

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/18/10

DEPT. 86

HONORABLE David Yaffe

JUDGE

C. WASHINGTON

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

B. JAUREGUI, COURTROOM ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NONE

Reporter

9:30 am

BS109420

Plaintiff

Counsel

MARINA STRAND COLONY II

NO APPEARANCE

VS

Defendant

Counsel

COUNTY OF LOS ANGELES

NATURE OF PROCEEDINGS:

ORDER FOR FURTHER BRIEFING

On June 14, 2007, Richard I. Fine, as attorney for Marina Strand Colony II Homeowners Association, filed a petition for writ of mandate against the County of Los Angeles and against Del Rey Shores Joint Venture, alleging noncompliance by said parties with the provisions of the California Environmental Quality Act (CEQA), Division 13 of the Public Resources Code. Public Resources Code Section 21167.4, a part of CEQA, provides that in any action alleging noncompliance with CEQA, the petitioner shall request a hearing within 90 days from the date of filing the petition or the action shall be subject to dismissal on the motion of any parties.

On September 13, 2007, Del Rey Shores Joint Venture filed a motion to dismiss the proceeding pursuant to section 21167.4, on the ground that attorney Fine failed to timely request a hearing on the petition as required by P.R.C. Section 21167.4. The Court granted the motion.

On October 15, 2007, Fine filed a motion for relief from the dismissal pursuant to C.C.P. Section 473, based upon his declaration of personal fault, indicating that the fault for not timely filing the motion required by section 21167.4 was entirely his and not his client's. C.C.P. Section 473(b) provides that when a court grants relief based upon an attorney's neg-

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Murray Gross (now retired), the judicial officer presiding at the judgment debtor examination, overruled all of Fine's objections to answering questions and producing documents, determined that the questions were proper, and ordered Fine to answer the questions and produce subpoenaed documents.

Fine refused to comply with Commissioner Gross' order, and Del Rey Shores instituted a contempt proceeding by filing an application for an order to show cause re contempt. A trial was held in the contempt proceeding, and Fine was found guilty of contempt for his continuing refusal to "furnish information to aid in the enforcement of the money judgment" as ordered by Commissioner Gross. The Court ordered Fine confined in jail until he agrees to furnish that information to aid in the enforcement of the money judgment. In its contempt order, the Court states that Fine may at any time file with the court a declaration stating that he is willing to answer the questions put to him in the judgment debtor examination, that upon receipt of the declaration the Court will set a date and time for the resumption of the judgment debtor proceeding and authorize the sheriff to transport Fine to said proceeding, and, that if Fine answers the questions concerning his assets that he has been ordered to answer, the Court will authorize the sheriff to release him from custody.

Fine has never filed such a declaration, but has con-

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tended that the Court is disqualified from enforcing the contempt order because all judicial officers of the Superior Court receive supplemental financial benefits from the County of Los Angeles, which is also a party to the underlying proceeding.

The contention that the judge presiding at the contempt proceeding is disqualified from enforcing the coercive contempt order has now been finally decided against Fine, and is not subject to further review. Fine appropriately raised the issue by filing a verified statement of disqualification for cause pursuant to C.C.P. Section 170.3(c)(1), which was stricken by the Court pursuant to the authority to do so set forth in C.C.P. Section 170.4(b). The exclusive means of seeking appellate review of that determination is a timely petition for writ of mandate to the Court of Appeal. C.C.P. Section 170.3(d). Fine is familiar with this procedure, and had previously pursued such a remedy (see FINE V. SUPERIOR COURT, 97 Cal. App. 4th 651 (2002)), but he did not timely seek such review in this case. Fine has therefore exhausted his rights to challenge the denial of a statutory judicial disqualification motion under California law, but he has the right to seek relief in federal court proceedings on the ground that the judgment of contempt is constitutionally invalid. ROTH V. PARKER, 57 Cal. App. 4th 542 (1997).

It appears that Fine has now exhausted his federal remedies as well. He has unsuccessfully sought relief

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in the United States District Court for the Central District of California, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court denied review of the Ninth Circuit decision on May 24, 2010. This Court will not entertain any further argument or proceeding on any of the issues that have been litigated and decided against Fine in federal or state court proceedings.

Fine now asserts, however, that his CONTINUED confinement will not induce him to furnish information to the judgment creditor to aid in the enforcement of the money judgment against him, pursuant to C.C.P. Section 708.110. This Court should therefore assess whether the confinement of Fine has ceased to serve its coercive purpose.

In a pleading received by this Court on May 17, 2010, Fine demands his immediate release citing In Re FARR, 36 Cal. App. 3rd 577, 584 (1974). Fine, however, uses the citation of the FARR case as a pretext to reargue that his confinement was unlawful from the outset for all of the reasons that he has previously litigated unsuccessfully in the California and federal courts. This Court will not entertain any further application from Fine that includes any attempt to relitigate such issues.

This Court is interested, however in any evidence that any party can present regarding the collectibility of the judgment against Fine in the absence of any testi-

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mony by him as to the location and value of his assets. The Court is also interested in the question of whether the continued incarceration of Fine will increase or decrease the likelihood of collecting such judgment. The Court is also interested in any other evidence that will provide the Court with an objective basis for determining whether the continued confinement of Fine will or will not assist the judgment creditor to collect the money judgment against Fine. All such evidence is to be presented by declarations under penalty of perjury that comply with C.C.P. Section 2015.5.

The parties are invited to submit such evidence, but only such evidence, to this Court by filing such declarations in this department on or before July 30, 2010. The parties may also file counter declarations, but only counter declarations, in this department on or before August 20, 2010. The declarations and counter-declarations shall be accompanied by a proof of service showing that a copy has been served on all other parties or counsel by hand delivery or fax.

The Court will determine what, if any, further proceedings to permit in this matter after reading and considering the declarations submitted pursuant to this order.

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