLLOWING:

1. EMAIL [jarnott@sanmateocourt.org](mailto:jarnott@sanmateocourt.org) BEFORE 4:00 P.M. CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING.
2. YOU MUST CALL (650) 261-5020 BEFORE 4:00 P.M. AND LEAVE A MESSAGE INCLUDING THE NAME OF THE CASE, THE CASE NUMBER AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING.
3. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).

Failure to do both items 1 or 2 and 3 will result in no oral presentation.

**At this time, appearances shall be made by Zoom Video. Sign in using your first and last name. Mute your line until your case is called. RECORDING OF A COURT PROCEEDING IS PROHIBITED.**

**Zoom Video Information:**

<https://sanmateocourt.zoomgov.com/>

Meeting ID: 161 818 2020

Password: 957524

**TO ASSIST THE COURT REPORTER, the parties are ORDERED** to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

Case Title / Nature of Case

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9:00

LINE: 1

22-CIV-02094 NAIFEH AZAR VS. OMAR AZAR, ET AL.

NAIFEH AZAR  
JUDGE V. RAYMOND SWOPE, III

PRO/PER  
SHARON M. NAGLE

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DEMURRER TO COMPLAINT BY V. RAYMOND SWOPE, III, JUDGE OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO, AND SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

**TENTATIVE RULING:**

To grant demurring parties' request for judicial notice of Judge Swope's Statement of Decision filed July 19, 2022, after the remand. (Evid. Code, § 452, subd. (c), (d) and (h).)

To sustain the demurrers to the Complaint, without leave to amend. (Code Civ. Proc., § 430.10, subd. (e).) Prevailing parties are directed to submit to this court, within 7 days of service of the minute order, a proposed order dismissing the action with prejudice as to the demurring defendants only.

**Background**

On May 24, 2022, plaintiff sued 7 defendants for alleged wrongdoing arising from a dispute over ownership of real property. On July 11, 2022, Plaintiff filed Doe Amendment No. 1, identifying the Superior Court as Doe No. 1. On June 12, 2023, Plaintiff filed Doe Amendment No. 2, identifying Judge Swope as Doe No. 2. The demurring defendants are referred to herein as "Judicial Defendants."

Judge Swope presided over an earlier action in which Ms. Azar was a defendant: *Azar v. Azar* (case number 18-CIV-01833; "*Azar I*."). In *Azar I*, the plaintiffs sought to quiet title to certain real property. Prior to Judge Swope's involvement, *Azar I* came on for trial on September 17-23, 2019 before Judge Richard H. DuBois. He rendered a judgment adverse to Ms. Azar on or about September 26, 2019. She appealed. The Court of Appeal reversed the decision of the trial court, and remanded the case with instructions.

On remand, Judge Swope heard the case on July 12, 2022. On July 19, 2022, Judge Swope issued a new Statement of Decision, again adverse to Ms. Azar, plaintiff herein, determining that she held "no title or ownership interest" in the Subject Property. (Request

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for Judicial Notice (“RFJN”), Nagle Dec., Ex. 1.) Apparently, Ms. Azar’s appeal from this second Statement of Decision was unsuccessful.

On May 24, 2022, **before** that hearing and **before** Judge Swope rendered the new Statement of Decision, Plaintiff filed the instant action. She named the Superior Court as Doe No. 1 even before the hearing and the filing of the new Statement of Decision.

In this new case, Plaintiff Azar states fourteen causes of action: to set aside a fraudulent transfer, cancellation of instruments, declaratory relief, conversion, fraud, quiet title, slander of title, temporary restraining order, elder abuse, breach of fiduciary duty, ejectment, unjust enrichment, negligence, and conspiracy. Presumably because Judge Swope had not acted on the case yet, Plaintiff alleges no specific conduct by him or the Superior Court. Plaintiff seeks, inter alia, \$15,000,000.00 in damages, an order selling the Subject Property, and an order setting aside the transfer of the property. (Compl. p. 33.)

As noted above, the Judicial Defendants were not initially named in the Complaint. They were joined as Doe Nos. 1 and 2. Therefore, none of the allegations of the Complaint are alleged against them specifically. Plaintiff’s untimely Opposition to this Demurrer argues that Judge Swope intentionally refused to comply with the Court of Appeal’s Order in *Azar I* to provide an Amended Statement of Decision. That appears to be the only basis for her case against him and the Court.

**Analysis:**

At the outset, the Judicial Defendants argue that joining them to this lawsuit by use of the Doe Amendment procedure was improper. The Court disagrees. Judge Swope did not render a decision in this case until after the lawsuit was filed.

Judicial officers are entitled to unqualified immunity and are therefore immune from civil suits arising out of the exercise of their judicial functions. (*Mireles v. Waco* (1991) 502 U.S. 9, 11.) “The decisions of this state uniformly and consistently grant immunity from civil suit to judges in the exercise of their judicial functions. That is true even if the acts are in excess of the jurisdiction of the judge and are alleged to have been done maliciously and corruptly.” (*Tagliavia v. County of Los Angeles* (1980) 112 Cal.App.3d 759, 761.)

The claims against each Judicial Defendant arise from Judge Swope’s judicial acts, performed in his capacity as a judicial officer, entitling both defendants to unqualified immunity. The Demurrer should be sustained for that reason.

Additionally, Plaintiff failed to allege compliance with the Government Claims Act. “[A] plaintiff must allege facts demonstrating or excusing compliance with the claim presentation requirement.” (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1243.) “Otherwise, his complaint is subject to a general demurrer for failure to state facts sufficient

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to constitute a cause of action." (*Ibid.*) Under Government Code section 945.4, "no suit for money or damages may be brought against a public entity ... until a written claim therefore has been presented to the public entity and has been acted upon ..."

No suit may be brought against a public entity until a written claim has been presented to the public entity and has been acted upon by the Board, or has been deemed to be have been denied by the Board. (Gov. Code, § 945.4.) The claim filing requirement applies to any lawsuit for damages against the State *or its employees*. (Gov. Code, §§ 911.2, 950.2, 945.4.)

Here, the Complaint does not allege compliance with the claim presentation requirements. The opposition does not contend otherwise, or represent that the Complaint could be amended to allege compliance.

In light of these defects in the Complaint, there is no need to address the sufficiency of any individual cause of action, but none of them would have merit against the Judicial Defendants.

No leave to amend will be granted. Absent a request for leave to amend, no abuse of discretion will be found unless a potentially effective amendment is both apparent and consistent with plaintiff's theory of the case. (*Camsi IV v. Hunter Technology Corp.* (1991) 230 Cal.App.3d 1525, 1542.) The burden is on the plaintiff to show in what manner he or she can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Hendy v. Lasse* (1991) 54 Cal.3d 723, 742.) In light of the unqualified judicial immunity applicable to both Judicial Defendants, and her not having complied with the Government Claims Act, there does not appear to be any way plaintiff could amend the Complaint to state a viable claim.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

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9:00

LINE: 2

22-CIV-02094 NAIFEH AZAR VS. OMAR AZAR, ET AL.

NAIFEH AZAR  
RONNY AZAR

PRO/PER  
MARC D. BENDER

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MOTION FOR ORDER IMPOSING SANCTIONS AND FOR AN AWARD OF PUNITIVE DAMAGES AGAINST DEFENDANT RONNY AZAR AND HIS ATTORNEY MARC BENDER BY NAIFEH AZAR

**TENTATIVE RULING:**

Deny Plaintiff's Motion for Sanctions. Grant Ronny Azar's request that the 6/30/23 default against him be set aside because of his attorney's neglect.

Because this is the second time that Attorney Bender's neglect has caused this default to be entered against his client, and then remain in place, on its own motion the Court intends to impose a sanction of \$500 against him, payable to the clerk of the Court within 30 days. CCP 128(a)(3), and (5).

**Background:**

On June 30, 2023, default was entered against Ronny Azar. On July 18, 2023, Attorney Bender filed a Joinder on his behalf to the Demurrer filed by Indrawous Azar on 12/5/22 and also filed a Motion to Set that Default Aside, and for Sanctions against Plaintiff, citing C.C.P §473(b), attorney neglect, as the basis for the relief. On September 8, 2023, Judge Foiles heard that Motion, and granted it in part, as follows:

“Defendant Ronny Azar's motion for relief from default has merit. The Declaration of Marc Bender explains that Mr. Bender's failure to file a responsive pleading on behalf of Ronny was a cost-saving measure. Specifically, Mr. Bender incorrectly believed that he could save his clients' money by filing a demurrer on behalf of only one Defendant (Indrawous Azar) and pay a single First Appearance Fee, rather than filing a Demurrer on behalf of all clients and incurring multiple First Appearance Fees. There is no statute, court rule, or regulation that supports this strategy. Mr. Bender's approach, though possibly well-meaning, constituted attorney neglect because a reasonable attorney would have known that demurring on behalf of just one client would leave other clients at risk of an entry of default. Therefore, relief from default is mandatory under Code of Civil Procedure section 473, subd. (b).”

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“In the interests of justice, the Court grants Defendant Ronny Azar 10 calendar days within which to file and serve a Supplemental Declaration in Support of Motion for Relief from Default that includes a proposed responsive pleading. If such declaration is filed and served within 10 calendar days, the Court will grant the motion for relief from default. Otherwise, the Court will deny the motion.”

Ronny Azar’s request for sanctions was denied.

Ronny Azar did not file a responsive pleading within that 10-day period. The Motion was therefore denied. Default is still in effect.

With respect to Ronny Azar’s request for sanctions, the court stated: “Defendant Ronny Azar's motion for sanctions is denied. Plaintiff was entirely within her right to file a Request for Entry of Default when Ronny Azar failed to respond within the statutory deadline.

On September 7, 2023, the day **before** the hearing on Ronny Azar’s Motion to Set the Default Aside and for Sanctions, Plaintiff filed this Motion for Sanctions, arguing that his filing of a joinder in another defendant’s Demurrer was improper because he was then in a default status, and that he sought sanctions without first complying with “Separate Pleading” and “Safe Harbor” requirements, citing C.C.P §§128.7 and 128.5; and C.R.C., Rule 2.30. Plaintiff does not request a specific sum for a sanction award, nor does she provide any evidence of expenses she incurred as a result of Ronny Azar’s Motion.

**Analysis:**

At page 2, line 20 of her moving papers, Plaintiff cites to C.C.P §128.5 and §128.7, but thereafter discusses only C.C.P §§128.7. The Court believes that this approach is immaterial. The Motion is based upon C.C.P §128.5, and the Court will address it as such.

C.C.P §128.5(a) provides that: “A trial court may order a party, the party's attorney, or both, to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay.”

C.C.P §128.5(c) provides that: “Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers or, on the court's own motion, after notice and opportunity to be heard.”

C.C.P §128.5(f)(1)(A) provides that: “A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific alleged action or tactic, made in bad faith, that is frivolous or solely intended to cause unnecessary delay.”

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C.C.P §128.5(f)(1)(B) provides that: “If the alleged action or tactic is the making or opposing of a written motion or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading that can be withdrawn or appropriately corrected, a notice of motion shall be served as provided in [Section 1010](#), but shall not be filed with or presented to the court, unless 21 days after service of the motion or any other period as the court may prescribe, the challenged action or tactic is not withdrawn or appropriately corrected.

Judge Foiles’ September 8<sup>th</sup> ruling on Ronny Azar’s Motion established that it was reasonable for Ronny Azar to file his Motion to Set the Default aside. The ruling can also be read to consider his request for sanctions to be frivolous, and so lacking in merit as to constitute bad faith. In addition, his request for sanctions violated C.C.P §128.5(f)(1)(A) because it was not filed as a separate motion. However, C.C.P §128.5(f)(1)(B)’s “safe harbor” requirement did not apply to Ronny Azar’s Motion, which sought to have the default set aside. It was not seeking to bar a “motion or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading”.

Therefore, Plaintiff is correct in arguing that Ronny Azar and his attorney failed to comply with the requirements of C.C.P §128.5. *See* C.C.P §128.5(a) and C.C.P §128.5(f)(1)(A). On the other hand, C.C.P §128.5 does not allow for an award as sought by Plaintiff because she has not provided an evidentiary basis for a sanctions award, and the court does not believe that the filing of the Motion calls for punitive damages. C.C.P §128.5(c). Therefore, Plaintiff’s Motion for Sanctions will be denied.

This does not end the Court’s analysis. With respect to getting the default set aside, Attorney Bender has twice failed his client and caused unnecessary work due to his neglect of his duties to his client. His Motion to Set Aside acknowledged that his neglect caused the default to be entered in the first place. After Judge Foiles ordered that the default be set aside, upon the condition that Mr. Bender file a responsive pleading within 10 days, he failed to do so again, also due to his sole neglect. CCP §§128(a)(3), and (5) and the Court’s inherent power and duty to control litigation in matters before it support an award of sanctions against Mr. Bender for his neglect. The Court will impose sanctions in the amount of \$500.00, payable to the clerk of the court within 30 days of the hearing on this Motion.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

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