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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(El Dorado)**

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LEMOIN BREWER et al.,  
  
Plaintiffs and Respondents,  
  
v.  
  
LEE W. HALL et al.,  
  
Defendants;  
  
J. F. SHEA CONSTRUCTION, INC.,  
  
Objector and Appellant.

C069545  
  
(Super. Ct. No. PC20060324)

This appeal challenges the trial court’s postjudgment order, which granted a judgment creditor’s motion for damages against a third party for a violation of its garnishee duties with regard to a writ of execution and notice of levy. We agree the trial court erred and shall reverse and remand.

Lemoine Brewer and Michael Palmer, partners in Snows Quarry Products (collectively Snows Quarry), obtained a judgment of nearly \$1.5 million against L. W. Hall Company, Inc., which formerly did business under the name of Cobalt Crushing (hereafter Hall Inc.), for breach of a lease agreement. In enforcement of this judgment, Snows Quarry served a writ of execution and notice of levy on J. F. Shea Construction, Inc., in February 2010.<sup>1</sup> Snows Quarry brought the instant motion for damages against Shea for the latter's violation of its garnishee duties, contending Shea had issued three checks in excess of \$100,000 to Hall Inc. without good cause after service of the writ of execution and notice of levy. (Code Civ. Proc., §§ 701.010 & 701.020;<sup>2</sup> see 2 Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2012) ¶ 6:577, pp. 6D-62 to 6D-63 (rev. #1, 2012) [judgment creditor may determine garnishee liability by means of motion in underlying action]; see also *Ilshin Investment Co., Ltd. v. Buena Vista Home Entertainment, Inc.* (2011) 195 Cal.App.4th 612, 628-630 [distinguishing right to recover legal fees in claim in underlying action for breach of garnishee duties (§ 701.020) from independent creditor's suit (§ 708.210)].) After holding an evidentiary hearing, the trial court granted the motion and entered a "judgment" in favor of Snows Quarry.<sup>3</sup> Shea filed a timely notice of appeal.

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<sup>1</sup> We pause here to note that Snows Quarry challenges the identity of the entity that is actually liable for breach of garnishee duties, contending that J. F. Shea Company, Inc., a Nevada corporation, is the appropriate entity and *not* J. F. Shea Construction, Inc., a California corporation (hereafter Shea). We address this contention in part I of the Discussion (pp. 8-10, *post*).

<sup>2</sup> Undesignated statutory references are to the Code of Civil Procedure.

<sup>3</sup> As this is a postjudgment *motion*, it does not result in a "judgment" but simply a postjudgment *order* establishing the garnishee's liability. "[W]hile there may be numerous orders made throughout a proceeding, there is only one judgment." (*Passavanti v. Williams* (1990) 225 Cal.App.3d 1602, 1605.)

Shea contends the trial court erroneously concluded that Shea *must* have been doing business with *Hall Inc.*, rather than with its president, *Lee W. Hall* (hereafter Lee Hall), as an individual doing business under the name of L. W. Hall/Cobalt Crushing (hereafter Hall/Cobalt), because Lee Hall did not have the necessary contractor's license for the work for which Shea made payment. Shea also argues the evidence does not support the judgment because it ignored Shea's claim that Hall Inc. had an outstanding debt to Shea that would have offset any debt for the work performed. Finally, it argues the finding of Shea's lack of a good faith belief that it was making payment to Lee Hall as an individual is not supported by substantial evidence. Snows Quarry has moved for sanctions and requested attorney fees for a frivolous appeal.

We agree that the legal premise of the trial court's ruling with respect to Lee Hall's need for a contractor's license to crush rock foreclosed the trial court in its evaluation of the evidence from finding that Shea had *in fact* contracted with Lee Hall (in which case it did not violate any duty regarding garnisheed Hall Inc. funds in its possession).<sup>4</sup> While we would ordinarily remand for the trial court to redecide the motion on the present evidence and briefing free of this legal misconception, we find the evidence entitles Shea as a matter of law to denial of the motion, and in the interest of justice we will direct the trial court to do so. Snows Quarry's motion for sanctions and request for attorney fees is consequently without merit and is therefore denied.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Ordinarily we would limit our account of the facts to those favoring the trial court's ruling. Given the error of law in the trial court's ruling, we instead will provide

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<sup>4</sup> We note that Lee Hall's need for a contractor's license to crush rock did not arise in prehearing or posthearing briefing; the resolution of this issue is contrary to the scant testimony at the hearing; and neither the trial court nor Snows Quarry provides any authority for the issue.

an account of *all* the evidence at trial. We note the facts are for the most part not in dispute, merely the legal significance one should draw from them.

In the underlying action, the trial court determined that Snows Quarry should not take anything on any cause of action against Lee Hall as an individual. It accordingly entered judgment in January 2010 in his favor.

With the million-dollar judgment pending against Hall Inc., Lee Hall consulted with counsel about starting over. In December 2009, he obtained a new taxpayer identification number (TIN) for the new business, Hall/Cobalt. He did not surrender the existing fictitious name that Hall Inc. held that would expire in 2011, and did not file a fictitious name certificate for his sole proprietorship. (Bus. & Prof. Code, § 17900, subd. (b)(1) [individual including own name in business title not within definition of fictitious business name].) He opened new bank accounts for the business. Believing that he had a secured interest in the Hall Inc. equipment in excess of its value, he effected the defunct (but not dissolved) corporation's surrender of the equipment to him under a writ of execution, and began to seek work.

Shea was soliciting bids to crush rock in one of its quarries for Shea to use in the manufacture of the asphalt aggregate it used in highway and other public work projects. Shea had used Hall Inc. frequently in the past because it was obligated to its union to contract with union businesses if possible and Hall Inc. was one of two in the county. There had also been litigation initiated in 2007 under the corporate name of Hall Inc. against Shea, which resulted in a settlement in November 2007<sup>5</sup> under which Hall Inc. had an outstanding debt to Shea for overpayments.<sup>6</sup>

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<sup>5</sup> Hall Inc. did not file a dismissal of the action until January 2010.

<sup>6</sup> Shea's project manager, who kept track annually of Shea's efforts to mitigate the damages Hall Inc. owed to it through sales of the disputed materials that it had in inventory, had calculated a balance due in excess of \$90,000 as of May 2010. At best,

Lee Hall spoke with Shea's project manager on February 3, 2010, and made an attractive bid that obligated Shea only to buy up to a certain quantity of crushed rock, then buy only on an "as needed" basis. In the course of their conversation, Lee Hall told Shea's project manager about the change in Lee Hall's form of business as a result of the judgment against Hall Inc.

Lee Hall sent an e-mailed letter later that day confirming the terms, and Shea's project manager prepared a purchase order on the same date. The project manager was not aware that the sheriff had unsuccessfully attempted to serve the notice of levy on the vice-president of "J. F. Shea Construction, Inc." at Shea's Redding offices that afternoon on any funds due "LW Hall Company Inc dba Cobalt Crushing" (Shea as a matter of policy refusing to accept process anywhere other than its Los Angeles offices).<sup>7</sup>

Shea's vice-president filed a garnishee memoranda (former § 701.030) in response to this notice of levy and a subsequent one in June 2010, which attested to his understanding that Shea did not owe money to judgment debtor Hall Inc. (against which Shea had an offset under the 2007 settlement for any debts Shea might owe it) but rather to Lee Hall as an individual. Shea's vice-president reiterated this position at trial as the basis for issuing the checks to Lee Hall even after he received the notices of levy.

Lee Hall told the foreman of Shea's asphalt plant<sup>8</sup> about the change in business when the latter asked about Lee Hall's ability to operate in light of the judgment. Lee

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the balance could be mitigated only to less than \$21,000 if all the remaining inventory could be sold.

<sup>7</sup> The sheriff effected substituted service by mail on the vice-president at the Redding office on the following day.

<sup>8</sup> Snows Quarry makes mention in its brief of the fact that a person of the same name as the plant foreman was listed as agent for service of process for Hall Inc. in 2008. It did not, however, ask the plant manager any questions about this at the hearing.

Hall sent the plant foreman the TIN for the new business in March 2010, who then forwarded it to Shea's project manager. At some point, Lee Hall told Shea's vice-president as well about the need to make the change in his form of business. The vice-president did not request any documentation of the change, and was not aware of the form in which Lee Hall intended to operate.

Lee Hall sent invoices for payment on stationery using the Hall/Cobalt title. On its receipt, Shea's office staff, which did not have any direct knowledge of any of the details of Shea's contracts with vendors, would have done a search for a name that was reasonably close to Hall/Cobalt in Shea's records. This would have generated the vendor number for Hall Inc., because there had not been any notification to the office staff of the need for a new vendor number (which can be generated only upon receipt of a new W-9 in the name of the vendor with its TIN). The old vendor number was written on the invoices, and appeared on the checks issued to "Cobalt Crushing" next to the date, which Shea's vice-president signed. The vice-president did not as a normal matter pay any heed to the vendor numbers on invoices and checks submitted to him for signature. He would simply look at the payee and the amount, and question it only if it did not make sense. Lee Hall deposited these checks in the new accounts opened for Hall/Cobalt.

Sometime in June 2010, Shea's plant manager learned that the sheriff was seizing the Hall/Cobalt equipment at the quarry, and drove over there to make sure Shea property was not taken as well. He was familiar with the equipment Hall Inc. had used over the years, and Hall/Cobalt appeared to have been using the same equipment. In a subsequent proceeding in the underlying action, the court determined that Lee Hall in fact had a secured interest in the property of Hall Inc., but not greater than the value of the equipment. In its December 2010 order, the court declined to add Lee Hall as an additional judgment debtor and awarded him about \$196,000 in first priority from the

proceeds of the sale of the equipment.<sup>9</sup> After the January 2011 sale of the equipment, Lee Hall was unable to respond to complaints Shea had about the composition of the mix of crushed rocks, on the basis of which Shea asserted that it had overpaid him about \$51,000.

In December 2010, Lee Hall went to Shea's offices to remind them that he would need a 1099 form reflecting his compensation (a form not issued to corporations). This was the first that the office staff had learned of his change in status. The office had him fill out a W-9 with the new TIN and issued a new vendor number. It also issued a 1099 form to Hall/Cobalt in the amount of the checks issued to Cobalt Crushing.

On the issue of Lee Hall's lack of a contractor's license, the testimony at the hearing was brief. Shea's plant foreman did not have any knowledge of whether Lee Hall had a contractor's license. On the final page of testimony, Lee Hall stated, "You don't need a mining contractor's license to do mining." He explained he did not need a state license to do mining work on federal forest land, mines were under federal jurisdiction, and that under the state contractors' law there was not even a classification for a mining license. He based his views on his 40 years of experience. The nature of the contractor's license numbers that appeared on the stationery of Hall Inc. (A&B402271) was not addressed at any point in the trial court, though the prefixes "A" and "B" suggest general engineering and general building licensure. (See Gibbs & Hunt, Cal. Construction Law (16th ed. 2000) § 1.02, pp. 6-8) [license classifications].)

The trial court concluded that Lee Hall had "*attempted* to convert the operation of the rock crushing business into a sole proprietorship," run from the same location and using a similar fictitious name as Hall Inc. (as well as using equipment that had belonged

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<sup>9</sup> Snows Quarry is thus mistaken or malfeasant in asserting only that the trial court confirmed ownership of the equipment in Hall Inc. with a lien in favor of Snows Quarry.

to Hall Inc.), but did not register Hall/Cobalt as a fictitious name for the new business and had not obtained a contractor's license in his own name; "[b]ecause [Lee] Hall *could not* legally contract for work in California, *the only logical conclusion for the court to draw from the evidence* is that [Lee] Hall continued to operate under the contractor's license of" Hall Inc. and, even though he had obtained a new tax identification number for the new business, "that fact alone does not change the nature of the business. The business that [Lee] Hall was entering into *required a contractor's license* to crush rock. [Lee] Hall never obtained the required license and his continued operation *could only have been* done under the . . . contractor's license [of Hall Inc.]" (Italics added.) Because of its conclusion that as a matter of law Lee Hall *could not* operate as an individual, the trial court did not address Shea's claim that it *would not* have contracted to pay Hall Inc. for the work because of the debt that the latter owed it.

On the issue of whether Shea had a good faith belief that it was dealing with Lee Hall as an individual, the trial court cited Shea's failure to request any substantiation of Lee Hall's right to do business as a contractor (despite Shea's awareness of the legal difficulties of Hall Inc.) or to create a new vendor number for the new business, and its awareness that Lee Hall was using the same equipment as when he operated Hall Inc. Thus, "[d]ue to the lack of diligence by [Shea], [it] could not in good faith believe that Lee Hall was doing business" in any form other than as Hall Inc., for which Shea had received the writ of execution naming Hall Inc. as a judgment debtor. Its failure to hand over the funds was thus without justification.

## **DISCUSSION**

### **I. Standing to Appeal: A Frivolous Issue**

In its reply brief and in its July 2012 motion for sanctions and request for attorney fees, Snows Quarry asserts the "judgment," *which it prepared*, names J. F. Shea Company, Inc. (see fn. 1, *ante*), as the party actually liable for breach of garnishee

duties.<sup>10</sup> Deadpan, it then asserts that “an un-named corporation, Shea Construction, responded to the motion brought against [the parent company] and *seemingly* argued on its behalf,” though this “procedural irregularit[y]” was “never brought to the trial court’s attention nor complained of by any party. Yet the *trial court* was consistent, naming only [the parent company] in the [‘]judgment[’] appealed from.” (Italics added.) Continuing in this sangfroid manner, Snows Quarry further asserts that the writs and notices, the garnishee memoranda, and the section 701.020 motion named the parent company as the party to this proceeding, and “Appellant is someone else.” Snows Quarry thus contends as a threshold issue that Shea does not have standing to pursue this appeal, rendering it frivolous. Snows Quarry is being too clever by half (if not more).

Whether from mistake or malfeasance, this argument is premised on a blatant misrepresentation of the most significant part of the record. *Both* of the writs and notices of levy, as we stated above, are directed to the vice-president of *Shea* (the second identifying him as “CEO”), and the first includes the proof of service on *that* party.<sup>11</sup> The initial garnishee memorandum identifies the responding garnishee as Shea in the text (though it and the second garnishee memorandum include the name of the parent company in the *caption* as “defendant”). The second memorandum refers to the responding party only as “J. F. Shea.”

Even if the parties (including Shea) after this point took a casual approach to the various permutations of Shea’s name in the body of their filings, Shea’s filings

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<sup>10</sup> Based on the certificate of interested entities or persons in Shea’s opening brief, Snows Quarry asserts that J. F. Shea Company, Inc., is a Nevada corporation and “the parent corporation” that wholly owns and operates Shea, a California corporation. Snows Quarry prepared the “Final Judgment on Third Party Claim Against J. F. Shea Company, Inc.” for the trial court’s signature; we note counsel for “J. F. Shea Company, Inc.” declined to sign and the words “not approved” were indicated.

<sup>11</sup> Snows Quarry admitted at trial it could not obtain the proof of service of the second.

consistently list it as the party of record, as does the *trial court's* register of actions after the date Shea filed its opposition to the section 701.020 motion and the *clerk's* notice of the filing of the notice of appeal. More to the point, Snows Quarry does not explain how the trial court could have acquired jurisdiction over (or issued an enforceable order against) any party *other than* Shea.

Indeed, in Snows Quarry's closing posthearing brief, it asserted "thereafter *J. F. Shea Construction, Inc.* was duty bound by [the statutory provisions for a writ of execution]" to pay over to the sheriff any sums due Hall Inc., which "renders *J. F. Shea Construction Inc.* liable upon the issuance of [the] three checks," and as a result "[j]udgment creditors are entitled to judgment against *J. F. Shea Construction, Inc., a California [c]orporation.*" (Italics added.) The trial court titled the ruling *it* issued "Decision and Judgment Against [Shea]" and refers only to Shea in its text, thus proving false Snows Quarry's assertion that the trial court (at least in documents in which Snows Quarry did not have a hand) "was consistent [in] naming only [the parent company]."

This argument is therefore entirely frivolous. It does not merit any further response.

## **II. Statement of Decision: A Frivolous Issue**

Snows Quarry's other threshold issue raised in its brief and motion for sanctions asserts we must apply the doctrine of implied findings (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130) in this appeal because Shea never objected to the trial court's "statement of decision." We do not need to spell out the effect this doctrine has on appellate review because it is manifestly inapposite.

"A statement of decision is not required in ruling on a motion." (7 Witkin, Cal. Procedure (5th ed. 2008) Trial, § 392, p. 460.) Shea accordingly did not have any obligation to object to the trial court's *ruling*. Moreover, even if the procedure in section

632 for statements of decision was somehow applicable to this proceeding, the trial court omitted the preliminary step of first announcing a *tentative* decision to which the parties could raise any objections. (7 Witkin, *supra*, § 394, p. 463.) As this failed to provide Shea with any opportunity to raise objections (and none of its arguments on appeal involve claims of omissions or ambiguities in the ruling), the doctrine of implied findings cannot apply. Finally, even if we entertained Snows Quarry’s dubious proposition, the legal error that is the crux of Shea’s appeal appears on the face of the “statement of decision,” which absolves Shea of any duty to object in the trial court. (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 59.) Consequently, we find this issue to be entirely frivolous and do not address it any further.

### III. Licensure

A “contractor” subject to the Contractors’ State License Law (Bus. & Prof. Code, § 7000 et seq.) is “synonymous with” the term “ ‘builder’ ” (*id.*, § 7026), and thus is “one who undertakes to . . . ‘construct, alter, repair, add to, subtract from, improve, move, wreck or demolish, any building.’ ” (*Howard v. State* (1948) 85 Cal.App.2d 361, 364.) On its face, then, one who crushes rock in a quarry is not subject to the licensing law. Moreover, as Shea points out, a supplier of materials (or finished goods) who does not in the process perform more than incidental work that would come within the definition of a contractor is not subject to licensure. (Bus. & Prof. Code, § 7045; *Walker v. Thornsberry* (1979) 97 Cal.App.3d 842, 848; cf. *King v. Hinderstein* (1981) 122 Cal.App.3d 430, 442 [analogizing to licensing law; “*substantial installation*” comes within its purview]; see *Banis Restaurant Design, Inc. v. Serrano* (2005) 134 Cal.App.4th 1035, 1046 [even if the plaintiff had not filed lien (which applies to fixtures subject to licensing law), services performed in course of supplying materials more than incidental and thus subject to licensing]; Gibbs & Hunt, *supra*, Cal. Construction Law, § 1.06, p. 23.)

The trial court, as we noted at the outset, did not provide any basis for ruling unexpectedly that Hall/Cobalt was subject to the licensing law in crushing rock to supply to Shea, and Snows Quarry does not make any attempt to defend the ruling beyond misstating the record yet again (claiming that the issue of Hall/Cobalt's work is based on "disputed facts," but citing only the second garnishee memorandum in which Shea discussed Lee Hall's providing (undescribed) services, but not indicating that these services were anything more than the provision of crushed rock). Rather, Snows Quarry blithely waves away this issue and asserts we should uphold the trial court's *result* despite the analytic flaw in its reasoning. This we cannot do.

By virtue of its conclusion that it was legally impossible for Shea to have contracted with Hall/Cobalt because the company lacked a contractor's license, the trial court never considered the necessary premise to liability under section 701.010: If the contract *was in fact* with Hall/Cobalt, then Shea did not have any duty under the writ of execution in the first place to remit *Hall Inc.* funds to Snows Quarry. To uphold the order imposing liability, we would thus need to find the evidence *as a matter of law* establishes that Shea contracted with Hall Inc. before assessing whether substantial evidence supports a finding that Shea did not in good faith think it was contracting with Hall/Cobalt.

To the contrary, the evidence at trial demonstrated Lee Hall did all he needed to do to establish Hall/Cobalt as a business: acquiring the TIN, opening new business accounts, changing his stationery, and acquiring equipment under a claim of right from Hall Inc. (albeit one that the trial court subsequently found was not as extensive as Lee Hall had believed). Dissolving Hall Inc. or surrendering its fictitious name of Cobalt Crushing were not essential to Lee Hall's commencing business as an individual under the name of L. W. Hall/Cobalt Crushing (which was not itself a fictitious name within the statutory definition). All the witnesses who were directly involved with Lee Hall

expressed their intent to contract with Hall/Cobalt, not Hall Inc., and Lee Hall provided the new TIN to Shea for Hall/Cobalt to confirm its independent status. If a TIN is good enough for the tax authorities, Snows Quarry does not give any persuasive reason why Shea needed to confirm every other aspect of Hall/Cobalt's start-up. Were it not for the failure to notify the Shea accounting department (which does not have any direct role in Shea's line operations) about the new form of business in which Lee Hall was operating, the old vendor number would not even have been employed,<sup>12</sup> and Shea in any event ultimately filed tax information reporting payments to *Hall/Cobalt*.

This evidence not only fails to entitle Snows Quarry as a matter of law to a finding that Shea did not actually contract with Hall/Cobalt, we believe it entitles Shea to the contrary finding as a matter of law. Absent the erroneous legal ruling that Hall/Cobalt was not a viable business, the only way in which a trier of fact could conclude that there was in fact an intent to contract with Hall Inc. would be the *arbitrary* discrediting of the uncontradicted percipient witnesses and documentary evidence, which a trier of fact is not permitted to do. (*Matthews v. Civil Service Commission* (1958) 158 Cal.App.2d 169, 173.) It would be arbitrary in the present case because we find any contrary *inference* of an intent to contract with Hall Inc. *irrational* as a matter of law. (*California Shoppers, Inc. v. Royal Globe Ins. Co.* (1985) 175 Cal.App.3d 1, 44-45.) Even if Shea had a strong motive to continue to work with *Lee Hall* because of their past relationship and his union business, this would not explain a desire to enter into a contract to pay *Hall Inc.* (which has an outstanding *debt* to Shea) rather than just pay Hall/Cobalt directly. Thus, disbelief of the evidence of an intent to contract with Hall/Cobalt does not provide any basis for the opposite inference. "A legal inference cannot flow from the nonexistence of a fact; it can

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<sup>12</sup> Nor, for that matter, does Shea's *accounting department's* use of the old vending number have any significance if those with the *authority to contract* in fact intended a deal with Hall/Cobalt.

be drawn only from a fact actually established.” (*Eramdjian v. Interstate Bakery Corp.* (1957) 153 Cal.App.2d 590, 602; accord, *People v. Herrera* (2006) 136 Cal.App.4th 1191, 1205; *People v. Stein* (1979) 94 Cal.App.3d 235, 239; *People v. Samarjian* (1966) 240 Cal.App.2d 13, 18 [must prevail on own evidence, “not on a vacuum created by rejection of a defense”].) No such fact exists in this record.

In light of this evidence, Snows Quarry’s professed belief in the existence of a contract with Hall Inc. rings hollow, and these proceedings have every indication of an intent to circumvent the liability-limiting effect of the corporate form of Hall Inc. in order to recoup its judgment from Lee Hall as an individual. It is time to bring this litigation to a close in the interests of justice. Because the trial court as the trier of fact could not reasonably find that Shea did *not* contract with and make payment to Hall/Cobalt, on remand we will direct it to enter an order finding that Shea is not liable for any breach of its garnishee duties because it contracted with and paid funds to Hall/Cobalt. (See *People v. Barragan* (2004) 32 Cal.4th 236, 249-250 [reviewing court has power to direct entry of judgment for appellant where, upon full consideration of record, court finds respondent cannot establish case on remand under any theory grounded in reason].)

#### **IV. Sanctions: A Frivolous Request**

Given the frivolous nature of issues that Snows Quarry raised in its brief and its misrepresentations of the record, this puts it in the position of the proverbial pot pointing at the kettle. In any event, our reversal of the trial court’s order necessitates denial of the motion for sanctions and request for attorney fees.

#### **DISPOSITION**

The order imposing liability for a breach of third party garnishee duties under section 701.010 is reversed. The matter is remanded with directions to enter a new order denying the motion for damages. Snows Quarry’s motion for sanctions and request for

attorney fees is denied. Objector and appellant J. F. Shea Construction, Inc., shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

\_\_\_\_\_ **BUTZ** \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ **ROBIE** \_\_\_\_\_, Acting P. J.

\_\_\_\_\_ **MURRAY** \_\_\_\_\_, J.