

LAW & MOTION, CIVIL CALENDAR

RULINGS

TIME:	9:00	DATE:	DECEMBER 1, 1995	DEPT:	1
JUDGE:	GARY W. THOMAS	REPORTER:	E. PASSARIS	CLERK:	C. SOTELO
CASE NO:	157680	TITLE OF ACTION:	CHURCH OF SCIENTOLOGY V. ARMSTRONG		

DEFENDANT'S MOTION

THE MOTION OF DEFENDANT GERALD ARMSTRONG FOR RECONSIDERATION IS DENIED. AS WILL BE SHOWN, NONE OF DEFENDANT'S ARGUMENTS MEET THE REQUIREMENTS OF CODE OF CIVIL PROCEDURE SECTION 1008, SUBDIVISION (a).

ARGUMENT 1: "THE COURT MUST CONSIDER THE HELLER DECLARATION WHICH RAISES TRIABLE ISSUES AS TO WHETHER THE AGREEMENT WAS INTEGRATED AND AS TO THE PARTIES INTENT THAT THE GAG PROVISIONS WERE RECIPROCAL" - IT IS NOT SUFFICIENT FOR PURPOSES OF A RECONSIDERATION MOTION TO SIMPLY ARGUE THAT THE COURT MISINTERPRETED THE LAW. (GILBERD V. AC TRANSIT (1995) 32 CAL.APP.4TH 1494, 1500.) DEFENDANT'S PURPORTED "NEW OR DIFFERENT" EVIDENCE IS NOT "NEW OR DIFFERENT" IN THAT IT IS MERELY CUMULATIVE OF ALL OF THE OTHER EVIDENCE DEFENDANT HAS SUBMITTED IN THIS CASE TO SHOW THAT THE NATURE OF SCIENTOLOGY CONTINUES TO BE RECOGNIZED AS A LIVE PUBLIC CONTROVERSY AND THAT SCIENTOLOGY INTIMIDATES AND CRITICIZES ITS MEMBERS AND CRITICS.

ARGUMENT 2: "THE INJUNCTION VIOLATES THE FIRST AMENDMENT" - THIS AGAIN IS SIMPLY AN ARGUMENT THAT THE COURT PREVIOUSLY MISINTERPRETED THE LAW. THE PURPORTED "NEW" EVIDENCE IS IRRELEVANT TO WHETHER THE INJUNCTION VIOLATES THE FIRST AMENDMENT.

ARGUMENT 3: "THE INJUNCTION PREVENTS ARMSTRONG FROM DEFENDING HIMSELF IN OTHER LITIGATION WITH CSI" - THIS IS NOT "NEW OR DIFFERENT" SINCE PLAINTIFF SOUGHT THE OBJECTED TO PROHIBITION IN ITS MOTION SEEKING A PERMANENT INJUNCTION. THE BANKRUPTCY ORDER IS NOT "NEW OR DIFFERENT" SINCE, EVEN IF THE BANKRUPTCY COURT HAD NOT DIRECTED THAT TESTIMONY BE VIA DECLARATION, DEFENDANT WOULD HAVE HAD THE SAME PURPORTED PROBLEM IN OBTAINING DIRECT TESTIMONY (I.E., HE WOULD HAVE BEEN UNABLE TO TALK TO PEOPLE ABOUT SCIENTOLOGY IN ORDER TO OBTAIN DIRECT TESTIMONY IN HIS OWN DEFENSE). EVEN IF THE COURT CONSIDERS THIS ARGUMENT, IT HAS NO MERIT IN THAT DEFENDANT CAN ASK PEOPLE TO SUBMIT DECLARATIONS WITHOUT DISCUSSING HIS VIEWS AND BELIEFS ABOUT PLAINTIFF.

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ARGUMENT 4: "THE SEALING ORDER IS UNINTELLIGIBLE AND UNENFORCEABLE" - AGAIN, THIS IS NOT "NEW OR DIFFERENT" SINCE PLAINTIFF SOUGHT THIS RELIEF WHEN IT SOUGHT THE PERMANENT INJUNCTION.

ARGUMENT 5: "TO THE EXTENT THE AGREEMENT IS IN RESTRAINT OF TRADE, IT IS INVALID" - AGAIN, THIS IS NOT "NEW OR DIFFERENT" SINCE THE SAME HELD TRUE AT THE TIME PLAINTIFF SOUGHT THE PERMANENT INJUNCTION. IN ANY EVENT, THE INJUNCTION DOES NOT PRECLUDE DEFENDANT FROM WORKING FOR HIS ATTORNEY AS A PARALEGAL. DEFENDANT CITES NO AUTHORITY THAT THE INJUNCTION IS INVALID WHERE IS ONLY LIMITS THE CASES UPON WHICH HE CAN WORK.

ARGUMENT 6: "THE HELLER AND LONG DECLARATIONS RAISE TRIABLE ISSUES REGARDING THE DEFENSE OF UNCLEAN HANDS" - DEFENDANT POINTS ONLY TO FACTS AND EVIDENCE SET FORTH IN HIS PREVIOUS SEPARATE STATEMENT, THUS THERE IS NOTHING "NEW OR DIFFERENT" TO SUPPORT THIS ARGUMENT.

PLAINTIFF'S MOTION

PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION IS DENIED; IN ALL OTHER RESPECTS, THE MOTION IS GRANTED. AS TO THE FIRST CAUSE OF ACTION OF DEFENDANT'S CROSS-COMPLAINT, PLAINTIFF HAS FAILED TO MEET ITS BURDEN OF SHOWING THAT THE COURT HAS DETERMINED THE ENFORCEABILITY OF PARAGRAPHS 7I AND 18E OF THE SETTLEMENT AGREEMENT. THE MOTIONS DIRECTED AT THE FOURTH, SIXTH, THIRTEENTH, SIXTEENTH, SEVENTEENTH AND NINETEENTH CAUSES OF ACTION ONLY INVOLVED PARAGRAPH 7D OF THE SETTLEMENT AGREEMENT. (SEE P'S EXS. RJN C AND D.) DEFENDANT DOES NOT DISPUTE THAT "PARAGRAPHS 4A AND 4B CONCERN AN APPEAL WHICH HAS ALREADY BECOME FINAL, AND AS TO WHICH NO RIGHTS, DUTIES OR OBLIGATIONS COULD BE ENFORCED IN THE FUTURE." (SEE P'S FACT 3.) THE ORDER OF PERMANENT INJUNCTION DID NOT FIND VIOLATIONS OF PARAGRAPHS 7I AND 18E. (SEE P'S EX. RJN E, P. 2, ¶4.)