

FILED WITH PERMISSION

In the
Supreme Court
of the
State of California

SUPREME COURT
FILED

MAR 26 2015

Frank A. McGuire Clerk
Deputy

S222726

ALEYAMMA JOHN, Petitioner

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent

Sylvia Chan dba STC Realty
Real Party in Interest

CALIFORNIA COURT OF APPEAL- SECOND DISTRICT. B256604
SUPERIOR COURT OF LOS ANGELES. APPELLATE DIVISION
BV030258

OPENING BRIEF ON THE MERITS

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Superior Court Judges
Hon. Bruce Mitchell, Commissioner
Hon. Deborah Christian, Judge
Hon. Patti Jo McKay, Judge (Presiding Judge Appellate Division)

TABLE OF AUTHORITIES

CASES

Mahdavi v. Superior Court
166 Cal.App.4th 32 (2008).....2, 5, 6

McColm v. Westwood Park Assn,
62 Cal.App.4th 678 (1998).....1, 2, 5, 7, 8, 10

In re R.H.
170 Cal.App.4th (2009).....2, 5, 7

STATUTES

Code of Civil Procedure section 391.7.....1, 5, 7

Code of Civil Procedure section 391.....11

Code of Civil Procedure section 391(a).....7

Code of Civil Procedure section 391(d).....8, 9, 10

Code of Civil Procedure section 128.7.....10

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... i

ISSUE PRESENTED.....1

INTRODUCTION.....1

FACTUAL BACKGROUND AND PROCEDURAL HISTORY.....2

LEGAL DISCUSSION.....4

I. JOHN WAS DECLARED A VEXATIOUS LITIGANT DURING THE
PENDENCY OF THE UNDERLYING ACTION, BY ANOTHER COURT
IN ANOTHER MATTER. JOHN’S LITIGATION TEMPERMENT IN
THE UNDERLYING ACTION WAS CONSISTENT WITH THAT OF A
VEXATIOUS LITIGANT.....4

II. POLICY CONSIDERATIONS, AND A BROAD INTERPRETATION
OF THE VEXATIOUS LITIGANT STATUTES PERMIT A PRESIDING
JUDGE TO REQUIRE A PREFILING ORDER FROM A VEXATIOUS
LITIGANT, IF THAT LITIGANT COMMENCES, INSTITUTES, OR
MAINTAINS AN ACTION.....6

CONCLUSION.....11

CERTIFICATE OF WORD COUNT.....12

PROOF OF SERVICE

ISSUE PRESENTED

Whether, a vexatious litigant, who is a Defendant/Appellant, is treated as a “plaintiff” on appeal, subject to a pre-filing order under Code of Civil Procedure section 391.7.

INTRODUCTION

Real party in interest appeals from the final order granting a writ, by the Court of Appeal, Division Seven, instructing the Appellate Division of the Superior Court to vacate its order of, what the real party in interest believes was a proper, dismissal of John’s Appeal. Whether a defendant/appellant may be considered a “plaintiff” on appeal is, by a plain reading of the statute, clear, but there is a split in authority. This court should finally determine whether the vexatious litigant statutes apply to a defendant/vexatious litigant who appeals an adverse ruling against them. The first and fifth districts have suggested that the vexatious litigant statutes apply to vexatious litigants (whether plaintiff or defendant) who institute or maintain an action, including an appeal, being that an appellant is akin to a plaintiff. The second and fourth districts have held that a defendant vexatious litigant is not maintaining or instituting an action under the vexatious litigant statutes by filing an appeal and is therefore not subject to a pre-filing order.

In *McColm v. Westwood Park Association* (1998) 62 Cal.App.4th 1211, the California Court of Appeal, first district, division four, suggested

that using broad definitions for the terms "litigation," "plaintiff" and "defendant" were appropriate. The court found that a vexatious litigant who files an appeal is akin to the definition of a plaintiff subject to a pre-filing order, since under the vexatious litigant statutes they "institute[s] or maintain[s] an action".

Subsequently in *Mahdavi v. Superior Court* (2008) 166 Cal.App.4th 32, the California Court of Appeal for the fourth district, division one, held that a defendant, who is a vexatious litigant and who files an appeal, is not akin to a plaintiff and not subject to a pre-filing order.

Thereafter, the Fifth district *In re R.H.* (2009) 170 Cal.App.4th 678 declined to follow *Mahdavi's* "too narrow" view of the vexatious litigant definitions and also stated that a lower level defendant who brings an appeal becomes a 'plaintiff'. In *In re R.H.* Justice Vartabedian details the problem with the ruling in *Mahdavi*, and encourages a broad interpretation of the vexatious litigant statute.

On November 10, 2014, the second district, division seven, declined to follow *In re R.H.*, and in its published opinion followed the reasoning in *Mahdavi*, holding that the vexatious litigant statutes do not apply to a defendant, who is a vexatious litigant and who initiates an appeal.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In December 2008, Aleyamma John ("John") began renting an apartment in Alhambra California. On September 8, 2011, real party in

interest (Sylvia Chan, "Chan") served John with a 60 day notice to quit¹, terminating John's month to month tenancy 60 days after service of the notice. Chan stated in the 60 day notice that the reason for service of the notice was John's failure to comply with her obligations as a tenant. This includes John's unilateral rent decreases, refusal to grant access to her premises, and generally rude and insulting behavior towards Chan. John contends that the eviction was retaliatory because John refused to pay a rent increase.

Chan filed an unlawful detainer action in November 2011, after months of litigation, including one frivolous motion after another being filed by John, a jury trial was had.² The jury returned a unanimous verdict in favor of Chan, finding specifically, that the 60 day notice was not served for a retaliatory purpose, and was instead served in good faith, that John was delinquent on her rental obligations to Chan.

After several post trial motions, and after the Sheriff posted the property for a lockout, John, in June 2012, finally vacated the property. Throughout that time John paid no rent, sought fee waivers from the court, refused to comply with the Code of Civil Procedure and failed to comply with the Court ordered monetary sanctions entered against her for her failure to do so.

¹ There are no State or local laws limiting evictions for cause in Alhambra, CA.

² Although John represented herself in pre-trial matters, she was guided by an attorney throughout the process, and then substituted in an attorney for trial, and substituted out that attorney after the jury's verdict.

Ultimately an attorney's fees award was entered against John in the amount of approximately \$40,000.00. John filed an appeal in the Appellate Division of the Superior Court of the County of Los Angeles. The Appellate Division dismissed John's appeal for her failure to comply with the rules of appellate practice, but then reinstated her appeal. After briefing concluded in the Appellate Division, but before oral arguments, the Appellate Division sought a pre-filing order. After John submitted her response to the pre-filing order the Appellate Division dismissed her appeal finding that the appeal was filed for an improper purpose, to harass and annoy Chan.

John filed a writ, and after a letter brief, a formal return, and oral arguments, the Second District issued a writ of mandate ordering the Appellate Division to vacate its order dismissing John's appeal.

LEGAL DISCUSSION

I. JOHN WAS DECLARED A VEXATIOUS LITIGANT DURING THE PENDENCY OF THE UNDERLYING ACTION, BY ANOTHER COURT IN ANOTHER MATTER. JOHN'S LITIGATION TEMPERMENT IN THE UNDERLYING ACTION WAS CONSISTENT WITH THAT OF A VEXATIOUS LITIGANT

The unlawful detainer case was litigated tenaciously with nearly two dozen motions being filed. John would file a motion, the Court would deny the motion, and John would file the same motion again. John repeatedly filed motions seeking sanctions against Chan's counsel. Perplexed by John's motion practice, Commissioner Bruce Mitchell, in a minute order

dated March 4, 2012, stated “THIS COURT WONDERS IF MS. JOHN IS USING LAW AND MOTION APPROPRIATELY, AND WILL NOT REWARD THIS PRACTICE BY AWARDING SANCTIONS.” (CT-10, [3/14/12] entry). It was less than a month after this minute order, in a separate action, that the Second District Court of Appeal, on its own motion, declared John a vexatious litigant. Prior to filing her unlawful detainer, Chan had no knowledge of any of John’s prior cases.

The troubling abuse of the court’s process has continued in her appeal and writ petition. John has filed multiple briefs that were out of compliance with Court Rules. Despite a jury’s finding that Chan evicted John because John failed to comply with her obligations as a tenant, John still represents to this Court that the eviction was retaliation because John was involved in other litigation. There is no evidence of that, anywhere, only the statement in the brief of John which is simply evidence of John’s continued efforts to disturb an unfavorable ruling, at all costs.

Judge, Patti Jo McKay, pursuant to CCP § 391.7 appropriately sought a pre-filing order from John. Case law on the propriety of this action is, unfortunately, split. The First District in *McColm v. Westwood Park Assn.* (1998) 62 Cal.App.4th 1211, defines a party in John’s situation as a ‘plaintiff’. The Fourth District, in *Mahdavi*, reached the opposite conclusion. Thereafter, the Fifth district (*In re R.H.* (2009) 170 Cal.App.4th 678) declined to follow *Mahdavi’s* “too narrow” view of the vexatious

litigant definitions and also holds that a lower level defendant who brings an appeal becomes a 'plaintiff'. In this matter, the Second district, Division Seven, followed the *Mahdavi* interpretation of the vexatious litigant statutes.

II. POLICY CONSIDERATIONS, AND A BROAD INTERPRETATION OF THE VEXATIOUS LITIGANT STATUTES PERMIT A PRESIDING JUDGE TO REQUIRE A PREFILING ORDER FROM A VEXATIOUS LITIGANT, IF THAT LITIGANT COMMENCES, INSTITUTES, OR MAINTAINS AN ACTION

Vexatious litigants are a drain on the Court's resources, the public tax dollars, and on the resources of those they litigate against. Vexatious litigants shall be viewed as a class of litigants who have a propensity of not litigating within the rules or with good faith purpose. As such it is imperative for the Court to ensure that a vexatious litigant is not running amuck of the Court's scarce resources. This is especially true for John who prior to Chan initiating an unlawful detainer, sent Chan a stern warning. "**I will not be paying a rent increase anytime in the near future**, and *if you proceed with these retaliatory acts, you will have a legal battle on your hands, wherein you pay me thousands of dollars in damages, and spend thousands of dollars on my attorney fees and your attorney fees.*" [emphasis was in the original text](CT-Supplemental-56). John stayed true to her word, as is evidenced from the unnecessary motion practice and the Court's dismay as cited above. Chan incurred nearly \$50,000.00 in attorney's fees

to evict John, over the course of six months and after a jury trial with substantial post trial motions, and ultimately several years on appeal.

In 1990, the Court amended the vexatious litigant statutes, broadening them, by adding CCP § 391.7. Pursuant to the new amendment “...the court may, on its own motion or the motion of any party, enter a pre-filing order which prohibits a vexatious litigant 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.” Prior to filing her appeal, John had been declared a vexatious litigant with a pre-filing order, so the question here is only whether John, a defendant-appellant, can be viewed as a ‘plaintiff’, pursuant to CCP § 391(d). According to *McColm v. Westwood Park Assn.* (1998) 62 Cal.App.4th 1211, and *In re R.H. supra*, the answer is yes. Simply put, a trial level defendant who brings an appeal is considered a ‘plaintiff’ for purposes of the vexatious litigant statutes and a trial level plaintiff who is a respondent on appeal is a ‘defendant’.

Indeed, this position is well supported by simple logic. Much like a plaintiff who files a lawsuit, a defendant who initiates an appeal controls the issues and is in the proverbial “driver’s seat”. An appeal is “Litigation” as defined by CCP § 391(a). By paying a new filing fee, receiving a new case number and establishing the issues in their first filing, and ultimately bearing the burden on each issue raised by them, an appellant becomes a

“Plaintiff”. Plainly, an appellant must be considered a “Plaintiff” as defined by CCP § 391(d), because they “commence, institute or maintain” a “Litigation”, namely an Appeal. Consistent with this, a defendant appellant has the first and last word in briefing and argument, exactly like a trial level plaintiff. They are also free to end the litigation by their decision to dismiss or not, again exactly like a trial level plaintiff. Once a defendant files an appeal, a trial level plaintiff loses control of the litigation, and is being led by the conduct of the Appellant/Defendant. In fact the entire litigation posture for the trial level plaintiff becomes defensive.

The Court in *McColm* states that “applying these broad definitions does not mean that this court will routinely reject proper attempts by vexatious litigants to appeal or to file writ petitions. It means only that the court will enforce the vexatious litigant statute by requiring the permission of the administrative presiding justice before a vexatious litigant subject to a pre-filing order may proceed in this court. The decision whether to allow the litigant to proceed will be made on an individual basis...” The plain language of the vexatious litigant statutes is not ambiguous. The plain language of the statute is unambiguous and therefore resorting to legislative history is unnecessary.

It is within the purview of the presiding Judge to review and consider the actions of a vexatious litigant who unnecessarily strains court resources with frivolous filings. In the present matter that is exactly what

the presiding Judge did. John's record on appeal does not support her arguments, and it appears that John is simply continuing her campaign against Chan. The vexatious litigant statutes are there to protect the Court and litigants from the conduct of a select group of vexatious litigants. A defendant, vexatious litigant, taking an appeal, for purposes of CCP § 391(d) is akin to a plaintiff maintaining an action, and therefore subject to the pre-filing order under CCP § 391.7.

Judge McKay, in reviewing John's application for a pre-filing order, determined that John's appeal lacked merit, and had been filed only to harass the Court and Chan and to delay the proceeding. Judge McKay's decision is supported by the record and corresponding arguments made on appeal. The record simply does not support John's appeal.

Vexatious litigant statutes are not new. These statutes are a tried and tested method of combating an age-old problem inherent to open court systems; abuse of the rules and procedures. Indeed, several courts and states have determined that these statutes are the least restrictive means of accomplishing the goal of preserving the integrity of the justice system. Of course, John has at her disposal an even less restrictive means of continued and essentially unfettered access to the court; hiring an attorney.

In California, every attorney who signs a pleading does so with the implicit representation that 1) the pleading is not for an improper purpose, 2) the claims made therein are supported by existing law, 3) the allegations

and factual contentions have evidentiary support, and 4) that any denials of factual contentions are warranted. C.C.P. §128.7. Violations of these tenants are punishable with sanctions as well as disciplinary actions by the State Bar. As such, when counsel is present, there are sufficient protections that the system will work as intended.

For Pro Se litigants, the methods of accountability are far less effective. This is precisely the problem that the vexatious litigant statutes are designed to protect against. In this case, the doors of justice are not being closed on John, rather a guard simply waits at them to ensure that she intends to enter for a proper purpose. Had John not fired her attorney after trial, and that attorney signed the appeal pleadings, this issue would be moot. Had John been able to support her contentions and claims in response to Judge McKay's request, this issue would be moot.

Unfortunately, John did neither.

After an ample opportunity to be fully heard, Judge McKay gave John due process and made a tenable finding that the appeal lacked merit and was filed for an improper purpose. Allowing this case or others similarly situated to continue on even after such findings have been made would only serve to drain the resources and the Courts and litigants. The vexatious litigant statutes were properly applied by the Appellate Division and the result is exactly what the statutes were designed to provide.

Allowing documented vexatious litigants to file any number of appeals (regardless of their merit or purpose) simply because they were originally a defendant is little more than the exploitation of a loop-hole by vexatious litigants and, in some sense, undermines the original purpose of these statutes.

CONCLUSION

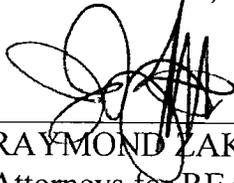
For the reasons stated herein, Real Party in Interest, Sylvia Chan, respectfully requests that this Court clarify the interpretation of CCP § 391, such that a defendant/appellant is considered a “plaintiff” and that this Court reverse the Court of Appeal, and uphold the order of dismissal entered by the Appellate Division of the Superior Court.

Dated: March 13, 2015

Respectfully submitted,

ZAKARI LAW, APC

By:



RAYMOND ZAKARI
Attorneys for REAL PARTY IN
INTEREST, SYLVIA CHAN &
BRIAN J. WARD
Attorney for Real Party in Interest,
Sylvia Chan

CERTIFICATE OF WORD COUNT

The text of this petition for review consists of 2,575 words as counted by the word processing program used to generate the petition.

Dated: March 12, 2015



Raymond Zakari

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county aforesaid; I am over the age of 18 years and not a party to
4 the within action; my business address is 46 Smith Alley, Suite 200, Pasadena CA 91103.

5 On March 10, 2015, I served on the interested parties in this action the within document
6 entitled:

6 **BRIEF ON THE MERITS**

7 [] by personally delivering the copies on:

8 [XX] by placing [] the original [XX] a true copy thereof enclosed in a sealed
9 envelope addressed as follows:

10 Aleyamma John
11 10 W. Bay State St., #7831
Alhambra, CA 91802

Hon. Deborah Christian (Trial Judge)
111 N. Hill Street, Dept. 94
Los Angeles, CA 90012

12 Hon. Patti Jo Mckay
13 Los Angeles County Superior Court
14 111 North Hill Street, Dept. 70
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15 Frederick R. Bennett
16 111 North Hill Street, Suite 546
Los Angeles, CA 90012

California Court of Appeal, Second District
Division Seven
300 S Spring St, Los Angeles, CA 90013

17 [XX] (BY USPS EXPRESS MAIL) As follows: I am "readily familiar" with the
18 firm's practice for collection and processing of correspondence for mailing
19 with the United States Postal Service. Said correspondence will be
20 deposited with the U.S. Postal Service on this same day in the ordinary
21 course of business. I am aware that upon motion of party served, service
is presumed invalid if postal cancellation date or postage meter date is
more than one day after date of deposit for mailing as declared herein.

22 Executed on March 10, 2015, at Pasadena, California.

23 [XX] (STATE) I declare under penalty of perjury under the laws of the State of
24 California that the foregoing is true and correct.

25 Devin Castaneda

