

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/30/16

DEPT. WEN

HONORABLE CRAIG D. KARLAN

JUDGE

MANNY MABUNGA

DEPUTY CLERK

HONORABLE #

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NONE

Reporter

1:30 pm

SC124183

Plaintiff

Counsel

RONNIE POTEL

NO APPEARANCES

VS

Defendant

PACIFIC FIRST NATIONAL INC.

Counsel

NATURE OF PROCEEDINGS:

1) CROSS-DEFENDANT'S DEMURRER TO THE FIRST AMENDED CROSS-COMPLAINT:

2) CROSS-COMPLAINANT'S REQUEST FOR SANCTIONS PURSUANT TO CCP SECTION 128.5:

In the above-matter heretofore submitted, the court rules as follows:

RULING:

The demurrer of Cross-Defendants Arie Abekasis, Bret Michael Silver (individually and dba Brent Silver Construction), Brent Silver Construction, Inc. and American Contractors Indemnity Company to the First Amended Cross-Complaint of Pacifica First National, Inc., is WITHDRAWN by moving parties

Cross-Complainant's request for sanctions pursuant to CCP §128.5 is GRANTED. Sanctions in the amount of \$1750.00 are imposed against Moving Cross-Defendants and their counsel of record, Leslie Richards, joint and severally, payable within 30 days. Cross-Complainant to give the notice required by CCP §128.5(h)(1).

Opposing party to give notice.

ANALYSIS:

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Cross-Complainant's Request for Sanctions Pursuant to CCP §128.5:
 PACIFICA argues sanctions of \$3,115 are appropriate pursuant to CCP §128.5 in that it had to oppose this frivolous demurrer. The issue of CCP §128.5 sanctions was very recently addressed in San Diegans for Open Government v. City of San Diego (Cal. Ct. App., June 7, 2016, No. D068421) 2016 WL 3162818, at 2-3. The following analysis is excerpted from that case:

In 1981, the Legislature enacted former CCP §128.5 to provide statutory authority for an award of sanctions. (Clark v. Optical Coating Laboratory, Inc. (2008) 165 Cal.App.4th 150, 164, 80 Cal.Rptr.3d 812.) Former section 128.5 applied only to complaints filed, or proceedings initiated, on or before December 31, 1994. (Olmstead v. Arthur J. Gallagher & Co. (2004) 32 Cal.4th 804, 819.) In 1994, the Legislature essentially suspended former section 128.5 when it enacted section 128.7, which provided statutory authorization for sanctions in actions filed on or after January 1, 1995. (§ 128.7, subd. (i); Olmstead, at p. 816.) Section 128.7 is much narrower and applies solely to misconduct in the filing or advocacy of groundless claims made in signed pleadings and other papers. (§ 128.7, subd. (b).) Section 128.7 also imposes a lower threshold for sanctions as the movant need not show subjective bad faith, but instead show the challenged conduct was " 'objectively unreasonable.' " (Guillemin v.

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Stein (2002) 104 Cal.App.4th 156, 167.)

In 2014, the Legislature proposed revising and reviving former section 128.5 "to provide an additional tool by which courts may potentially sanction bad faith actions or tactics." (Assem. Com. on Judiciary, analysis of Assem. Bill No. 2494 (2013-2014 Reg. Sess.) as amended April 10, 2014, p. 1.) The Legislature enacted the current version of section 128.5, effective January 1, 2015. (See Cal. Const., art. IV, § 8, subd. (c)(1) [absent urgency clause, a statute enacted at a regular session of the Legislature becomes effective on January 1 of the following year].) The substantive provisions of former section 128.5 and section 128.5 are virtually identical. (Compare § 128.5, subds. (a), (b), (c) & (d) and former § 128.5, subds. (a), (b), (c) & (d).) The current version of section 128.5 contains three additional provisions: (1) stating it does not apply to discovery disclosures and motions (id., subd. (e)); (2) providing any sanctions imposed must be "imposed consistently with the standards, conditions, and procedures set forth in subdivisions (c), (d) and (h)" of section 128.7 (§ 128.5, subd. (f)); and (3) imposing reporting obligations (id., subds. (e), (f) & (h)). These three additional provisions will be repealed on January 1, 2018, unless a later-enacted statute deletes or extends that date. (§ 128.5, subd. (i); see Stats. 2014, ch. 425, §§ 1, p. 3295.)

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The San Diegans court concluded that: (1) section 128.5 applies to any action pending as of January 1, 2015; (2) a motion under section 128.5 does not need to comply with the safe harbor waiting period described in section 128.7(c)(1); and (3) the objective standard used to evaluate section 128.7 sanctions motions applies to 128.5. (San Diegans for Open Government, supra, at pp. 4-6.)

Here, the Court finds Cross-Defendants' demurrer to be frivolous - i.e., "totally and completely without merit [and/or] for the sole purpose of harassing an opposing party." (CCP §128.5(b)(2).) An objectively reasonable attorney standard applies to this determination. (People v. LaBlanc (2015) 238 Cal.App.4th 1059, 1070 [addressing former § 128.5]; Finnie v. Town of Tiburon (1988) 199 Cal.App.3d 1, 12 [same].) Cross-Defendants' boilerplate and unintelligible demurrer lacked any argument or supporting authority.

American Contractors filed its answer to the First Amended Cross-Complaint on March 10, 2016. The Brent Silver Defendants filed their answer to the First Amended Cross-Complaint on April 13, 2016. This demurrer was not filed until May 23, 2016. A demurrer may be filed in conjunction with an answer, but not afterwards. (CCP §430.30(c).) Moreover, Cross-Defendants' failed to meet and confer before filing their demurrer, as per CCP § 430.41(a) and Cross-Defendants' failed to withdraw their untimely

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Counsel

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demurrer, even though opposing counsel so requested within three days of its filing. Thus, the Court finds that sanctions are appropriate.

The Court finds that sanctions are appropriate in the amount of \$1750.00 against Cross-Defendants and their counsel of record, Leslie Richards, joint and severally.

NOTE: A party filing a motion for sanctions under the current version of section 128.5 is required to e-mail the California Research Bureau of the California State Library "a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying the motion. The party shall also indicate whether a motion for sanctions was made pursuant to Section 128.7." (CCP §128.5(h)(1).) PACIFICA is ordered to comply with these reporting requirements.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/30/16 HONORABLE CRAIG D. KARLAN HONORABLE # NONE	JUDGE JUDGE PRO TEM Deputy Sheriff	MANNY MABUNGA NONE	DEPT. WEN DEPUTY CLERK ELECTRONIC RECORDING MONITOR Reporter
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1:30 pm	SC124183	Plaintiff Counsel	NO APPEARANCES
	RONNIE POTEL VS PACIFIC FIRST NATIONAL INC.	Defendant Counsel	

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in SANTA MONICA, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 6/30/2016

Sherri R. Carter, Executive Officer/Clerk

By: 
MANNY MABUNGA

KENNETH GROSSBART, ESQ.
Law Offices of Abdulaziz, Grossbart & Rudman
6454 Coldwater Canyon Avenue
North Hollywood, Ca 91606

LESLIE RICHARDS, ESQ.
Law Offices of
17337 Ventura Blvd., Suite 228
Encino, Ca 91316

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NO APPEARANCES

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Counsel

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MARIE BETTS-FRANKEL, ESQ.
Law Offices of
844 6th Street, #12
Santa Monica, Ca 90403

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