

4 Civil No. D062738

Court of Appeal Fourth District

FILED

APR 17 2013

Stephen M. Kelly, Clerk

DEPUTY

**IN THE COURT OF APPEAL OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE**

STUTZ ARTIANO SHINOFF &
HOLTZ, APC,

Plaintiff/Respondent,

v.

MAURA LARKINS,

Defendant/Appellant.

Ct. of App. No. D062738

Superior Court Case No.
37-2007-00076218-CU-DF-CTL

Appeal from an Order of the Superior Court of California
In and For the County of San Diego
Honorable Judge Judith F. Hayes

**RESPONDENT'S MOTION TO CONSOLIDATE APPEALS
AND SUPPORTING MEMORANDUM; REQUEST FOR
EXTENSION OF TIME TO FILE RESPONDENT'S BRIEF
IN THE ALTERNATIVE;
DECLARATION OF COUNSEL IN SUPPORT**

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RESPONDENT'S MOTION TO CONSOLIDATE APPEALS

STUTZ ARTIANO SHINOFF & HOLTZ, APC ("Stutz"), the Respondent in two related appeals from Superior Court Case No. 37-2007-00076218-CU-DF-CTL pending before this Court, moves this Court for an order consolidating the two appeals filed by Appellant MAURA LARKINS, in pro per, for purposes of briefing, oral argument and decision. This motion is made on the ground that the evidence underlying both appeals and the legal questions presented by both appeals are so related as to make it advisable to consolidate them to preserve judicial economy.

Larkins' first appeal (Docket Number D062738) seeks review of a denial of a motion to dissolve or modify a stipulated injunction. The record in that appeal has been filed, as well as the Appellant's Opening Brief and Appellant's Appendix. The Respondent's Brief is due on April 22, 2013. Stutz previously filed a motion to dismiss this appeal, which will be considered by the Court with that appeal.

While Stutz was preparing briefing in the first appeal, Larkins filed a second appeal (not yet docketed) from the judgment entered in Stutz's favor. Stutz anticipates that this appeal will cover similar ground as the first appeal, and thus should be consolidated.

Rather than file two separate Respondent's Briefs, Stutz moves that the appeals be consolidated so that Larkins files an amended consolidated brief,

which would encompass both appeals, and then Stutz would file a consolidated Respondent's Brief. Larkins would then file an optional consolidated reply brief.

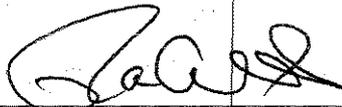
This motion is based on the attached memorandum, the records and files of this Court.

In the event that the motion is denied, then Stutz requests an additional 30 days to file its Respondent's Brief in the first appeal, which is currently due on April 22, 2013.

DATED: April 17, 2013

STUTZ ARTIANO SHINOFF & HOLTZ
A Professional Corporation

By: _____



Ray J. Artiano

James F. Holtz

Paul V. Carelli IV

Attorneys for Plaintiff STUTZ ARTIANO
SHINOFF & HOLTZ, APC

MEMORANDUM

I. STATEMENT OF THE CASE

In the instant action, Stutz sued Larkins for defamatory statements published by Larkins against the Stutz firm. The Superior Court issued a stipulated permanent injunction, but Larkins has willfully and repeatedly violated the terms of that injunction. Stutz made multiple attempts to compel compliance, then filed a motion to strike Larkins' answer. The trial court allowed extended briefing on the motion to strike, including additional time for a response and surreply respectively by the parties.

After a hearing on the merits, the trial court issued a Minute Order dated May 30, 2012, which deferred the decision to strike Larkins' Answer for forty-five (45) days, and requested further briefing from the parties regarding compliance with the stipulated injunction. The trial court heard further briefing by both parties, and issued an Order dated August 10, 2012, striking Larkins' answer. Larkins filed notice of the instant appeal of the trial court's May 30, 2012 minute order denying her motion to dissolve or modify the stipulated injunction on September 4, 2012.

Thereafter, Stutz filed its Request for Entry of Default on September 21, 2012, pursuant to the trial court's Order dated August 10, 2012. Then on January 10, 2013, Stutz filed its Request for Entry of Default

Judgment, along with the required declarations, forms, and proof of damages. On January 29, 2013, the trial court entered final judgment against Larkins. Larkins noticed a subsequent appeal on March 28, 2013, appealing the Judgment entered on January 29, 2012 by the trial court.

II. CONSOLIDATION IS NECESSARY TO CONSIDER TOGETHER TWO APPEALS WHICH CONCERN ISSUES ARISING FROM THE SAME EVENT AND WHICH HAVE OVERLAPPING APPELLATE RECORDS

“Since in the consideration of a motion for consolidation it is a factual question as to whether the questions presented are so related as to make it advisable to consolidate and whether the consideration of the appeals will be expedited by the consolidation, every motion for consolidation must, of necessity, be disposed of on its own merits.” (*Sampson v. Sapoznik* (1953) 117 Cal.App.2d 607, 609; see *General Elec. Co. v. Fed. etc. Distrib. Co.* (1954) 122 Cal.App.2d 509.)

The September 4, 2012 and March 28, 2013 appeals here present a compelling case for the advisability of consolidation:

1. The instant appeal of the denial of Larkins’ motion to modify or dissolve the April 9, 2009 stipulated injunction, and the subsequent appeal of the final judgment, present interrelated issues arising from the same factual nexus.

2. The two appellate issues arise from the same Superior Court Case No. 37-2007-00076218- CU-DF-CTL and the relief granted by the trial court therein.

3. The consolidation of the two appeals would allow for a complete augmented record for consideration and resolution of all currently noticed appellate issues arising from Superior Court Case No. 37-2007-00076218- CU-DF-CTL.

Because the two appeals arise from the same event and because determination of the March 28, 2013 appeal will require review of the record in the instant appeal, the interests of judicial economy will best be served by consolidating the two appeals for briefing, oral argument and decision.

In the interest of judicial efficiency and the global resolution of Superior Court Case No. 37-2007-00076218- CU-DF-CTL and the appeals therefrom, Respondent proposes the following: 1) a consolidation of the currently pending appeals for the purposes of briefing, oral argument and decision; 2) an extension of time for Appellant Larkins to file an augmentation of record and appendix; 3) an extension of time for Appellant Larkins to file a consolidated opening brief; 4) an extension of time for Respondent Stutz to file a consolidated respondent's brief; and 5) an extension of time for Appellant Larkins to file her reply brief from what would normally be set in due course.

III. IN THE ALTERNATIVE, STUTZ REQUESTS AN EXTENSION OF TIME TO FILE THE RESPONDENT'S BRIEF IN DOCKET D062738

In the event that Stutz's motion to consolidate appeals is denied, Stutz requests an additional 30 days to complete and file its Respondent's Brief in the first appeal, Docket D062738. This request is supported by the declaration of counsel.