

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 68

HON. JUDITH F. HAYES, JUDGE

STUTZ ARTIANO SHINOFF & HOLTZ,)

PLAINTIFFS,)

VS.)

MAURA LARKINS,)

DEFENDANT.)

CASE NO. 37-2007-
00076218-CU-DF-CTL

REPORTER'S TRANSCRIPT

AUGUST 24, 2012

A P P E A R A N C E S:

FOR THE PLAINTIFF: STUTZ ARTIANO SHINOFF & HOLTZ
BY: ALEX TRAMONTANO, ESQ.
ATTORNEY AT LAW

FOR THE DEFENDANT: IN PROPRIA PERSONA

MARVEL S. VOTAW, RPR, CRR, CSR NO. 2817
OFFICIAL REPORTER
SAN DIEGO SUPERIOR COURT
SAN DIEGO, CALIFORNIA 92101

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THE COURT: 24 ON CALENDAR, STUTZ ARTIANO AND SHINOFF VERSUS LARKINS.

MR. TRAMONTANO: ALEX TRAMONTANO ON BEHALF OF THE PLAINTIFF.

THE COURT: SPELL YOUR LAST NAME FOR US, PLEASE.

MR. TRAMONTANO: T-R-A-M-O-N-T-A-N-O, ON BEHALF OF THE PLAINTIFF.

THE COURT: AND?

MS. LARKINS: MAURA LARKINS, DEFENDANT IN PRO PER.

THE COURT: ALL RIGHT. THIS IS A MOTION FOR RECONSIDERATION.

MS. LARKINS, GO AHEAD.

MS. LARKINS: THE MAY 30TH, 2012, DECISION BY THIS COURT IS AN IMPORTANT AND INTERESTING DECISION, PARTLY BECAUSE IT ADDRESSES FOUR SEPARATE BUT INEXTRICABLY INTERTWINED MOTIONS, ONE OF WHICH WAS MADE MORE THAN TWO YEARS EARLIER, AS WELL AS --

THE COURT: OKAY. LET ME GO -- LET ME JUST INTERRUPT YOU FOR A MOMENT.

AS YOU SAW, WE HAVE A VERY HEAVY CALENDAR THIS MORNING. AND I WANT TO ACCOMMODATE YOU, BUT I FOUND IN YOUR MOVING PAPERS THAT YOU RAISE NO NEW FACTS OR LAW. SO I'M GOING TO LIMIT YOU IN TERMS OF YOUR ARGUMENTS TO ADDRESSING THAT. WE'RE NOT GOING TO BE ABLE TO, IN

1 EFFECT, HEAR THE SAME MOTION OVER AGAIN.

2 SO I WANT YOU TO BE AWARE OF THAT FACT, AND
3 PROCEED ACCORDINGLY. OKAY?

4 MS. LARKINS: YES, YOUR HONOR. THERE WAS NEW
5 INFORMATION --

6 THE COURT: OKAY, GO AHEAD.

7 MS. LARKINS: -- IN MY MOTION FOR
8 CONSIDERATION.

9 SINCE THERE WAS NO HEARING ON MAY
10 30TH, I NEVER GOT A CHANCE TO PRESENT THE NEW
11 INFORMATION. THIS INFORMATION WAS OBTAINED ON
12 MARCH 27, 2012, AS INDICATED BY EXHIBIT 8 IN MY
13 MOTION TO RECONSIDER.

14 NEITHER THE COURT NOR PLAINTIFF HAS
15 DIRECTLY RESPONDED TO EITHER THE NEW INFORMATION OR MY
16 ARGUMENTS ABOUT WHY IT IS OF CRITICAL IMPORTANCE.

17 THE MOTION FOR RECONSIDERATION RAISES A
18 QUESTION AS TO WHETHER YOUR HONOR EVER HAD THE OPPORTUNITY
19 TO SEE MY SIX-PAGE PLEADING AND SUPPORTING DOCUMENTS FILED
20 ON MARCH 21ST, 2012.

21 THE COURT CLERK TOLD ME THAT I HAD USED A
22 LOT MORE THAN SIX PAGES FOR THAT PLEADING. SHE ALSO SAID
23 THAT SHE OVERHEARD SOMEONE IN THE COURT DISCUSSING THIS.

24 I ATTACHED SUPPORTING DOCUMENTS, AN EXHIBIT
25 AND A DECLARATION, TO THAT SIX-PAGE PLEADING. AND SO
26 THIS -- THESE ATTACHED -- THESE SUPPORTING DOCUMENTS ARE
27 APPARENTLY WHAT THE CLERK AND THE OTHER PERSON WERE
28 OBJECTING TO.

1 **THE COURT:** WHEN YOU SAY "OBJECTING," WHAT DO
2 YOU MEAN?

3 **MS. LARKINS:** THE CLERK WAS QUITE IRRITATED WITH
4 ME, KEPT REPEATING TO ME THAT I HAD USED MORE THAN SIX
5 PAGES, AND THAT THEY THOUGHT IT WAS VERY ODD. AND I
6 ASKED --

7 **THE COURT:** ANYTHING OTHER THAN THEY THOUGHT --
8 THAT SOMEONE THOUGHT IT WAS ODD?

9 **MS. LARKINS:** I ASKED IF THE DOCUMENTS HAD BEEN
10 ACCEPTED BY THE COURT. AND THE CLERK SAID THAT SHE DID
11 NOT KNOW, EVEN THOUGH SHE'D BEEN PRIVY TO A DISCUSSION
12 ABOUT THE DOCUMENTS.

13 I QUESTION WHETHER THE COURT WAS GIVEN THE
14 OPPORTUNITY TO DECIDE WHETHER TO ACCEPT OR NOT ACCEPT THE
15 DOCUMENTS. THERE IS STRONG EVIDENCE THAT YOUR HONOR DID
16 NOT SEE THE IMPORTANT DOCUMENTS SINCE YOUR MAY 30TH, 2012,
17 DECISION FALSELY CLAIMED THAT STATEMENTS WERE CURRENTLY ON
18 MY WEBSITE, EVEN THOUGH I HAD SUBMITTED DOCUMENTATION
19 SHOWING THAT STATEMENTS -- THE TWO STATEMENTS THAT HAD
20 BEEN MADE BY THIRD-PARTY COMMENTERS HAD BEEN REMOVED.

21 ONE WOULD HOPE THAT THE MAY 30TH DECISION
22 WOULD BE CHANGED AS SOON AS YOUR HONOR BECAME AWARE THAT
23 IT CONTAINED FALSE STATEMENTS.

24 THE COURT STILL HAS NOT ACKNOWLEDGED
25 RECEIVING THE DOCUMENTS THAT PROVE THAT I HAD REMOVED THE
26 STATEMENTS. HOWEVER, THE COURT SEEMS TO HAVE TACITLY
27 ACKNOWLEDGED THE IMPORTANCE OF THE NEW INFORMATION IN MY
28 MOTION TO RECONSIDER SINCE THE COURT DID NOT INCLUDE THE

1 FALSE STATEMENTS IN ITS JULY 27TH, 2012, DECISION TO
2 STRIKE MY ANSWER, EVEN THOUGH THE COURT HAD USED THOSE
3 STATEMENTS IN ITS MARCH 8TH, 2012, TENTATIVE RULING
4 STRIKING MY ANSWER.

5 THE FACT THAT THE COURT INCLUDED NO
6 STATEMENTS FROM MY WEBSITE IN ITS DECISION TO STRIKE MY
7 ANSWER IS VERY CONCERNING, ESPECIALLY SINCE THE COURT
8 SPECIFICALLY ASKED PLAINTIFF TO COME UP WITH A LIST OF
9 VIOLATIONS OF THE INJUNCTION FOR THE PURPOSE OF
10 DETERMINING WHETHER TO STRIKE MY ANSWER.

11 I HOPE THAT YOU WILL RECONSIDER YOUR
12 RULING. BUT IF NOT, I DO PLAN TO APPEAL. THE COURT DOES
13 NOT HAVE JURISDICTION TO TURN AN AGREEMENT INTO AN
14 INJUNCTION IF THE INJUNCTION IS NOT CONSTITUTIONAL.

15 I ASK THE COURT TO RECONSIDER IT'S REFUSAL
16 TO DISSOLVE OR MODIFY THE INJUNCTION. I ALSO ASK THE
17 COURT TO EXPLAIN ITS DECISION NOT TO DISSOLVE OR MODIFY
18 THE INJUNCTION.

19 I ASK THE COURT TO RECONSIDER IT'S
20 FAILURE TO GRANT ME A JURY TRIAL OR ALSO -- AND/OR
21 ALSO GIVE ME AN EXPLANATION FOR THE DECISION.

22 I ALSO ASK THE COURT TO RECONSIDER
23 THE SANCTIONS IT HAS GIVEN ME BASED ON AN
24 UNCONSTITUTIONAL INJUNCTION.

25 AND I WANT TO NOTE THAT THE COURT OF
26 APPEAL DID NOT DIRECT THIS COURT TO EXERCISE ITS
27 DISCRETION TO PUNISH ME FOR VIOLATIONS OF THE
28 INJUNCTION. THAT IS ANOTHER FALSE STATEMENT.

1 I WOULD ALSO LIKE THE COURT TO RECONSIDER
2 ITS SUAS SPONTE DECISION TO STAY DISCOVERY.

3 AND I WOULD ASK THE COURT TO RECONSIDER
4 TODAY'S RULING WITHIN THE NEXT WEEK AND A HALF SINCE I AM
5 REQUIRED TO FILE THE NOTICE OF APPEAL WITHIN 90 DAYS OF
6 FILING MY MOTION TO RECONSIDERATION, AND THAT WOULD BE
7 SEPTEMBER 6TH.

8 THE COURT: OKAY.

9 MR. TRAMONTANO: YOUR HONOR, JUST BRIEFLY.

10 I THINK YOU HIT THE NAIL ON THE HEAD
11 WITH YOUR TENTATIVE. CALIFORNIA CODE OF CIVIL
12 PROCEDURE 1008 STATES THAT A PERSON ON THE MOTION
13 FOR RECONSIDERATION, A PARTY MUST BRING NEW FACTS OR
14 LAW TO LIGHT WHICH COULD NOT HAVE BEEN REASONABLY
15 DISCOVERED WITH DUE DILIGENCE. DEFENDANT SIMPLY
16 HASN'T DONE THAT. SHE STILL FAILS TO EXPLAIN HOW
17 EXHIBIT 8 CHANGES ANYTHING.

18 THE INJUNCTION WAS NOT A COURT ISSUED
19 INJUNCTION. IT WAS A STIPULATED INJUNCTION WHICH THE
20 DEFENDANT AGREED TO AND HAS SINCE VIOLATED MULTIPLE TIMES
21 AS STATED IN OUR PAPERS LEADING UP TO THIS POINT.

22 SO WE WOULD SUBMIT ON THE TENTATIVE.

23 THANK YOU, YOUR HONOR.

24 THE COURT: GO AHEAD.

25 MS. LARKINS: WELL, IT IS INTERESTING THAT
26 MR. TRAMONTANO SAYS THAT THERE ARE MULTIPLE VIOLATIONS,
27 AND YET NARY A ONE IS MENTIONED IN THE MOTION TO STRIKE.
28 THE ONLY -- THE ONLY TIME ANY STATEMENT OF MINE WAS EVER

1 SPECIFICALLY RULED AS VIOLATING THE INJUNCTION WAS ON THIS
2 VERY MAY 30TH DECISION THAT I AM ASKING FOR
3 RECONSIDERATION OF.

4 AND ON THAT -- THOSE STATEMENTS, TWO OF
5 THEM WERE THIRD PARTY, WHICH I HAD REMOVED. THEY WERE
6 THIRD-PARTY STATEMENTS, AND I HAD REMOVED THEM. AND THE
7 COURT HAS REFUSED TO TELL ME WHETHER THE COURT FEELS THAT
8 THIRD-PARTY STATEMENTS ARE COVERED BY THE INJUNCTION.

9 ALSO, TWO OF THE STATEMENTS WERE FROM THE
10 PUBLIC RECORD, AND THE COURT HAS FAILED TO SAY WHETHER
11 THOSE ARE INCLUDED.

12 I LOST THE TRAIN OF THOUGHT. NEVER MIND.

13 THE COURT: I'LL GIVE YOU A MINUTE.

14 MS. LARKINS: OKAY. OH, THAT'S FINE.

15 I BELIEVE THAT -- I BELIEVE THAT THE
16 RECORD CONTAINS ENOUGH. OH, OH, YES. I REMEMBER
17 NOW. I WANTED TO TALK ABOUT THE -- THE
18 UNCONSTITUTIONAL INJUNCTION.

19 BASICALLY, TWO HUMAN BEINGS, TWO CITIZENS
20 OF THE UNITED STATES OR RESIDENTS OF THE UNITED STATES CAN
21 MAKE ANY KIND OF AGREEMENT THEY WANT. BUT THE COURT
22 CAN'T. THE COURT HAS TO OBEY THE CONSTITUTION. THE COURT
23 CANNOT MAKE AN INJUNCTION THAT'S UNCONSTITUTIONAL.

24 THAT'S ALL.

25 THE COURT: ALL RIGHT. WELL, TO THAT EXTENT I
26 AGREE WITH YOU.

27 HOWEVER, THE INJUNCTION THAT WAS THE
28 SUBJECT OF THIS ACTION WAS A STIPULATED INJUNCTION.

1 THE TERMS OF IT WERE CLEAR. YOU ADMITTED ON THE
2 RECORD, AS WE DISCUSSED THE LAST TIME, THAT YOU
3 UNDERSTOOD THE INJUNCTION. AND IT'S NOT AN
4 INJUNCTION THAT WAS SO DIFFICULT OR COMPLEX THAT IT
5 CANNOT BE READILY UNDERSTOOD.

6 IT APPEARS TO THE COURT THAT YOUR
7 VIOLATIONS OF THE INJUNCTION WERE NUMEROUS, CLEAR, AND
8 DELIBERATE. LESSER SANCTIONS DIDN'T WORK. AND YOU WERE
9 GIVEN OPPORTUNITIES TO REMEDY THE SITUATION. YOU CHOSE
10 NOT TO DO THAT. FROM THE START YOUR ACTS IN VIOLATING THE
11 INJUNCTION APPEAR TO BE DELIBERATE AND WILLFUL. IT CAUSED
12 UNNECESSARY DELAY AND EXPENSE TO THE OTHER SIDE. FURTHER
13 ATTEMPTS TO COMPEL COMPLIANCE APPEAR TO ME TO BE FUTILE.

14 AND AMONG OTHER CASES, I WOULD REFER
15 YOU TO DEL JUNCO V. HUFNAGEL AT 150 CAL. APP. 4TH,
16 789.

17 IT JUST AT THIS POINT WOULD BE A
18 FUTILE ACT TO GO FORWARD WITH THE MATTER. AND TO
19 ATTEMPT EXPLANATION TO YOU AND ENGAGE IN DIALOGUE IS
20 TO INVITE FURTHER VIOLATIONS BY YOUR WILLFUL
21 ATTEMPTS AND DELIBERATE ATTEMPTS TO CIRCUMVENT THE
22 ORDER.

23 SO AT THIS POINT THE MOTION TO RECONSIDER
24 IS DENIED.

25 MS. LARKINS: MAY I SAY ONE THING?

26 THE COURT: NO. AT THIS TIME WE'VE CONCLUDED
27 THE HEARING. BUT THANK YOU.

28 MR. TRAMONTANO: THANK YOU, YOUR HONOR.

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MS. LARKINS: THANK YOU.

(PROCEEDINGS CONCLUDED AT 11:34 AM)

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CERTIFICATE


STATE OF CALIFORNIA)
: SS.
COUNTY OF SAN DIEGO)

STUTZ ARTIANO SHINOFF & HOLTZ VS. MAURA LARKINS
CASE NO. 37-2007-00076218-CU-DF-CTL - 8/24/2012
1 THROUGH 8, INCLUSIVE

I, MARVEL S. VOTAW, CERTIFIED SHORTHAND
REPORTER, AN OFFICIAL REPORTER OF THE SUPERIOR COURT
OF THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DO
HEREBY CERTIFY:

THAT I REPORTED IN SHORTHAND THE PROCEEDINGS
HELD IN THE FOREGOING CAUSE; THAT MY NOTES WERE LATER
TRANSCRIBED INTO TYPEWRITING UNDER MY DIRECTION; AND
THE FOREGOING PAGES CONTAIN A CORRECT TRANSCRIPTION OF
THE PROCEEDINGS.

DATED THIS 25TH DAY OF AUGUST, 2012.



MARVEL S. VOTAW, RPR, CRR
CSR NO. 2817
OFFICIAL REPORTER