

LAW & MOTION, CIVIL CALENDAR

RULINGS

TIME: 9:00

DATE: 1/27/95

DEPT: 1

JUDGE: GARY W. THOMAS

REPORTER: JANICE KNETZGER

CLERK: J. BENASSINI

CASE NO: 157680

TITLE OF ACTION: CHURCH OF SCIENTOLOGY V. GERALD ARMSTRONG

THE MOTION OF PLAINTIFF FOR SUMMARY ADJUDICATION OF ISSUES IS GRANTED AS TO THE FOURTH AND SIXTH CAUSES OF ACTION AND DENIED AS TO THE ELEVENTH CAUSE OF ACTION.

AS TO ALL CAUSES OF ACTION, DEFENDANT FAILS TO RAISE A TRIABLE ISSUE AS TO WHETHER THE LIQUIDATED DAMAGES PROVISION IS INVALID. DEFENDANT RELIES ON THE LAW AS IT EXISTED PRIOR TO JULY 1, 1978. (SEE *UNITED SAV. & LOAN ASSN. V. REEDER DEV. CORP.* (1976) 57 CAL.APP.3D 282 AND EARLIER VERSIONS OF CIV. CODE, §§ 1670 AND 1671.) THE LAW NOW PRESUMES THAT LIQUIDATED DAMAGES PROVISIONS ARE "VALID UNLESS THE PARTY SEEKING TO INVALIDATE THE PROVISION ESTABLISHES THAT THE PROVISION WAS UNREASONABLE UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THE CONTRACT WAS MADE." (CIV. CODE, § 1671, SUBD. (b).) DEFENDANT'S EVIDENCE IS NOT SUFFICIENT TO RAISE A TRIABLE ISSUE IN THAT REGARD. ALTHOUGH DEFENDANT STATES IN HIS DECLARATION THAT HE WAS NOT INVOLVED IN NEGOTIATING THE PROVISION (SEE D'S EX. 1, ¶12), HE GOES ON TO STATE THAT HE DISCUSSED THE PROVISION WITH TWO ATTORNEYS BEFORE SIGNING THE AGREEMENT. (*ID.*, ¶¶12-13.) THUS, HE CLEARLY KNEW OF THE PROVISION YET CHOSE TO SIGN IT. HE HAS NOT SHOWN THAT HE HAD UNEQUAL BARGAINING POWER OR THAT HE MADE ANY EFFORTS TO BARGAIN OR NEGOTIATE WITH RESPECT TO THE PROVISION. (SEE *H. S. PERLIN CO. V. MORSE SIGNAL DEVICES* (1989) 209 CAL.APP.3D 1289.) DEFENDANT NEXT STATES THAT PLAINTIFF'S ACTUAL DAMAGES ARE ZERO. (D'S EX. 1, ¶12.) HOWEVER, "THE AMOUNT OF DAMAGES ACTUALLY SUFFERED HAS NO BEARING ON THE VALIDITY OF THE LIQUIDATED DAMAGES PROVISION..." (SEE LAW REVISION COMMISSION COMMENT TO § 1671.) FINALLY, DEFENDANT POINTS TO THE FACT THAT OTHER SETTLEMENT AGREEMENTS CONTAIN A \$10,000 LIQUIDATED DAMAGES PROVISION. (SEE D'S EXS. 2C AND 2D.) THIS ALONE IS NOT SUFFICIENT TO RAISE A TRIABLE ISSUE IN THAT DEFENDANT HAS NOT SHOWN THAT CIRCUMSTANCES DID NOT CHANGE BETWEEN 12/86 AND 4/87 AND THAT THOSE SETTLING PARTIES STAND IN THE SAME OR SIMILAR POSITION TO DEFENDANT (I.E., THAT THEY WERE AS HIGH UP IN THE ORGANIZATION AND COULD CAUSE AS MUCH DAMAGE BY SPEAKING OUT AGAINST PLAINTIFF OR THAT THEY HAVE/HAD ACCESS TO AS MUCH INFORMATION AS DEFENDANT).

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DEFENDANT ALSO HAS NOT RAISED A TRIABLE ISSUE REGARDING DURESS. DEFENDANT'S OWN DECLARATION SHOWS HE DID NOT EXECUTE THE AGREEMENT UNDER DURESS IN THAT IT SHOWS THAT HE CAREFULLY WEIGHED HIS OPTIONS. (SEE D'S EX. 1, ¶10.) IT CERTAINLY DOES NOT SHOW THAT HE DID SOMETHING AGAINST HIS WILL OR HAD "NO REASONABLE ALTERNATIVE TO SUCCUMBING." (SEE *IN RE MARRIAGE OF BALTINS* (1989) 212 CAL.APP.3D 66, 84.) IN ADDITION, DEFENDANT IS RELYING ON THE CONDUCT OF A THIRD PARTY (FLYNN) TO ESTABLISH DURESS, YET HE SETS FORTH NO FACT OR EVIDENCE IN HIS SEPARATE STATEMENT SHOWING THAT PLAINTIFF HAD REASON TO KNOW OF THE DURESS. (SEE *LEEPER V. BELTRAMI* (1959) 53 CAL.2D 195, 206.)

AS TO THE FOURTH CAUSE OF ACTION, CONTRARY TO DEFENDANT'S ARGUMENT, THE SUBJECT DECLARATION DOES MORE THAN MERELY AUTHENTICATE DOCUMENTS. (SEE P'S EX. 1(A)(11), ¶¶1-3.) THE COURT FINDS THAT THE DECLARATION CONSTITUTES A DISCLOSURE OF DEFENDANT'S "EXPERIENCES WITH" PLAINTIFF OR "KNOWLEDGE OR INFORMATION" CONCERNING PLAINTIFF AND HUBBARD. (SEE P'S EX. 1B, ¶7D.) DEFENDANT FAILS TO RAISE A TRIABLE ISSUE REGARDING OBSTRUCTION OF JUSTICE/ SUPPRESSION OF EVIDENCE. THE SETTLEMENT AGREEMENT EXPRESSLY DOES NOT PROHIBIT DEFENDANT FROM DISCLOSING INFORMATION PURSUANT TO SUBPOENA OR OTHER LEGAL PROCESS. (SEE P'S EX. 1B, ¶7H; CONTRAST WITH PEN. CODE, §§ 136.1 AND 138, *WILLIAMSON V. SUPERIOR COURT* (1978) 21 CAL.3D 829, *PEOPLE V. PIC'L* (1982) 31 CAL.3D 731.) NOR IS PLAINTIFF IN THIS CAUSE OF ACTION SEEKING TO PROHIBIT DISCLOSURE TO GOVERNMENT AGENCIES CONDUCTING INVESTIGATIONS PURSUANT TO STATUTORY OBLIGATIONS. (CONTRAST WITH *MARY R. V. B. & R. CORP.* (1983) 149 CAL.APP.3D 308 AND *ALLEN V. JORDANOS' INC.* (1975) 52 CAL.APP.3D 160.) EVEN IF A PORTION OF THE AGREEMENT COULD BE CONSTRUED TO SO PROHIBIT (SEE, E.G., ¶10), PLAINTIFF IS NOT RELYING ON THAT SECTION. NOR HAS DEFENDANT SHOWN THAT THE PROVISION IS SO SUBSTANTIAL AS TO RENDER THE ENTIRE CONTRACT ILLEGAL. (CONTRAST WITH *ALLEN*, *SUPRA*, 52 CAL.APP.3D AT 166.

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AS TO THE SIXTH CAUSE OF ACTION, DEFENDANT FAILS TO RAISE A TRIABLE ISSUE REGARDING THE CNN INTERVIEW. DEFENDANT ADMITTED IN HIS DEPOSITION THAT HIS CONVERSATION WITH CNN INVOLVED KNOWLEDGE HE HAD GAINED BECAUSE OF HIS YEARS OF EXPERIENCE WITH THE ORGANIZATION (P'S EX. 1A AT 344:1-4), THUS REFUTING HIS ARGUMENTS THAT HIS STATEMENT WAS BASED ON KNOWLEDGE ACQUIRED AFTER THE SETTLEMENT AGREEMENT AND THAT HIS INTERVIEW WAS DIRECTLY RELATED TO THE INSTANT LITIGATION. IN ADDITION, PLAINTIFF SET FORTH NO FACTS OR EVIDENCE IN HIS SEPARATE STATEMENT SHOWING THAT HE COULD DISCLOSE INFORMATION ACQUIRED AFTER EXECUTION OF THE SETTLEMENT AGREEMENT OR THAT HE COULD MAKE SUCH STATEMENTS IN THE CONTEXT OF FUTURE LITIGATION. FINALLY, THERE IS NOTHING IN THE STATEMENT WHICH TIES IT TO EITHER OF THE ARGUMENTS RAISED BY DEFENDANT. DEFENDANT ALSO FAILS TO RAISE A TRIABLE ISSUE REGARDING THE AMERICAN LAWYER INTERVIEW. DEFENDANT'S CLAIM THAT HE ONLY DISCUSSED THE INSTANT LITIGATION IS REFUTED BY HIS OWN ADMISSION THAT HE DISCUSSED "THE PLIGHT OF THE ORGANIZATION [AND] WHAT IT WOULD TAKE TO END ITS LEGAL TROUBLES." (D'S EX. 1D AT 352:15-19.) DEFENDANT'S CLAIM THAT HIS DISCUSSION INVOLVED "NOTHING MORE THAN WHAT JUDGE BRECKENRIDGE STATED IN HIS DECISION IN ARMSTRONG I" IS REFUTED BY HIS ADMISSION THAT HE DID NOT RECALL DISCUSSING THE BRECKENRIDGE OPINION WITH THE REPORTER. (D'S EX. 1D AT 358:20-23.) FURTHER, DEFENDANT POINTS TO NOTHING IN JUDGE BRECKENRIDGE'S OPINION WHICH COINCIDES TO THOSE MATTERS DISCUSSED BY DEFENDANT.

AS TO THE ELEVENTH CAUSE OF ACTION, PLAINTIFF HAS NOT SHOWN THAT DEFENDANT VIOLATED PARAGRAPH 7D OF THE SETTLEMENT AGREEMENT. THE DECLARATION RELIED ON BY PLAINTIFF (P'S EX. 1(A)(8)) DOES NOT DISCLOSE DEFENDANTS "EXPERIENCES WITH THE CHURCH OF SCIENTOLOGY [OR] ANY KNOWLEDGE OR INFORMATION HE MAY HAVE CONCERNING THE CHURCH OF SCIENTOLOGY..."

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DEFENDANT ARMSTRONG FILED A SUPPLEMENTAL DECLARATION AND EVIDENCE SIX DAYS LATE. THE COURT DID NOT PERMIT SAME. THE PLAINTIFF'S MOTION TO STRIKE THE SUPPLEMENTAL PAPERS FROM THE FILE IS GRANTED. PLAINTIFF'S REQUEST FOR SANCTIONS IS GRANTED. DEFENDANTS KNEW THE LATENESS OF THE FILING, SOME SIX DAYS. THERE WAS AMPLE TIME TO SEEK THE COURT'S PERMISSION FOR A LATE FILING. PERMISSION WAS NOT SOUGHT. SANCTIONS REQUESTED BY PLAINTIFF PURSUANT TO SECTION 437C(i) ARE GRANTED IN THE AMOUNT OF \$700, AS THE COURT FINDS THIS SIX-DAYS LATE FILING TO BE IN BAD FAITH.

Laurie Bartilson and Andrew Wilson appearing for plaintiff; Ford Greene appearing for defendant Gerald Armstrong. Matter is heard and argued. Tentative ruling becomes final. Sanctions are to be paid within 20 days. Motion to strike is granted, subject papers removed from record and destroyed. William Benz is appointed as referee.