

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

GRAY1 CPB, LLC,

Plaintiff and Respondent,

v.

GULFSTREAM FINANCE, INC., et al.,

Defendants and Appellants.

G047966

(Super. Ct. Nos. 30-2010-00361680,
30-2010-00364277)

O P I N I O N

Appeals from an order of the Superior Court of Orange County, Robert J. Moss, Judge. Affirmed in part, reversed in part.

Dorsey & Whitney, John S. Baker, Jill A. Gutierrez and Lynnda A. McGlinn for Defendant and Appellant Gulfstream Finance Inc.

Law Offices of Jeffrey Benice and Jeffrey Benice for Defendants and Appellants Bruce and Kathy Elieff.

Shumener, Odson & Oh, Robert J. Odson and Edward O. Morales for Plaintiff and Respondent.

* * *

Gray1 CPB, LLC (Gray1) filed a motion before the discovery referee in this matter seeking evidence and issue preclusion sanctions against defendants Gulfstream Finance, Inc. (Gulfstream), Bruce Elieff (Elieff) and Kathy Elieff. The motion also sought monetary sanctions against Gulfstream, but did not seek monetary sanctions against the Elieffs. The discovery referee issued his report and, in addition to recommending the imposition of evidentiary and issue preclusion sanctions against Gulfstream and the Elieffs, recommended the imposition of more than \$159,000 in sanctions against the Elieffs, as well as Gulfstream. The court then approved the report and recommendation.

Defendants appealed and contend the trial court abused its discretion in imposing the various sanctions. We will not review the propriety of the evidentiary and issue preclusion sanctions because such orders are not subject to an interlocutory appeal. (*Lund v. Superior Court* (1964) 61 Cal.2d 698, 709; *Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1432.) We will, however, review the issuance of the monetary sanctions.

I

BACKGROUND¹

Gray1 obtained a judgment against the Elieffs for millions of dollars in a breach of guaranty action. Gray1 was unable to satisfy the judgment for almost two years. (*Gray1 CPB, LLC v. SCC Acquisitions, Inc.* (2015) 233 Cal.App.4th 882, 886.) In an effort to collect on the judgment, Gray1 obtained liens against three of the Elieffs' real estate properties, only to discover three properties had prior liens on them in favor of Gulfstream. Gray1 initiated the present action in April 2010 for declaratory relief and to

¹ We granted Gulfstream's unopposed motion for us to take judicial notice of our docket in *Gray1 CPB, LLC v. SCC Acquisitions Inc.* (G047429) and the petition for a writ of mandate filed in *Gulfstream Finance Inc. v. Superior Court (Gray1CPB, Inc.)* (G046771).

set aside liens it alleged were fraudulently placed on the Elieffs' properties as part of a scheme to insulate the Elieffs' properties from the judgment.

Ten days after Gray1 initiated the present action, Gulfstream filed a complaint to judicially foreclose on the liens. Elieff is not indebted to Gulfstream. Gulfstream initiated the foreclosure action as the behest of Blackstar Capital, S.A.'s (Blackstar) principal, Jeremy Murphy. The court consolidated the two actions.

Gulfstream contends it and Gray1 are but creditors competing for the same security. Gulfstream maintains that it and its predecessor, Canyon Finance, Inc. lent money to Elieff. Gray1, on the other hand, contends Elieff's own money was used to fund the "loans." For example, Gray1 asserts it obtained discovery from Ansbacher Bahamas Bank, Ltd. (Ansbacher) that permitted Gray1 to trace the source of one \$7.6 million loan as follows: On October 12, 2006, Horizon Development Limited, a Bahamas entity, received \$7.6 million from a company owned by Elieff, TDV Development Corporation. Eight days later, on October 20, 2006, Horizon Development Limited transferred \$7.6 million and another \$3.7 million to Bonny Cord Group Limited. That same day, Bonny Cord Group Limited transferred \$7.6 million to Paradise Hills SA. Also on that same day, Paradise Hills SA transferred \$7.6 million to Regency Holdings. On October 24, 2006, Regency Holdings transferred \$7.6 million to Canyon Finance, Inc., Gulfstream's predecessor. Two days later, on October 26, 2006, Canyon Finance, Inc. wired \$7.6 million to Elieff. Bank records also permitted Gray1 to track a December 26, 2007 transfer of \$18.5 million from an account of Elieff's to an entity that within two days transferred substantially the same amount of funds to another entity and less than a week later \$18.5 million was loaned back to Elieff.

In February 2011, the superior court appointed a discovery referee. Extensive discovery was undertaken, including discovery in foreign countries. Discovery proceedings were contentious and the discovery referee filed 30 separate reports and recommendations with the trial court. Through the course of filing the 30 reports and

recommendations, the discovery referee concluded the defendants “have engaged in an ongoing practice of discovery abuse that has prevented [Gray1] from obtaining discoverable information to support its claims herein.”

In March 2011, the discovery referee recommended Gray1 be permitted to conduct discovery in foreign countries so it could trace the genealogy of the purported loans. As the discovery referee concluded, Gray1 was entitled “to conduct discovery in an effort find support for its contention that the Gulfstream loans are a sham.” Gray1 sought the deposition of Ansbacher in the Bahamas. The purpose of the deposition was to authenticate the records of the bank. Just minutes before the deposition was to begin, Gray1’s attorney in the Bahamas and the Attorney General for the Bahamas were informed Gulfstream and Elieff, without notice to Gray1’s counsel in the Bahamas or the Bahamas Attorney General, had obtained a stay of all depositions set pursuant to Orange County Superior Court’s letter request.

During the course of discovery proceedings, Gray1 attempted to take the depositions Gulfstream and Blackstar, the company that purportedly loaned the Elieffs money. Murphy testified as the person most knowledgeable from Blackstar. Murphy refused to answer questions based on a Cayman Island confidentiality statute. The discovery referee reported that “Blackstar, through Jeremy Murphy, by refusing to provide responsive answers to deposition question[s], refusing to produce documents having clear discovery relevance, and asserting as the basis therefore certain privileges and right[s] of confidentiality after the Court had found such assertions to be unsupported, essentially has prevented [Gray1] from acquiring information that would support its contention that Blackstar is owned by Elieff, and in funding the Gulfstream Loan to Elieff it was merely loaning to Elieff his own money, and using this transaction as a vehicle to create the lien on Elieff’s property that is being attacked by [Gray1] in this action.”

Robert Venneri, the sole shareholder and President of Gulfstream, testified at a deposition as the person most knowledgeable of Gulfstream. Gulfstream has no employees and has never had a California lender's license. Venneri testified he destroys Gulfstream's e-mails in December of each year. Venneri did not look in his Gulfstream e-mail folder to see if there were any responsive e-mails after becoming aware of Gray1's request for production of documents. Indeed, Venneri admitted he did nothing after receiving the request for the production of documents, other than confer with counsel. Venneri further admitted he had e-mail communications in 2009 or 2010 with Blackstar concerning the Elieff loan.

During discovery, a sample of orders made against Gulfstream, Blackstar, or Elieff include: Order overruling Gulfstream's objections to Gray1's subpoena to Blackstar; order overruling Gulfstream's objections to orders authorizing foreign discovery; order requiring Gulfstream to provide further answers to special interrogatories; order directing Elieff to respond to request for admissions and imposing sanctions; order requiring Blackstar to appear for deposition; order requiring Gulfstream to provide further responses to Gray1's request for production; order directing Elieff to respond to requests for production and imposing sanctions; order requiring Blackstar to appear for deposition; order requiring Gulfstream to provide further responses to requests for admissions; order directing Blackstar to produce documents and a privilege log; and multiple orders for Venneri to appear for deposition. Eventually, in May 2012, Gulfstream and Elieff were ordered to desist from collaterally attacking the trial court's letters request in foreign jurisdictions.

On April 16, 2012, Gray1 filed a motion for terminating sanctions. Gray1 set forth the history of discovery abuse by Gulfstream and its principals, Blackstar and Murphy. Gray1 also alleged Gulfstream willfully withheld or destroyed several documents it had been ordered to produce, that Blackstar funneled at least \$5 million to Elieff during the present litigation at Gulfstream's instructions. Gulfstream also withheld

or destroyed documentation that had been ordered disclosed, including a March 9, 2010 e-mail by which Murphy directed Venneri to file the judicial foreclosure action. Gray1 further asserted that Gulfstream and Elieff collaterally attacked the superior court's discovery rulings in the Bahamas, preventing Gray1 from conducting the depositions of Ansbacher and two others. The discovery referee's June 23, 2012 report and recommendation, adopted by the court on July 12, 2012, did not grant Gray1 the relief it requested in its motion for terminating sanctions, but it advised Gray1 to file specific suggested evidentiary and issue preclusion sanctions to be imposed.

In the interim, on May 4, 2012, the superior court found defendants "have engaged in abuse of the discovery process by collaterally attacking in a foreign jurisdiction the rulings of this Court regarding the nature and scope of discovery in this action," and ordered defendants to desist from such action. Notwithstanding the order to desist, Gulfstream's counsel filed an affidavit in the Grand Court of the Cayman Islands Financial Services Division dated July 30, 2012. That declaration stated judgment in the underlying guaranty action had been fully satisfied and that Gray1 was "no longer a legitimate creditor seeking to enforce a judgment."

In August 2012, as suggested by the court, Gray1 filed its motion for imposition of evidentiary sanctions or, in the alternative, appropriate relief. The motion set forth a number of purported discovery abuses, including incidents referred to in Gray1's earlier motion for terminating sanctions. Evidentiary sanctions were sought against Gulfstream and Elieff, issue preclusion sanctions against Gulfstream, and \$244,572.03 in monetary sanctions against "Gulfstream, Venneri, Blackstar, Murphy and their attorneys Dorsey & Whitney LLP." (Original capitalization and bolding omitted.)

The discovery referee recommended the court adopt eight evidentiary and issue preclusion sanctions, and impose \$159,971.15 in sanctions. In recommending an award of the lesser amount, the referee found that amount was "incurred in attempting to implement the Letters Rogatory issued by this court and . . . obtaining the records of

Ansbacher, both of which efforts were frustrated by [d]efendants’ abuse of the discovery process.”

On November 29, 2012, the court adopted the recommendations, including the recommendation that “[d]efendants shall forthwith pay to [Gray1] the sum of \$159,971.15 as and for monetary sanctions for abuse of the discovery process by [d]efendants.” On January 25, 2013, Gulfstream filed its notice of appeal from “the trial court’s . . . order directing payment of monetary sanctions by Gulfstream in the amount of \$159,971.15.”

On December 18, 2012, the Elieffs filed a motion for reconsideration of the court’s November 29, 2012 sanctions order. On March 15, 2013, the court stayed the hearing on the motion, presumably pending issuance of the remittitur in *Gray1 CPB, LLC v. SCC Acquisitions, Inc.*, *supra*, 233 Cal.App.4th 882. That same day, the Elieffs filed their notice of appeal from “the [t]rial [c]ourt’s November 29, 2012 Order re ‘Report and Recommendation of Discovery Referee.’” (Italics omitted.)

II

DISCUSSION

An order directing monetary sanctions by a party for an amount exceeding \$5,000 is appealable. (Code Civ. Proc.,² § 904.1, subd. (a)(12).) “We review the propriety of a discovery sanctions award for abuse of discretion and uphold it unless it “exceeds the bounds of reason” [Citation.]’ [Citation.]” (*Espinoza v. Classic Pizza, Inc.* (2003) 114 Cal.App.4th 968, 975.) We presume the court’s order is correct and we draw all reasonable inferences in favor of the order. (*Aguire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 970.) The trial court’s factual determinations are reviewed for substantial evidence. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1032.)

² All further undesignated statutory references are to the Code of Civil Procedure.

A. *Nonmonetary Sanctions*

Before addressing the issues raised by defendants, we note the court issued monetary and nonmonetary sanctions. As stated above, a court order imposing monetary sanctions in excess of \$5,000 is appealable. (§ 904.1, subd. (a)(12).) “A trial court’s order is appealable when it is made so by statute. [Citations.]” (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696.) The imposition of evidentiary sanctions and issue preclusion sanctions are not reviewable by way of an interlocutory appeal (*Lund v. Superior Court, supra*, 61 Cal.2d at p. 709; *Doe v. United States Swimming, Inc., supra*, 200 Cal.App.4th at p. 1432; § 904.1), and defendants have not sought writ review of the nonmonetary sanctions. (*Johnson v. Superior Court* (2000) 80 Cal.App.4th 1050, 1060-1061.) Additionally, Gulfstream’s notice of appeal stated it appealed from “the trial court’s November 29, 21012, order directing payment of monetary sanctions by Gulfstream in an amount of \$159, 971.15, an amount that exceeds \$5,000.00.” A notice of appeal that specifies only a portion of an order may not be extended beyond its logical limits to include other portions of the order, especially parts that are not appealable. (Cf. *Shiver, McGrane & Martin v. Littell* (1990) 217 Cal.App.3d 1041, 1046 [“a notice of appeal which specifies a portion of a judgment may not be stretched beyond its logical limits to include other parts of the judgment”].) Because nonmonetary sanctions are not appealable, we will not review the evidentiary and issue preclusion sanctions.

B. *The Elieffs’ Appeal*

1. *The Timeliness of the Appeal*

The standard time in which an appeal must be filed is set forth in California Rules of Court, rule 8.104(a)(1).³ Pertinent to this appeal, that rule provides: “Unless a

³ All undesignated references to rule sections are to the California Rules of Court.

statute, rule 8.108, or rule 8.702 provides otherwise, a notice of appeal must be filed on or before the earliest of: [¶] . . . [¶] (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled ‘Notice of Entry’ of judgment or a file-stamped copy of the judgment, accompanied by proof of service. . . .” (Rule 8.104(a)(1)(B).) That time period is extended by rule of court when a valid motion for reconsideration of the appealable order was filed. “If any party serves and files a *valid motion to reconsider* an appealable order under Code of Civil Procedure section 1008, subdivision (a), the time to appeal from that order is extended for all parties until the earliest of: [¶] (1) 30 days after the superior court clerk, or a party serves an order denying the motion or a notice of entry of that order; [¶] (2) 90 days after the first motion to reconsider is filed; or [¶] (3) 180 days after entry of the appealable order.” (Rule 8.108(e)(1) - (3), italics added.) We do not have jurisdiction to hear an untimely appeal. (*Branner v. Regents of University of California* (2009) 175 Cal.App.4th 1043, 1049; rule 8.104(b).)

The Elieffs have appealed from the court’s November 29, 2012 order imposing monetary sanctions in excess of \$5,000. They were served a filed-stamped copy of the order on December 4, 2012. They filed a motion for reconsideration of the November 29, 2012 order on December 18, 2012. The court did not decide the motion for reconsideration. It stayed the hearing on the motion, presumably until a final determination on the issue of whether the judgment on the matter that made Gray1 the Elieffs judgment creditor has been satisfied. The Elieffs filed their notice of appeal on March 15, 2013.

To be timely, the Elieffs’ notice of appeal must have been filed within 60 days of their being served with a file-stamped copy of the November 29, 2012 order (rule 8.104(a)(1)(B)), unless they filed a “valid motion to reconsider” the order, in which case a notice of appeal filed within 90 days of the filing of the valid motion for reconsideration would be timely (rule 8.108(e)(2)). Because the Elieffs’ notice of appeal was filed more

than 60 days from the date they were served with a file-stamped copy of the November 29, 2012 order, but within 90 days of the filing of their motion for reconsideration, we must determine whether their motion for reconsideration was “valid.” That in turn depends upon whether the motion for reconsideration was timely filed. (Rule 8.108(e).)

The Elieffs contend their motion was timely because section 1008 deems a motion for reconsideration timely if filed “within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law” (§ 1008, subd. (a)), and they were never served with a document entitled “notice of entry.” Gray1 maintains that although the Elieffs were not served with a document entitled “notice of entry,” they were served with a file-stamped copy of the order on December 4, 2012, and that fulfills the same purpose as a notice of entry. Therefore, according to Gray1, the Elieffs’ motion for reconsideration had to be filed no later than 10 days following such service (December 14, 2012) to be considered timely, i.e., valid.

Although subdivision (a) of section 1008 states the time period in which to file a motion for reconsideration is “within 10 days after service upon the party of written notice of entry of the order,” service of a file-stamped copy of the order suffices to start the 10-day time period in which a motion to reconsider may be filed. (Cf. *Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1268; see *Parris v. Cave* (1985) 174 Cal.App.3d 292, 294 [“there can be no better notice of what an order says than is provided by a file-stamped copy of the order”].) Therefore, Gray1’s December 4, 2012 service of the file-stamped copy of the order imposing monetary sanctions started the 10-day time period in which the Elieffs could file a valid motion for reconsideration.

December 4, 2012, fell on a Tuesday. Ten days later, December 14, 2012, fell on a Friday. The Elieffs’ filed their motion for reconsideration on Tuesday, December 18, two court days after December 14, 2012. Section 1013, subdivision (c), provides that although service is complete when the document served by Express Mail is deposited, “any period of notice and any right or duty to do any act or make any response

within any period or on a date certain after service of the document served by Express Mail . . . shall be extended by two court days.”

Gray1 argues the two court days filing extension provided by section 1013, subdivision (c), does not apply in this matter because of subdivision (b) of section 1005: “Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion, papers opposing a motion, or reply papers governed by this section.” (§ 1005, subd. (b).) However, section 1005 only applies in a listed number of circumstances, the last of which is “[a]ny other proceeding under this code in which notice is required *and no other time* or method is prescribed by law or by court or judge.” (§ 1005, subd. (a)(13), italics added.) By its own terms, section 1005 does not apply to a motion for reconsideration because section 1008 specifically sets forth the time period in which a motion for reconsideration must be filed. Additionally, section 1005 applies to the time between the filing of the notice and the date of the hearing, not the time between an adverse decision and the filing of a motion for reconsideration.

Because section 1005 does not apply in this matter, the Elieffs had until December 18, 2012 (two court days after December 14) in which to file a timely notice of motion for reconsideration. The Elieffs’ timely filed their motion for reconsideration, so the motion was valid. Accordingly, the Elieffs’ had 90 days from the filing of their motion for reconsideration in which to file their notice of appeal. (Rule 8.108(c)(2).) Their notice of appeal was filed within that 90-day period and was timely as well.

C. Gray1’s Standing to Bring a Motion for Sanctions

On June 8, 2012, the Friday before the scheduled hearing on Gray1’s motion for terminating sanctions, Elieff had a check delivered to Gray1, satisfying the judgment in the guaranty action. Defendants argue that in light of the satisfaction of the underlying judgment, Gray1 lacked standing to bring the motion for discovery sanctions.

They reason that Gray1 had standing to file this lawsuit only because it was a judgment creditor of the Elieffs, and once the underlying judgment was satisfied, Gray1 no longer has standing in this case. We disagree.

Whether Gray1 may continue to prosecute the lawsuit (based on the satisfaction of the underlying judgment) has apparently not yet been decided by the trial court. “When a court has jurisdiction over the parties and subject matter of a suit, its jurisdiction continues until a final judgment is entered.” (*Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 437.) Gulfstream contends the issue is one of Gray1’s standing, not whether the court has jurisdiction. Gulfstream’s reasoning, carried to its logical extreme, would preclude Gray1 from filing any response to a motion to dismiss based on the underlying judgment having been satisfied. Our legal system does not work that way. So long as the case is pending before the superior court, it may decide issues properly raised.

This case has not yet been resolved one way or the other. Presumably the superior court will reach the issue of whether Gray1 may continue prosecuting the lawsuit now that the underlying judgment—the judgment that gave Gray1 its status as a judgment creditor of the Elieffs—has been satisfied, but the court has not yet addressed the issue. Until such time, the court has jurisdiction to decide, and Gray1 has standing to litigate, discovery issues. (See *Frank Annino & Sons Construction, Inc. v. McArthur Restaurants, Inc.* (1989) 215 Cal.App.3d 353, 357 [court had jurisdiction over issue of defendant’s sanctions motion even though it was brought *after* defendant was dismissed from the case].) There is no reason in law or logic that a judgment creditor who brought a lawsuit to set aside purportedly fraudulent liens used to protect the judgment debtor’s property from execution, and who has been the victim of abusive discovery conduct by the defendant that caused the plaintiff to incur substantial attorney fees, should be denied a remedy simply because the judgment debtor decided to satisfy the underlying judgment prior to the hearing on the plaintiff’s sanction motion. Finding such a plaintiff lacks standing to bring a motion for discovery sanctions before the action is dismissed, would

encourage a judgment-debtor defendant to engage in discovery abuses. Such a defendant could then safely engage in a course of abusive discovery practice with the hope of prevailing and, knowing that if he or she gets caught, monetary sanctions can be avoided by the simple expedient of satisfying the underlying judgment.

Additionally, there are occasions where a party may litigate a previously violated statutory right even when that party is no longer in the lawsuit. In *Frank Annino & Sons Construction, Inc. v. McArthur Restaurants, Inc.*, *supra*, 215 Cal.App.3d 353, a Mr. Dupuis was named as an individual defendant. (*Id.* at p. 355.) During the litigation, Dupuis filed a motion for summary judgment, which plaintiff's attorney admitted to Dupuis's counsel was "well taken." Prior to the hearing on the motion, the plaintiff dismissed Dupuis from the lawsuit. (*Id.* at p. 356.) After Dupuis was dismissed from the action, he filed a motion for sanctions, alleging plaintiff and its counsel's actions and tactics in prosecuting the lawsuit against him were made "in bad faith, frivolous and intended solely to cause delay." Plaintiff contended the court did not have jurisdiction to consider the motion because Dupuis was no longer a party to the lawsuit. (*Ibid.*)

The appellate court found the trial court "had jurisdiction over Dupuis's sanction motion even though plaintiff had dismissed Dupuis as a party." (*Frank Annino & Sons Construction, Inc. v. McArthur Restaurants, Inc.*, *supra*, 215 Cal.App.3d at p. 357, original capitalization omitted.) The court noted that while a court generally does not have jurisdiction over a party once the party is no longer in the lawsuit, there are exceptions to the rule "in order to give meaning and effect to a former party's statutory rights." (*Ibid.*) Discovery sanctions are statutorily authorized. (*Nickell v. Matlock* (2012) 206 Cal.App.4th 934, 944; §§ 2023.010-2023.040.)

Our conclusion that the court had jurisdiction to order sanctions in this matter notwithstanding defendants' contention that Gray1 no longer has standing in this enforcement action, is consistent with the decision in *Frank Annino & Sons Construction, Inc. v. McArthur Restaurants, Inc.*, *supra*, 215 Cal.App.3d 353, and the cases cited

therein. Just as “it cannot be contemplated that the legislature, having provided authority and means for securing of costs to litigants, intended to leave a defendant remediless against a plaintiff who chose to bring an action and put a defendant to great costs in preparing to meet the same and then dismiss the suit” (*id.* at p. 358), the same reasoning compels the conclusion that a judgment debtor cannot avoid sanctions for its abusive discovery conduct by satisfying the outstanding judgment. The fact that Gulfstream was not the judgment debtor makes no difference. Gulfstream was named as a defendant along with the Elieffs because the lawsuit was based on Grayl’s contention that Gulfstream was part a scheme to defraud the Elieffs’ creditors. Accordingly, we reject defendants’ contention. We conclude the motion for sanctions was properly heard by the superior court.

D. *The Monetary Sanctions*

1. *Gulfstream*

“The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney’s fees, incurred by anyone as a result of that conduct. . . . If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.” (§ 2023.030, subd. (a).) A court has wide discretion in ordering monetary sanctions in connection with discovery abuses. (*Franklin Capital Corp. v. Wilson* (2007) 148 Cal.App.4th 187, 206.) The existence of conflicting evidence does not undermine the trial court’s factual findings, express or implied. (*Ellis v. Toshiba American Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 878.)

As noted above, the extensive discovery disputes were evidenced in approximately 30 reports and recommendations submitted to the trial court by the

discovery referee. In recommending the court order sanctions against Gulfstream, the discovery referee concluded the record supported Gray1's contention that Gulfstream "engaged in an ongoing practice of discovery abuse." Gray1 sought more than \$244,000 in monetary sanctions, but the discovery referee recommended and the court ordered sanctions in the amount of \$159,971.15.

Gulfstream contends the order for monetary sanctions is not supported by the evidence and the sanctions order improperly holds it responsible for the conduct of Blackstar and Murphy. We disagree. First, as to holding Gulfstream responsible for the conduct of Blackstar and Murphy: The judicial foreclosure action was initiated by Gulfstream, but Elieff did not owe Gulfstream money. The action was undertaken by Gulfstream at Blackstar's behest, based on a debt Elieff purportedly owed Blackstar. As was found below, Blackstar is Gulfstream's principal. For that reason, the discovery referee referred to Gulfstream as "the nominal party to this action." Gulfstream, acting as Blackstar's agent, cannot expect its principal's abuse of the discovery process will not affect the lawsuit it brought on the principal's behalf, especially when *both* have engaged in abusing the discovery process, apparently to the same end. Under this set of facts, it is appropriate that Gulfstream should be saddled with the acts of the principal.

As stated above, Gray1 sought over \$244,000 in sanctions. Included in that amount were fees incurred by Gray1's Bahamas counsel from January 30 to May 2, 2012, in attempting to depose parties designated in the court's letters request and prevented by collateral attacks on the court's letter request, drafting motions to compel Gulfstream's compliance with discovery, and fees incurred in meeting and conferring with Gulfstream and issuing subpoenas. Also included in the amount requested were \$2,680 for drafting a motion to compel Gulfstream to comply with its statement of compliance; \$2,680 for drafting a motion to compel Gulfstream to comply with Gray1's inspection demand; \$6,034 for drafting a motion to compel Gulfstream to provide further responses to interrogatories; \$4,030 for drafting a motion to compel Gulfstream to provide further

responses to Gray1's request for production; \$4,040 for successfully opposing Gulfstream's motion to compel further responses; \$2,430 for Gray1's motion to compel Gulfstream to provide further responses to Grays'1 request for admission; \$22,220 for meeting and conferring with Gulfstream, and litigating other discovery issues; \$5,252 for opposing Blackstar's motion for a protective order; \$3,645 for litigating a motion to compel Venneri's deposition; \$6,730 for opposing Blackstar's motion for reconsideration; \$6,060 for litigating Gray1's motion for evidentiary and issue preclusion sanctions; \$9,480 for drafting the motion for terminating sanctions that resulted in the court directing Gray1 to file a motion for evidentiary and issue preclusion sanctions; and \$18,800 related to drafting and litigating the motion for sanctions.

“Although a fee request ordinarily should be documented in great detail, it cannot be said in this particular case that the absence of time records and billing statements deprived the trial court of substantial evidence to support an award; we do not reweigh the evidence. [Citation.]” (*Weber v. Langholz* (1995) 39 Cal.App.4th 1578, 1587.) Accordingly, we affirm the court's award of monetary sanctions against the defendants.

2. *The Elieffs*

As stated above, in April 2012, Gray1 filed a renewed motion for termination sanctions against Gulfstream, but not the Elieffs. The discovery referee did not grant the relief requested by Gray1, but solicited Gray1 to file proposed evidentiary and issue preclusion sanctions. Following that decision, Gray1 filed its motion for evidentiary, issue preclusion, and monetary sanctions on August 15, 2012. The motion clearly stated it sought evidentiary sanctions against Gulfstream *and* Elieff, and monetary sanctions against “Blackstar, Murphy, Gulfstream, Venneri, and Dorsey & Whitney LLP . . . jointly and severally, in the amount of \$244,572.03.” Nowhere in the motion is there any reference to Gray1 seeking monetary sanctions from the Elieffs.

“The essence of due process is the requirement that ‘a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.’” (*Mathews v. Eldridge* (1976) 424 U.S. 319, 348.) The purpose of due process “‘is to minimize the risk of erroneous decisions.’” (*Heller v. Doe* (1993) 509 U.S. 312, 332.) Given the motion’s failure to state Grayl was seeking monetary sanctions against the Elieffs, it must have been a surprise to them when the discovery referee’s recommendation to the court was to order the “defendants” to be sanctioned in the amount of \$159,971.15. The Elieffs were not on notice they were facing the possibility of monetary sanctions when the motion was pending before the discovery referee. Although the Elieffs had an opportunity to address the issue of monetary sanctions in the superior court, *after* the discovery referee made his recommendation to the superior court, that was not enough to satisfy due process. The court had appointed a discovery referee to initially handle discovery matters. Grayl’s motion to the discovery referee for sanctions made it clear that it sought evidentiary and issue preclusion sanctions against Gulfstream and the Elieffs, and equally clear that it was *not* seeking monetary sanctions against the Elieffs.

Ultimately the decision as to what, if any, sanctions should be awarded was the trial court’s to make, however, the recommendation—based on the evidence presented to the discovery referee—surely must have carried some weight with the trial court. Yet while Grayl and Gulfstream had the opportunity to present evidence to the discovery referee on the issue of monetary sanctions, the Elieffs did not. They had no reason to; the motion raised the issue of monetary sanctions only in connection with Gulfstream, not the Elieffs. The notice of motion heard by the discovery referee did not provide the Elieffs notice that monetary sanctions were sought from them or the opportunity to present evidence on the issue.

Given that the motion for sanctions was first heard by the discovery referee, the motion did not purport to seek monetary sanctions against the Elieffs, the Elieffs had

no incentive to weigh in on the issue of monetary sanctions since such sanctions were not being sought against them, but Gray1 and Gulfstream submitted evidence on the issue of monetary sanctions, we think the notice afforded the Elieffs by the subsequent report and recommendation of the discovery referee was too little, too late. The Elieffs were due more process than they received. They were entitled to know monetary sanctions were being sought from them *before* the discovery referee heard evidence on the issue of monetary sanctions. Gulfstream was afforded that right. The Elieffs should have been too. Because the Elieffs were denied that right, the portion of the superior court's November 29, 2012 order requiring the Elieffs to pay monetary sanctions to Gray1 is reversed.

III

DISPOSITION

The court's November 29, 2012 order for monetary sanctions against Gulfstream is affirmed. The court's order is reversed insofar as monetary sanctions were also ordered against the Elieffs. Gray1 shall recover its costs on appeal from Gulfstream. In the interests of justice, the Elieffs shall bear their own costs on appeal.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.