

Judicial Notice Exhibit 28

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

DEPARTMENT C16

THE SPARTAN ASSOCIATES, INC.,)
)
 Plaintiff,)
)
 vs.) No. 30-2015-00805807
)
 GARY HUMPHREYS, an individual;)
 KAREN HUMPHREYS, an individual, and)
 DOES 1 THROUGH 25, inclusive,)
)
 Defendants)
)
 _____)
 GARY HUMPHREYS, an individual and)
 KAREN HUMPHREYS, an individual;)
)
 Cross-Complainants,)
 vs.)
)
 ADAM BEREKI, an individual, et al.,)
)
 Cross-Defendants.)
 _____)

HONORABLE JAMES J. DI CESARE, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MARCH 15, 2019

APPEARANCES OF COUNSEL:

FOR THE DEFENDANTS,
 CROSS-COMPLAINANTS: WILLIAM G. BISSELL
 ATTORNEY AT LAW

FOR THE CROSS-DEFENDANT: ADAM BEREKI
 IN PROPRIA PERSONA

JAMIE JENNINGS, CSR NO. 13434
 OFFICIAL COURT REPORTER

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(NO WITNESSES)

(NO EXHIBITS)

SANTA ANA, CALIFORNIA - MARCH 15, 2019

MORNING SESSION

(PROCEEDINGS IN OPEN COURT:)

* * *

THE COURT: Thank you. Is there an appearance on court call, please.

Someone on court call, please.

THE CLERK: Mr. Bereki?

MR. BEREKI: Your Honor, can you hear me?

THE COURT: We can now. Please state your name.

MR. BEREKI: Adam Bereki in propria persona.

THE COURT: Thank you. Welcome.

MR. BEREKI: Thank you.

THE COURT: And then counsel for the plaintiff.

MR. BISSELL: William Bissell, Your Honor, for the opposing parties, Karen and Gary Humphreys.

THE COURT: Thank you very much. Okay. So we do have a court reporter here. I do want to find out how much time that you wanted to take to argue the matter, then I'll put that into my consideration as to when I'll call the case.

So, Mr. Bissell, did you have a time estimate, if any?

MR. BISSELL: Your Honor, we would submit on

1 the tentative.

2 THE COURT: Okay. Mr. Bereki, do you have a
3 time estimate at all?

4 MR. BEREKI: 10 -- 10 minutes, Your Honor. I
5 just have some questions to ask of you for clarity
6 because my next step is obviously to go to the US
7 Supreme Court, so I just want some clarity on your
8 tentative.

9 THE COURT: Okay. Do you have -- do you have
10 the tentative? Have you been able to pull it off the
11 internet?

12 MR. BEREKI: Yes. I'm looking at it,
13 Your Honor.

14 THE COURT: All right.

15 Okay. Very good. So I'll come back to you
16 then.

17 MR. BEREKI: Thank you.

18 THE COURT: Thank you for your patience.

19 (Recess.)

20 THE COURT: Okay. The matter is Spartan
21 Associates versus Humphreys.

22 MR. BISSELL: Good morning, Your Honor.

23 William Bissell for Respondents, the Humphreys.

24 THE COURT: Thank you.

25 Mr. Bereki, would you make your experience.

26 MR. BEREKI: Yes, Your Honor. Adam Bereki in

1 propria persona. Your Honor, this case hinges upon
2 whether federal constitutional protections were denied
3 and whether the trial in appellate court had
4 jurisdiction to deny these protections. The matter goes
5 to the jurisdiction of the Court, not the merit as was
6 cited in the tentative.

7 While the rule that Your Honor cited may be
8 applicable, it cannot be used to overrule the federal
9 constitutional protections that I'm contending were
10 denied here. This is held in *Miranda v. Arizona* at 384
11 US 436 at 491. The US Supreme Court stated there:
12 Where rights secured by the Constitution are involved,
13 there shall be no rule-making or legislation that would
14 abrogate them.

15 The law of case doctrine that was cited in the
16 tentative authority, which is *People v. Dutra*, does not
17 apply here. It states: Because the rule is merely one
18 of procedure and does not go to the jurisdiction of the
19 Court, the doctrine will not be adhered to where its
20 application will result in an unjust decision. For
21 example, where there has been a manifest misapplication
22 of existing principles resulting in substantial
23 injustice.

24 That is exactly what I'm claiming here,
25 Your Honor, that there's been a substantial injustice.
26 And so, because this is a motion to vacate a void

1 judgment, I'm challenging the jurisdiction of the court
2 to issue the Humphreys costs, and they have not
3 substantiated the jurisdiction of the court to violate
4 the Constitution and award the costs or even to have
5 judgment awarded in their favor.

6 THE COURT: Thank you very much. Thank you.
7 Counsel, did you want to say something?

8 MR. BISSELL: I'm not sure how to respond to
9 that, Your Honor. It's clear that the question of
10 jurisdiction has been determined not once but twice:
11 Once at the trial court level, once at the appellate
12 court level, and presented to the California Supreme
13 Court and rejected as a -- as grounds for review at that
14 level. The -- you know, the Superior Court is a court
15 of general jurisdiction; it has jurisdiction over all
16 matters not exclusively reserved to the Courts of Appeal
17 or the California Supreme Court. It had subject matter
18 jurisdiction over this action.

19 Mr. Bereki appeared at the trial in this
20 matter, he presented his case, he presented evidence, he
21 questioned witnesses, he cross-examined witnesses. So,
22 clearly, he had submitted to personal jurisdiction in
23 this case. So the jurisdiction question is, to me, put
24 to rest. If he wants to raise it, he has to raise it at
25 another level.

26 Now, Mr. Bereki here is -- he's unhappy with

1 the Court's ruling, with the Court's decision. He
2 thinks it's in error. Well, that's not a void judgment.
3 That's a judgment you take up on appeal. He's done
4 that. He's lost on appeal. If he's still unhappy, he
5 has another level to go. That's where he has to go. He
6 has no business being in this court today to present
7 this motion.

8 THE COURT: Thank you.

9 Mr. Bereki?

10 MR. BEREKI: Yes, Your Honor. This is not
11 just a matter of me being unhappy with the judgment.
12 The Supreme Court in Kokesch v. SEC recently heard this
13 matter regarding disgorgement. And what the Court --
14 what the matter was before that court was, I believe,
15 Mr. Kokesch -- there was a judgment awarded, a
16 disgorgement judgment awarded against him for about
17 \$40 million. And there was a statute in this case --
18 the determination was to whether that disgorgement
19 penalty was -- was a penalty or not, because, if it was,
20 then the statute of limitations would apply and he would
21 not be liable for that disgorgement.

22 So the court heard the matter and determined
23 that the disgorgement in that case was a penalty.

24 So, in this case, there's been a
25 near-million-dollar disgorgement judgment awarded
26 against me. And I'm claiming that that judgment, based

1 upon the Kokesh decision by the Supreme Court, is a
2 penalty. And if you apply the same holdings that they
3 did in Kokesh to this case, it clearly evidences that
4 the holding in this case is punitive as well.

5 So here's where the constitutional protections
6 apply and why I'm challenging the jurisdiction of the
7 court: Because a court does not have jurisdiction to
8 violate either the California Constitution or the
9 Constitution of the United States.

10 So if the trial in Appellate Court found that
11 this award was not punitive, in spite of the fact that
12 the US Supreme Court held that it was, I'm contending
13 that the 14th Amendment protections for excessive
14 punitive damage awards have to apply here and that
15 essentially due process was violated because the court
16 did not recognize that the judgment was punitive in
17 nature.

18 So, in my mind, if the constitution's been
19 violated, that's not a judicial act and the court
20 doesn't have jurisdiction to do that, which is why I
21 keep challenging jurisdiction. And, on appeal and in
22 the trial court, I have not yet seen one authority
23 presented by the Humphreys or by the courts that
24 overrule the Supreme Court's authority in Kokesh or the
25 more than 100 years' authority case cited in that case
26 that discuss exactly what a punitive judgment is. And

1 the judgment in this case, disgorgement, strictly to be
2 nonpunitive under the laws of restitution -- nonpunitive
3 restitutionary disgorgement can only apply to the
4 profits that I made acting as the, quote/unquote,
5 unlicensed contractor in this case. Can't order
6 disgorgement of all the moneys were paid whatsoever,
7 because, once you go beyond profits, as the Court held
8 in Kokesh, it becomes punitive.

9 So the Humphreys have to be able to
10 substantiate how they got a near-million-dollar award
11 that wasn't punitive. And nowhere in this case and
12 nowhere in any of the decisions of the Appellate Court
13 or anywhere else do they do that. So it's very clear to
14 me that this award that goes beyond any compensation
15 that I received is punitive.

16 And if you look at the Exhibit B, which is the
17 order for judgment in this case, it lists damages at
18 \$848,000. Well, my contention is these are punitive
19 damages. Well, if they are, then the 14th Amendment's
20 protections for excessive punitive damages apply. And
21 if you apply those protections in this case, the maximum
22 award that they could have got is \$5,000; not a million.

23 So, I mean, this is hugely, hugely
24 significant, and the jurisdictional issue is not just me
25 being upset with the Court's judgment. I'm happy to
26 take a lick and keep going on with life, but I want to

1 see the authorities for the Court to do this, and they
2 just aren't here.

3 The two cases that the Appellate Court cited
4 are actually SEC versus Huffman. That one was overruled
5 or superseded by Kokesh. And the other one was
6 United States versus Phillip Morris, and that one is
7 also, so to speak, in my favor because it says that it's
8 not in the Court's equity powers to issue punishment.
9 And it -- disgorgement only applies to the ill-gotten
10 gains or profits, not to all of the compensation that
11 was paid for a project.

12 THE COURT: Thank you very much.

13 Did you want to retort, for a moment only?

14 MR. BISSELL: Just for a moment only,
15 Your Honor.

16 These arguments go to the merits of the case
17 that has been determined as final and remitted to the
18 Superior Court for one purpose only: For the entry of
19 an award of costs. Even a case where the Court has made
20 an error of law, even if the error of law is apparent on
21 its face, which it's not here, that is not a void
22 judgment and cannot be attacked at this level.

23 THE COURT: Mr. Bereki, you did read the
24 tentative; right?

25 MR. BEREKI: I did, Your Honor. And what I'm
26 saying is that appears to be a legislative rule that is

1 attempting to over -- to supersede the Constitution.
2 Because the Miranda v. Arizona decision states, quote:
3 Where rights secured by the Constitution are involved,
4 there shall be no rule-making or legislation that would
5 abrogate them. And under the supremacy clause of
6 Article 6, Section 2, the Constitution has authority
7 here.

8 So if these are punitive damages and the Court
9 violated the Constitution, it does not have jurisdiction
10 to issue a remittitur and award costs or to affirm the
11 judgment of the Humphreys, period.

12 THE COURT: Well, what I --

13 MR. BEREKI: And the authorities that I've
14 established here are -- Kokesch is one. I mean,
15 literally 100 years of precedent of determining what a
16 punitive damage award is, which is clearly punishment
17 because --

18 THE COURT: No, I got it. No, I understand.
19 Your papers make that clear and your argument makes that
20 clear. The tentative, however, is the present state of
21 the law, and so it will have to be the order of the
22 Court.

23 I want to thank you very much for your very
24 articulate presentation and --

25 MR. BEREKI: No problem, Your Honor. Can I
26 ask you a couple of questions?

1 THE COURT: Well, the Court doesn't really
2 answer questions. The Court reviews the papers and then
3 gives tentatives. So I can really offer no direction.
4 The issues that you're dealing with and have argued
5 involve substantive law, and that is something that
6 really has to be addressed, in this circumstance, with
7 the Court of Appeal. Already been to the Court of
8 Appeal. Petition to the Supreme Court. And you may
9 have other remedies, but I really cannot comment on any
10 of those or offer you any assistance.

11 MR. BEREKI: I'm not interested in you
12 practicing law or doing that. I just had some questions
13 about how -- the decision that you made to issue the
14 tentative in this case.

15 THE COURT: Yeah. It is in the tentative. It
16 is in the tentative. So I have other people in the
17 courtroom, and I'm going to have to get to their case,
18 but I really want to appreciate -- tell you that I
19 appreciate your fine argument and that of counsel.

20 So have a good day. The tentative --

21 MR. BEREKI: Okay. Your Honor, can I wait
22 until the other people are done so that we can go
23 through this?

24 THE COURT: Well, I really do not want to get
25 involved in doing any more than I've already done. I
26 cannot give any legal advice or give any direction, and

1 the --

2 MR. BEREKI: I'm clearly not asking for that,
3 Your Honor.

4 THE COURT: Excuse me.

5 MR. BEREKI: I have questions -- just to give
6 an example, the judgment order says there's damages in
7 \$848,000. So I have questions as to what specific type
8 of damages these are.

9 THE COURT: Yeah, no, I'm not prepared --

10 MR. BEREKI: I need to know that to be able to
11 prepare a meaningful and substantive petition to the
12 Supreme Court. If no one's going to answer these
13 questions, well, I feel that that's denying me a
14 hearing, and I have a right to know what the actual
15 judgment order is and how the --

16 THE COURT: The Appellate Court -- excuse me.

17 As a matter of fact, the Appellate Court, in
18 its opinion, did address those issues. So I do have to
19 move on. The tentative is the order of the Court.

20 You have a very nice day. Thank you.

21 MR. BEREKI: Thank you.

22 THE COURT: Bye-bye.

23 MR. BISSELL: Thank you, Your Honor.

24 (Proceedings concluded.)

25

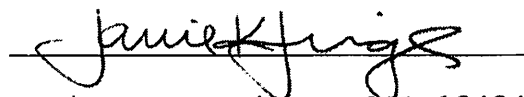
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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
)SS.
COUNTY OF ORANGE)

I, Jamie K. Jennings, CSR 13434, Official
Court Reporter in and for the Superior Court of the
State of California, County of Orange, do hereby certify
that the foregoing transcript, consisting of Pages 1
through 11, inclusive, is a true and correct transcript
of my shorthand notes and is a full, true and correct
statement of the proceedings had in said cause.

Dated this 20th day of March, 2019.



Jamie K. Jennings, CSR 13434