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LISA M. GALDOS
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

Eugene Forte,
Plaintiff
vs.
Robert O'Farrell, et al.,
Defendants.

Case No: M72599

**ORDER DENYING MOTION FOR
REFILING ORDER AND ORDER
REQUIRING PLAINTIFF TO FURNISH
SECURITY (C.C.P. §§391-391.7)**

Order

In disposition of a motion (filed 5-12-05), purportedly made on behalf of parties identified as Schwarzenegger, Lockyer, office of the California Attorney General, Schiavenza, Pon and Hammerness, seeking orders pursuant to Code of Civil Procedure sections 391-391.7,

IT IS ORDERED THAT said purported motion is denied.

Discussion

1. Code of Civil Procedure section 391.1 authorizes a defendant in any litigation pending in any court of this state to move the court for an order requiring the plaintiff to furnish security and if the court determines that plaintiff is a vexatious litigant, as defined in Code of Civil Procedure section 391, and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish security for

1 the moving defendant and may enter a pre-filing order pursuant to Code of Civil Procedure section
2 391.7.

3 These authorities do not authorize the orders sought by the purported motion because it is
4 not made on behalf of any entity who is a defendant in this action.

5 2. Code of Civil Procedure section 391 defines a vexatious litigant and the
6 memorandum of points and authorities supporting the purported motion invokes subdivision (b)(2)
7 of the statute to demonstrate that plaintiff is a vexatious litigant. That provision requires that, after
8 a litigation has been finally determined against the person, that person repeatedly relitigates or
9 attempts to relitigate either (i) the validity of the determination against the same defendant as to
10 whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of
11 the issues of fact or law, determined or concluded by the final determination against the same
12 defendant as to whom the litigation was finally determined.

13 The memorandum of points and authorities contends that the complaint is attempting to
14 relitigate the merits of plaintiff's conviction for contempt by Judge O'Farrell.

15 The invocation of subdivision (b)(2) fails for these reasons.

16 a) Litigation is defined by Code of Civil Procedure section 391, subdivision (a) as any
17 civil action or proceeding, commenced, maintained or pending in any state or
18 federal court. A contempt conviction results from a criminal proceeding; it does
19 not result from a civil action or proceeding and, therefore, does not constitute
20 litigation.

21 b) The contempt conviction was not a determination made in a proceeding in which
22 Judge O'Farrell was a party as to whom the contempt determination was made.

23 c) The term "relitigates" requires that the subsequent litigation (i.e., this complaint) be
24 a repetition of the earlier litigation (i.e., the contempt proceeding.) The complaint
25 contains allegations related to the contempt proceeding but the claims and issues
26 presented by the complaint are not those concluded by the contempt conviction.
27 They implicate alleged violations of plaintiff's rights and present claims for
28 monetary compensation in causes of action for false arrest and imprisonment,

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battery, abuse of process, intentional infliction of emotional distress and conspiracy.

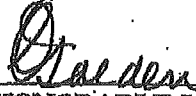
The requirement of relitigation is not met.

d) The term "repeatedly" requires that the relitigation be conducted again and again (Random House Dictionary of the English Language.) The combination of the terms "relitigates" and "repeatedly" requires that the litigation occur at least 3 times. Plainly, one instance of renewed litigation is insufficient (cf. First Western Development Corp. v. Superior Court (Andrisani) (1989) 212 Cal. App. 3d 860, 868-869). If the legislature had intended the term to mean "more than one time", it would have said so (Holcomb v. U.S. Bank National Association) (2005 DJDAR 6716, 6/8/2005, Ct. of App., 4th Dist.). The term "repeatedly" requires that the relitigation must occur more than twice (Ibid.)

3. The memorandum of points and authorities also invokes subdivision (b)(3) of section 391. That provision also defines a vexatious litigant as one who, in any litigation, while acting in propria persona, repeatedly files unmeritorious motions, pleadings or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

The memorandum contends that plaintiff has repeatedly filed and served unnecessary discovery and voluminous, unmeritorious and scandalous pleadings and papers in this case. It specifically points to plaintiff's motion to amend the complaint so as to add as defendants "a slew of officials from the Governor and the Chief Justice on down". That motion has been dropped. Otherwise, the contention has not been particularized. There has not been demonstrated by the moving papers the conduct described in subdivision (b)(3) of Code of Civil Procedure section 391.

DATED: June 30, 2005


HONORABLE JOHN J. GOLDEN
JUDGE OF THE SUPERIOR COURT