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CHURCH OF SCIENTOLOGY
6 INTERNATIONAL

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF MARIN

9 CHURCH OF SCIENTOLOGY
10 INTERNATIONAL,

11 Plaintiff,

12 vs.

13 GERALD ARMSTRONG

14 Defendant.

Case No. CV 021632

**PLAINTIFF'S MOTION TO
REINSTATE SENTENCES FOR
CONTEMPT; and
MOTION FOR ISSUANCE OF
WARRANT FOR DEFENDANT'S
ARREST**

15 Date: August 27, 2007
Time: 9:00 am
16 Court: Dept. L

17 TO DEFENDANT GERALD ARMSTRONG AND HIS COUNSEL OF
18 RECORD:

19 PLEASE TAKE NOTICE THAT at 9:00 a.m., on August 27, 2007, before the
20 Honorable M. Lynn Duryee, in Department L of this Court, located at the Marin County
21 Superior Court, Hall of Justice, 3501 Civic Center Drive, San Rafael California 94903,
22 plaintiff Church of Scientology International, will and hereby does move for
23 reinstatement of the sentences of contempt issued against defendant Gerald Armstrong,
24 and for the issuance of a warrant for his arrest.

25 This motion is supported by the attached memorandum of points and authorities,
26 the decision of the Court of Appeals addressing this matter, the complete files and

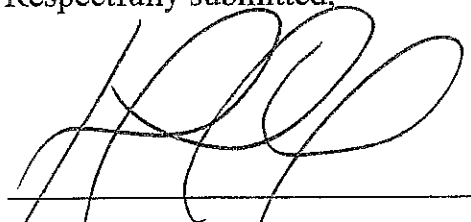
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1 records in this action and any argument which may be presented at the hearing thereon.

2 Dated: July 26, 2007

Respectfully submitted,

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6 Kendrick Moxon

7 Counsel for plaintiff

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1 CSI obtained a permanent injunction against further breaches, Armstrong fled the
2 jurisdiction and moved to Canada, from where he openly and contemptuously disobeyed
3 the injunction and publicly defamed Judge Thomas by alleging that he had either been
4 bribed or extorted by CSI. Armstrong even appeared in public and on television and
5 radio to publicly attack the Churches of Scientology and its leadership, announcing with
6 glee that he was violating the Courts' Orders by doing so.

7 In June 1997, Armstrong was found in contempt of court by Judge Thomas for
8 intentional violations of the Permanent Injunction, fined \$1,000 and sentenced to 2 days
9 of incarceration. Armstrong fled the jurisdiction, and proceeded to enter into a flagrant
10 campaign of further violations of that Order and the Injunction. Thus, in February of
11 1998, Armstrong was found in repeated and intentional violations of the Court's
12 injunction and sentenced to a further period of incarceration of 26 days.

13 These Orders had no effect upon his conduct. Indeed, if anything, he was only
14 more contumacious, acting outside the United States to violate the injunctions hundreds
15 of times. Thus, a further motion for contempt was filed in 2002 and assigned to this
16 Court. Trial went forward in April 2004. This Court found that Armstrong repeatedly
17 and intentionally violated the injunction, found him further in contempt and sentenced
18 him to an additional 5 days of incarceration. However, the Court also ruled that in light
19 of Armstrong's appearance in court from his long flight from the jurisdiction, both the
20 prior sentences and this Court's own sentence would be deemed served.

21 Armstrong announced victory, determined he was free to flaunt the mercy of this
22 Court, the injunction and any contempt with impunity, and proceeded immediately to do
23 so. Lacking further recourse to affect Armstrong's misconduct, CSI appealed this Court's
24 rulings purging the prior contempt sentences. The Court of Appeals reversed, finding that
25 this Court lacked jurisdiction to alter the sentences imposed in the prior contempt
26 proceedings. (Ex. A, p. 5.) The Court of Appeals also concluded that this Court's
27 "judgment here discharging the bench warrants on the contempt citations on June 5, 1997
28 and February 20, 1998 and deeming the sentences served was in error." *Id.*, p. 6.

1 The Court further ruled, "The trial court is directed to reinstate the sentences
2 previously imposed on Armstrong for the contempt citations of June 5, 1997 and February
3 20, 1998 and to reinstate the fine on the third contempt citation." *Id.*, p. 7.

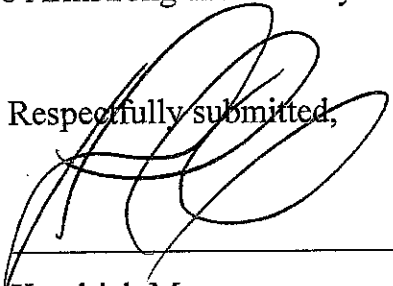
4 Armstrong filed a petition for certiorari, which was rejected by the California
5 Supreme Court and the remittitur issued on January 12, 2006. (Ex. B.)

6 Plaintiff hoped these rulings finally would cause Armstrong to come to his senses,
7 and thus forbore from further proceedings for more than a year and a half. However,
8 Armstrong has proven to be incorrigible. That forbearance was a futile act, as Armstrong
9 continues to commit numerous violations of the injunction, and publicly to announce that
10 he recognizes he is doing so and will continue to do so.

11 **III – CONCLUSION**

12 CSI accordingly moves for reinstatement of the sentences against Armstrong and
13 for the issuance of a warrant for his arrest to serve those sentences in accordance with the
14 Court of Appeal's ruling, as an encouragement to Armstrong that he obey the rulings of
15 this and other Courts.

16 Dated: July 26, 2007

Respectfully submitted,


Kendrick Moxon
Counsel for plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

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Filed 10/19/05

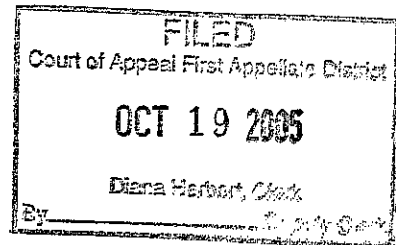
NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR



CHURCH OF SCIENTOLOGY
INTERNATIONAL,

Petitioner,

v.

THE SUPERIOR COURT OF MARIN
COUNTY,

Respondent;

GERALD ARMSTRONG,

Real Party in Interest.

A107095

(Marin County Super. Ct. Nos.
15229, 157680, CV021632)

In a petition for writ of certiorari, the Church of Scientology International (CSI) seeks an order compelling the trial court to reinstate sentences imposed upon Gerald Armstrong in earlier contempt proceedings. We grant the petition in part.

I. FACTUAL BACKGROUND

In December 1986, the parties entered into a settlement agreement under which CSI paid Armstrong, a former Church member, \$800,000 in exchange for his dismissal of claims against CSI. In addition, pursuant to paragraph 7.D. of the agreement, Armstrong agreed to maintain confidentiality concerning his experiences with CSI and not to publish orally or in writing any information about his experiences with or knowledge of CSI and its affiliated individuals and organizations. Paragraph 7.D. also contained a liquidated

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damages provision under which Armstrong agreed that CSI was entitled to liquidated damages in the amount of \$50,000 for each breach of the agreement.¹

In February 1992, CSI filed a complaint against Armstrong alleging that he breached the settlement agreement by assisting counsel for other litigants against CSI and providing declarations in their cases describing his experiences with CSI. On October 17, 1995, the court granted CSI's motion for summary adjudication on four causes of action, concluding that Armstrong breached the settlement agreement entitling CSI to liquidated damages. The court found that Armstrong waived his First Amendment rights by signing the settlement agreement and rejected various challenges to the liquidated damages provision. The court also enjoined Armstrong from voluntarily assisting anyone other than a governmental entity engaged in litigation against CSI or defending a claim against it; facilitating the creation, publication, broadcast or writing of any work referring to CSI; or discussing CSI with anyone other than an immediate family member or his attorney. The court thereafter entered a judgment against Armstrong in the amount of \$321,923—\$300,000 in liquidated damages plus \$21,923 in interest. In addition, the

¹ Paragraph 7.D. provides in relevant part: "Plaintiff [Armstrong] agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing or to broadcast or to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. . . . Plaintiff agrees that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of \$50,000 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in a constructive trust pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages [is] hereto acknowledged by Plaintiff."

court awarded CSI costs of \$334,671.75.² This court dismissed Armstrong's appeal from that judgment.

On June 5, 1997, the court found Armstrong in contempt of its order enjoining him from assisting others in litigation against CSI. The court fined Armstrong \$1,000 and ordered that he be confined in the county jail for a period not to exceed 48 hours. Armstrong did not appear at the hearing in the contempt proceedings and did not file any opposition or evidence. The court entered a second order of contempt on February 20, 1998, finding that Armstrong violated the injunction in 13 separate incidents between September 2, 1997 and November 26, 1997, including disseminating a documentary work about CSI on the Internet. The court fined Armstrong \$200 for each violation for a total of \$2,600 and ordered that he be confined a total of 26 days in the county jail. Again, Armstrong failed to appear at the contempt proceedings. A third order to show cause re contempt proceeding was issued in December 2000. Armstrong filed an opposition to the court's order to show cause but did not appear at the hearing. In his opposition, Armstrong admitted that he had violated the injunction but argued that he signed the settlement agreement under duress and that the injunction was unlawful. Armstrong further averred that he was living in British Columbia, Canada. At the hearing on January 17, 2001, the court found that the injunction was valid and that Armstrong violated it by making 131 postings on the Internet violating one or more provisions of the injunction, that he spoke in violation of the order at a public gathering in Florida on December 5, 1999, and that he gave a radio interview on December 10, 1999 that violated the injunction. The court noted that there were two outstanding warrants for Armstrong which resulted from the two previous contempt proceedings and deferred imposition of punishment on the present contempt pending Armstrong's apprehension.

On April 2, 2002, CSI filed another action for breach of contract against Armstrong again seeking to recover liquidated damages for Armstrong's breaches of the settlement agreement. CSI alleged 201 breaches of paragraph 7.D. of the agreement

² It appears this judgment debt was never paid and, ultimately, was discharged in bankruptcy.

requiring Armstrong to maintain confidentiality about CSI and sought liquidated damages in the sum of \$10,050,000. Armstrong answered the complaint and admitted that he had breached paragraph 7.D. of the agreement more than 200 times. He alleged that the provisions of paragraph 7.D. of the agreement were illegal, unconstitutional and unenforceable and raised numerous affirmative defenses including unconscionability of the agreement and invalidity of the liquidated damages provision.

On April 9, 2004, the case was called for trial. At the outset, the court heard CSI's motion in limine to preclude Armstrong from introducing any evidence of defenses to the action on the grounds of collateral estoppel and res judicata. CSI argued that the 131 breaches of the agreement for which it sought recovery had already been determined to violate the agreement and the injunction. The court took the motion in limine under submission and the parties proceeded with opening statements.

After presentation of opening statements, the court granted the motion in limine, finding that 131 breaches of the agreement did occur, and that "these defenses" had been previously litigated. The court, however, found that it would be unconscionable to "punish" Armstrong with liquidated damages in excess of the \$800,000 he received as a benefit under the settlement agreement. Noting that Armstrong had previously been "sanctioned" in the sum of \$300,000, the court entered judgment for CSI in the amount of \$500,000.

During the course of the proceedings, the court, with the agreement of the parties, consolidated the sentencing hearing on the third contempt proceeding with the trial on CSI's current complaint. With respect to the contempt, the court discharged the previous bench warrants on the contempt citations of June 5, 1997 and February 20, 1998 and ordered that the jail time imposed on the citations be deemed served. On the third contempt citation, the court sentenced Armstrong to five days in jail and imposed a fine of \$1,000 which was ordered "concurrent with the judgment." The court further ordered that the jail time was deemed served by Armstrong's appearance in court.

II. DISCUSSION

CSI petitions for a writ of certiorari to address the court's order on the contempt proceedings against Armstrong.³ As CSI acknowledges, the court's order in the contempt proceedings is final and conclusive and is not an appealable order. (Code Civ. Proc., § 1222; *Butler v. Butler* (1967) 255 Cal.App.2d 132, 135-136.) The court's order, therefore, may be reviewed only upon certiorari if it is in excess of the court's jurisdiction. (*Taylor v. Superior Court* (1942) 20 Cal.2d 244, 246.) CSI has standing to seek such review. (*Id.* at p. 247 [since petitioner is person for whose protection the injunction was granted, he is a party beneficially interested in the ruling complained of within the meaning of Code Civ. Proc., § 1069].)

CSI is correct that the trial court had no jurisdiction to alter the sentences imposed in the first two contempt proceedings. “[J]udgments and orders of a court or judge made in cases of contempt are final and conclusive ([Code Civ. Proc.,] § 1222), and the court or judge retains no jurisdiction to alter a completed judicial act.” (*County of Lake v. Superior Court* (1977) 67 Cal.App.3d 815, 818.) Nor is there evidence to support Armstrong's claim that what occurred was actually a remission of punishment. No motion or request to remit was made at the hearing; the court merely announced its intention to “discharge the jail and the . . . contempt punishment[] with the entry of the judgment of \$500,000.” After brief arguments from counsel, the court issued its order that the contempts were “deemed served.” In any event, there were no circumstances in the record justifying a remission of the sentences. “In unusual cases, even though a contempt judgment is sustained, if the violation was the result of an honest mistake of law, *and compliance is ultimately obtained* [italics added], either the trial or appellate court may grant a remission of punishment [italics omitted].” (8 Witkin, Cal. Procedure (4th ed. 1997) Enforcement of Judgment, § 347, p. 355; see *City of Vernon v. Superior Court* (1952) 39 Cal.2d 839, 842-843.) Although Armstrong offers many arguments to support his position his sentences should have been remitted—for example, that his

³ CSI appealed from the judgment for liquidated damages but subsequently moved to dismiss the appeal. We granted the motion.

violations of the agreement were expressions of his religious beliefs—he has not argued or shown that in violating the injunction he operated under an honest mistake of law. And, Armstrong makes no claim that he has complied, or will ever comply, with the injunction. Indeed, he repeated at oral argument his position that compliance is “literally impossible.” We conclude therefore that the court’s judgment here discharging the bench warrants on the contempt citations of June 5, 1997 and February 20, 1998 and deeming the sentences served was in error.

Armstrong makes several arguments challenging the validity of the contempt orders. He contends that the first contempt order was improper because he was within his rights to submit a declaration in a CSI litigation matter despite the contract prohibiting him from doing so because he was reporting a crime to the court. He urges that the second and third contempt orders violate his First Amendment right to the free exercise of his religion. Armstrong, however, is foreclosed from challenging the merits of the contempt orders in this writ proceeding.⁴ The contempt orders are final. (Code Civ. Proc., § 1222.)

CSI asserts that the court erred in its sentencing of Armstrong on the third contempt citation. The court sentenced Armstrong to five days in jail and fined him \$1,000 concurrent with the judgment in the breach of contract action. The court deemed the jail time served by Armstrong’s appearance in court. While the court had the discretion to determine the sentence on the basis of the evidence and within the scope of Code of Civil Procedure section 1218 (see 6 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Criminal Judgment, § 155, p. 183), its linking of the compensatory damages of the contract action with the contempt fine was in error (see *In re Wales* (1957) 153 Cal.App.2d 117, 119 [“a contempt proceeding is not a civil action, either at law or in equity, but is a separate proceeding of a criminal nature [citations] notwithstanding the recognized practice to prosecute the contempt in the cause or proceeding out of which it

⁴ As CSI points out, Armstrong did not seek review of the trial court’s ruling on the validity of the injunction or the court’s determination that his defenses had been previously litigated.

arose”]; *Bailey v. Superior Court* (1956) 142 Cal.App.2d 47, 54 [court erred in awarding compensatory damages in contempt action]). The court simply had no authority to order the fine in the contempt proceeding “concurrent” with the judgment in the civil action.

III. DISPOSITION

The petition for writ of certiorari is granted in part. The trial court is directed to reinstate the sentences previously imposed on Armstrong for the contempt citations of June 5, 1997 and February 20, 1998 and to reinstate the fine on the third contempt citation. The parties are to bear their own costs.

RIVERA, J.

We concur:

SEPULVEDA, Acting P. J.

MUNTER, J.*

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A107095

IN THE SUPREME COURT OF CALIFORNIA

En Banc

CHURCH OF SCIENTOLOGY, Petitioner,

v.

SUPERIOR COURT OF THE COUNTY OF MARIN, Respondent;

GERALD ARMSTRONG, Real Party in Interest.

Petition for review DENIED.

Kennard, J., is of the opinion the petition should be granted.

SUPREME COURT
FILED
JAN - 4 2006
Frederick K. Ulrich Clerk
DEPUTY

GEORGE

Chief Justice

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 4

Kendrick Moxon
Moxon & Kobrin
3055 Wilshire Blvd.
Ste. 900
Los Angeles, CA 90010

CHURCH OF SCIENTOLOGY INTERNATIONAL,
Petitioner,

v.

THE SUPERIOR COURT OF MARIN COUNTY,
Respondent;
GERALD ARMSTRONG,
Real Party in Interest.

~~2005~~
Marin County No. 157680, 021632

** REMITTITUR **

I, Diana Herbert, Clerk of the Court of Appeal of the State of California, for the First Appellate District, do hereby certify that the decision entered in the above-entitled cause on October 19, 2005 has now become final.

Appellant Respondent to recover costs
 Each party to bear own costs
 Costs are not awarded in this proceeding
 See decision for costs determination

Witness my hand and the Seal of the Court affixed at my office this JAN 12 2006

Diana Herbert
Clerk of the Court

I. CALANOC

Deputy Clerk



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1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the
3 age of eighteen (18) years and not a party to the within action.

4 On July 26, 2007, I served the foregoing document described as:

5 **PLAINTIFF'S MOTION TO REINSTATE SENTENCES FOR CONTEMPT;**
6 **MOTION FOR ISSUANCE OF WARRANT FOR DEFENDANT'S ARREST**

7 by Federal Express, prepaid, on interested parties in this action as follows:

8 Gerald Armstrong
9 #1-45950 Alexander Avenue
10 Chilliwack, B.C. V2P 1 L5
11 Canada

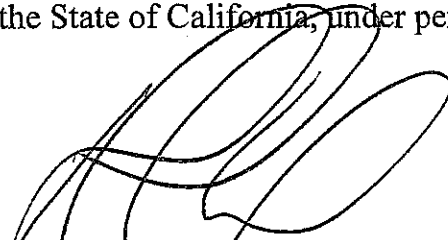
12 and by sending it to Gerald Armstrong via email to: gerry@gerryarmstrong.org

13 and my sending by first class mail, postage prepaid, to:

14 Ford Greene
15 711 Sir Francis Drake Blvd.
16 San Anselmo, CA 94960

17 Executed on July 26, 2007 at Los Angeles, California.

18 I declare in accordance with the laws of the State of California, under penalty of
19 perjury, that the foregoing is true and correct.

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21 _____
22 Kendrick Moxon
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