

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

Presiding Judge Law and Motion Calendar

Judge: HONORABLE ELIZABETH K. LEE

Department 17

400 County Center, Redwood City

Courtroom 2K

April, April 22, 2024

NOTICE TO ALL COUNSEL

Until further order of the Court, no endorsed-filed "courtesy copy" of pleadings is required to be provided to the Law and Motion Department.

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

1. YOU MUST CALL (650) 261-5117 BEFORE 4:00 P.M. AND FOLLOW THE INSTRUCTIONS ON THE MESSAGE.
2. EMAIL PJLawandmotion@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
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.

All Counsel are reminded to comply with California Rule of Court 3.1110. The Court will expect all exhibits to be tabbed accordingly.

Case

Title / Nature of Case

9:00

24-CIV-00711 GLORIA RODRIGUEZ VS. ANA MARIE ALTUBE STARR
TRUSTEE MARGARET SAUSED0, ET AL

GLORIA RODRIGUEZ	PRO SE
ANA MARIE ALTUBE STARR TRUSTEE MARGARET SAUSED0	PATRICK J.
	WHITEHORN

DEFENDANTS MOTION (1) TO DECLARE PLAINTIFF A VEXATIOUS LITIGANT; (2) FOR ENTRY OF A PREFILING ORDER; AND (3) TO REQUIRE PLAINTIFF TO FURNISH SECURITY

TENTATIVE RULING:

Defendant Ana Maria Altube Starr's Unopposed Motion (1) to Declare Plaintiff Gloria Rodriguez a Vexatious Litigant, (2) for Entry of a Prefiling Order, and (3) to Require Plaintiff to Furnish Security is GRANTED in part and DENIED in part. Defendant Ana Maria Altube Starr's Request for Judicial Notice is GRANTED as to all items.

By this motion, Defendant Ana Maria Altube Starr seeks an order declaring Plaintiff Rodriguez a vexatious litigant, prohibiting Rodriguez from filing new litigation in propria persona without leave of court, and requiring Rodriguez to furnish security in the amount of \$13,725.00 for Altube Starr's past and anticipated expenses. For the reasons set forth below, the Court finds Rodriguez to be a vexatious litigant and enters a prefiling order, but denies the request that Rodriguez furnish security.

A. Legal Standard on Motion to Declare Litigant Vexatious

Upon the motion of a party, a court may enter a prefiling order restraining a vexatious litigant from filing any new litigation in propria persona without leave of court and order security be furnished before proceeding with a pending action commenced in propria persona. (Code of Civ. Proc., §§ 391.3, 391.7.)

A "vexatious litigant" is defined as one who, inter alia, (1) has commenced or maintained at least five litigations other than in a small claims court in propria persona in the preceding seven years that have been finally determined adversely to the person or (2) repeatedly relitigates or attempts to relitigate, in propria persona, either the validity of a final determination adverse to the person, same cause of action, same claim, same controversy, or any of the same issues of fact or law against the same defendant or defendants. (Code of Civ. Proc., § 391, subd. (b).)

As used in these statutes, "[l]itigation" means any civil action or proceeding, commenced, maintained or pending in any state or federal

court" and includes appeal and writ proceedings. (Code of Civ. Proc., § 391, subd. (a)); see *Fink v. Shemtov* (2010) 180 Cal.App.4th 1160, 1170. "Litigation is finally determined adversely to a plaintiff if he does not win the action or proceeding he began, including cases that are voluntarily dismissed by a plaintiff." (*Garcia v. Lacey* (2014) 231 Cal.App.4th 402, 406.)

The moving party bears the burden of demonstrating the plaintiff is a vexatious litigant. (*Golin v. Allenby* (2010) 190 Cal.App.4th 616, 640.) If this burden is carried, the court may enter a prefiling order without further evidence. (*In re Marriage of Rifkin & Carty* (2015) 234 Cal.App.4th 1339, 1348.) However, to obtain an order requiring the plaintiff to furnish security, the moving party must also demonstrate "that there is no reasonable probability that the plaintiff will prevail in the action against the moving defendant." (*Golin, supra*, at p. 640.) In determining whether a vexatious litigant has a reasonable probability of prevailing in the litigation against the defendant, the court must consider and weigh "any evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion." (Code of Civ. Proc., § 391.2; see *Golin, supra* at p. 640.)

B. Rodriguez Shown to be Vexatious Litigant

Altube Starr contends that Rodriguez meets both the definitions of vexatious litigant mentioned above. While Rodriguez's pro se filings in her various lawsuits are not so clear as to easily determine whether they are attempts to relitigate determined issues, she indeed has commenced at least five litigations in propria persona that have been finally determined adversely to her within the past seven years.

These litigations include:

Gloria Rodriguez v. Julia Espinoza, et al. (Super. Ct. San Mateo County, 2022, 20CIV04598) (Mar. 11, 2024 Declaration of Patrick J. Whitehorn ("Whitehorn Decl."), exh. 3);

Gloria Rodriguez v. City of Burlingame (Super. Ct. San Mateo County, 2022, 20CIV04876) (*id.*, at exh. 8);

Gloria Rodriguez v. Ana Maria Altube-Starr, et al. (Super. Ct. San Mateo County, 2023, 21CIV02650 (*id.*, at exh. 16);

Rodriguez v. Espinoza, et al. (dismissed Sep. 16, 2022, A165729), arising from *Gloria Rodriguez v. Julia Espinoza, et al., supra* (*id.*, exh. 4);

Rodriguez v. Altube (dismissed Jan. 29, 2024, A169232), arising from *Gloria Rodriguez v. Mary Altube* (Super. Ct. San Mateo County, 2023, 20CIV04970) (*id.*, at exh. 12);

and *Altube Starr v. Rodriguez* (dismissed Aug. 3, 2022, A164476), arising from *Ana Maria Altube Starr, et al. v. Gloria Rodriguez, et al.* (Super. Ct. San Mateo County, 2021, 21CIV01450) (*id.*, at exh. 25).

Each was commenced by Rodriguez in propria persona, finally determined, and determined adversely to Rodriguez. Accordingly, Altube Starr has carried her burden of showing Rodriguez meets the definition of a vexatious litigant.

C. Prefiling Order Warranted

As Rodriguez has been shown to be a vexatious litigant, the Court hereby enters a prefiling order prohibiting Rodriguez from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed. (See Code of Civ. Proc., § 391.7, subd. (a).)

D. No Showing of No Reasonable Probability of Prevailing

Altube Starr contends Rodriguez has no reasonable probability of prevailing in the present litigation because Rodriguez's claims are barred by the statute of limitations and are res judicata. However, the evidence proffered does not support these contentions.

Altube Starr admits that the present complaint does not disclose the date on which the single cause of action for premises liability accrued. (See Feb. 8, 2024 Complaint, *passim*.) Altube Starr instead points to the judgment from *Gloria Rodriguez v. Mary Altube* (Super. Ct. San Mateo County, 2023, 20CIV04970) as evidence that Rodriguez vacated one of the two adjacent properties—at which the Complaint alleges her injury occurred—on September 3, 2020, and thus the cause of action must have accrued more than two years ago. (Whitehorn Decl., exh. 11; see Code of Civ. Proc., § 335.1 [two-year statute of limitations for injury caused by negligence].) However, the fact that Rodriguez was found to have ceased residing at the property at one point in time does not preclude her from being injured at the same location when she possibly returned at some later time in the intervening four years.

Altube Starr also points to the statement of decision in *Gloria Rodriguez v. Christopher Nash, et al.* (Super. Ct. San Mateo County, 2023, 21CLJ03496), a case in which Rodriguez prevailed in obtaining damages for a July 4, 2020 injury at the properties. (Whitehorn Decl., exh. 19.) Though Starr suggests the injury involved in the two suits are the same and thus the present claim is both time-barred and res judicata, this is a bare assumption.

Neither of these pieces of evidence do any work to show Rodriguez has no probability of prevailing in the instant action. While the laconic form complaint in the instant case does not appear to sufficiently plead any causes of action, this does not foreclose Rodriguez's eventual success at trial, and the burden is on Starr to demonstrate otherwise by admissible evidence. Accordingly, the Court denies the request for an order requiring Rodriguez to furnish security at this time. Pursuant to Code of Civil Procedure section 391.6, the stay of the case shall be lifted ten (10) days after entry of this order, without need for a further order.

9:00

24-CIV-01828 SAN MATEO COUNTY SHERIFF'S OFFICE VS. CONRAD WARMBOLD

SAN MATEO COUNTY SHERIFF'S OFFICE
CONRAD EDWARD WARMBOLD

JOHN D. NIBBELIN

SAN MATEO COUNTY SHERIFF'S OFFICE MOTION TO SEAL RECORDS

TENTATIVE RULING:

GRANT SHERIFF'S OFFICE MOTION TO SEAL RECORDS

POSTED: 3:00 PM