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9 **GINGERBREAD COURT L.P.**

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – WEST DISTRICT**

10 **BARBARA HUMPHREY,**

11 **Plaintiff,**

12 **v.**

13 **GINGERBREAD COURT, L.P.; and DOES 1**
14 **through 10, inclusive,**

15 **Defendants.**

CASE NO.: SC 101482

Assigned For All Purposes To:
DEPT. WEJ

PROOF OF SERVICE OF ORDER

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LOS ANGELES SUPERIOR COURT

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BY VIVIAN JAIME, DEPUTY

SEP 07 2011
SUPERIOR COURT
WEST DISTRICT
SANTA MONICA

Attorneys for Defendant
Gingerbread Court L.P.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES - WEST DISTRICT**

10 **BARBARA HUMPHREY,**
11
12 **Plaintiff,**
13
14 **v.**
15 **GINGERBREAD COURT, L.P., a California**
16 **limited partnership; etc. et al,**
17
18 **Defendants.**

CASE NO.: SC 101482

Filed: January 26, 2009

Assigned For All Purposes To:

Dept. WEJ

[proposed] ORDER

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1 The motion of defendant Gingerbread Court L.P. for a prefiling order against plaintiff
2 Barbara Humphrey ("Humphrey") and her attorney Theodore A. Pinnock ("Pinnock"), and for an
3 order requiring security from Humphrey and/or Pinnock came on for hearing in Department J of
4 this Court on January 29, 2009. David Blake Chatfield appeared on behalf of defendant
5 Gingerbread Court L.P., and Theodore A. Pinnock appeared on behalf of plaintiff Barbara
6 Humphrey and attorney Theodore A. Pinnock.

7 Having read and considered the moving papers, declarations, and requests for judicial notice
8 in support of defendant's motion, and the opposing papers, and having heard and considered the
9 arguments presented at the hearing, the Court found that defendant presented satisfactory evidence
10 to establish that plaintiff Barbara Humphrey is a vexatious litigant within the meaning of Code of
11 Civil Procedure § 391(b), and that there is no reasonable probability that plaintiff will prevail in this
12 action against the moving defendant. The Court further found that Pinnock was a lawyer actually
13 litigating this matter on his own behalf and may not "hire" a straw plaintiff to avoid being declared
14 a vexatious litigant. However, rather than declare Pinnock a vexatious litigant, the Court found
15 Humphrey to be the vexatious litigant and ordered that Humphrey post \$10,000 security within 20
16 days of the date of the order. The Court dismissed this action when Humphrey failed to post any
17 security. Plaintiff appealed.

18 On June 23, 2011, the Court of Appeal ruled that the Court's determination that Humphrey
19 was a vexatious litigant rather than Pinnock was in error and reversed. The Court of Appeal
20 determined that if, as the trial court had found, "Pinnock retains disabled persons to act as straw
21 plaintiffs in these lawsuits,...then Pinnock is "an attorney at law acting in propria persona" (C.C.P.
22 Section 391, subd. (d)), and is, himself subject to the provisions of section 391 et seq." (Slip
23 Opinion, 5 attached hereto as Exhibit "A").

24 As the June 23, 2011 decision of the Court of Appeal is now the law of this case, based upon
25 the prior findings of the Court as reflected in the record, and good cause being found therefore;

26 **IT IS HEREBY ORDERED:**

- 27 1. Defendant Gingerbread Court L.P.'s motion is granted as to Theodore A. Pinnock;
28 2. Attorney Theodore A. Pinnock is prohibited from filing any new litigation in the state and federal

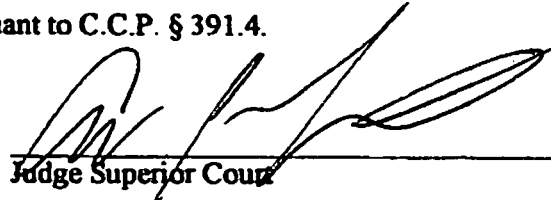
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courts of California without first obtaining leave of the presiding judge of the court in which the action is proposed to be filed;

3. In order to proceed with this litigation, Theodore A. Pinnock shall furnish security in the amount of \$10,000 for the benefit of defendant in this action within 20 days of the date of this Order. The action is stayed pending proof that such security has been furnished; and,

4. Should Theodore A. Pinnock fail to furnish security within 20 days of the date of this Order, this case shall be dismissed with prejudice pursuant to C.C.P. § 391.4.

DATED: September 16 2011



CESAR C. SARMIENTO

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California Rules of Court, rule 8.1116(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1116(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1116.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

COURT OF APPEAL - SECOND DIST.

FILED

JUN 13 2011

BARBARA HUMPHREY,

Plaintiff and Appellant,

v.

GINGERBREAD COURT, L.P.,

Defendant and Respondent.

B219578

JOSEPH T. ...

Clerk

**(Los Angeles County
Super. Ct. No. SC101482)**

Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County.

Terry B. Friedman, Judge. Reversed.

Theodore A. Pinnock for Plaintiff and Appellant.

Westlake Law Group, David Blake Chatfield for Defendant and Respondent.

Plaintiff Barbara Humphrey (Humphrey) challenges the orders of the trial court, issued under Code of Civil Procedure section 391, declaring her to be a vexatious litigant, requiring her to post a \$10,000 bond, ordering her to obtain leave of court before filing any new litigation, and dismissing her lawsuit against defendant Gingerbread Court, L.P. upon her failure to post the bond. Because we determine that Humphrey does not fit within any of the statutory definitions of a vexatious litigant under section 391, we reverse the judgment and orders.

FACTUAL AND PROCEDURAL BACKGROUND¹

After securing a fee waiver, Humphrey, through her attorney, Thomas Pinnock (Pinnock), filed suit against defendant alleging violations of the Americans With Disabilities Act (42 U.S.C. §§ 12182(a) et seq.), the Unruh Act (Civ. Code, §§ 51 and 52), and the Disabled Persons Act (Civ. Code, §§ 54, 54.1 and 54.3.) Specifically, Humphrey alleged that she is a person with physical impairments which substantially limit her ability to walk, and that she uses a motorized wheelchair for mobility. She was unable to enter defendant's commercial property, which includes a variety of shops on Venice Beach, because there were multiple steps but no ramp, and no directional signage to an accessible entrance. Humphrey sought injunctive relief, statutory damages and attorney fees.

Defendant filed a motion seeking to have Humphrey and her counsel declared vexatious litigants. The basis for the motion was not that Humphrey had filed multiple, unsuccessful lawsuits in pro. per. (she had not), but that her counsel, Pinnock, was using her as a "straw plaintiff" in order to skirt the vexatious litigant statute. In this connection, defendant submitted evidence that Pinnock filed over 2,000 lawsuits against nearly 10,000 small businesses, either in his name, in the name of an association formed by him,

¹ We deny defendant's request that we take judicial notice of the declaration of Noni Gotti as well as of eight civil case summary records of the Los Angeles Superior Court. These matters were not before the trial court, and have no bearing on our resolution of this appeal.

or in the name of indigent individuals who acted as plaintiffs in name only, including more than 50 lawsuits filed on Humphrey's behalf during 2009, none of which resulted in a judgment for Humphrey.

The trial court recognized that Humphrey did not meet the definition of a vexatious litigant under Code of Civil Procedure section 391.² The court nevertheless declared Humphrey a vexatious litigant, ordered her to post \$10,000 security within 20 days, and issued a pre-filing order prohibiting her from filing any new litigation without first obtaining leave of the court's presiding judge. Humphrey failed to furnish the \$10,000 security, and the court dismissed her lawsuit.

Humphrey appeals the dismissal of her action together with the orders declaring her to be a vexatious litigant and requiring her to obtain leave of court to file future lawsuits.

STANDARD OF REVIEW

"A court exercises its discretion in determining whether a person is a vexatious litigant. [Citation.] We uphold the court's ruling if it is supported by substantial evidence. [Citations.] On appeal, we presume the order declaring a litigant vexatious is correct and imply findings necessary to support the judgment.' (*Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 219, 120 Cal.Rptr.2d 879.) Questions of statutory interpretation, however, we review de novo. (*Ibid.*)" (*Holcomb v. U.S. Bank Nat. Assn.* (2005) 129 Cal.App.4th 1494, 1498-1499.)

² All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

DISCUSSION

Section 391, subdivision (b)(1) describes a vexatious litigant³ as a person who "[i]n the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing." As noted above, the trial court recognized that Humphrey did not fit within this definition of a vexatious litigant, because she had never filed any litigation in pro. per., but had always been represented by Pinnock. Nevertheless, the court relied on the reasoning of *Camerado Insurance Agency, Inc. v. Superior Court* (1993) 12 Cal.App.4th 838 (*Camerado*) to conclude that Humphrey is subject to the vexatious litigant law.

The issue in *Camerado, supra*, was whether section 391, subdivision (b) "applies to a litigant who is presently represented by counsel, despite having commenced five litigations in propria persona in the previous seven years." (*Id.* at p. 840.) The appellate court ruled that both a plain reading of the statute and the legislative purpose in enacting the law supported the conclusion that a party need not be acting in pro. per. in the current litigation in order to be declared a vexatious litigant pursuant to section 391, subdivision (b)(1), so long as the party was self-represented in at least five lawsuits in the immediately preceding seven years.

Defendant acknowledged that the facts of *Camerado* differed from those present in this case, so that *Camerado* was not directly applicable. It argued, however, that just as a party cannot avoid the vexatious litigant statute by hiring a lawyer to prosecute the current litigation, a lawyer who is actually litigating a matter on his own behalf may not "hire" a straw plaintiff in order to avoid being declared a vexatious litigant. The trial court found this reasoning compelling. However, rather than declare Pinnock a vexatious litigant, the court found Humphrey to be one. This was error.

³ Three additional definitions of the term appear in section 391, subdivision (b), none of which defendant contends are applicable here.

Not only does Humphrey not fit the statutory definition of a vexatious litigant, but she is not among the class of persons whose behavior the Legislature sought to address with the enactment of section 391. If, as defendant asserts, Humphrey is merely a straw plaintiff whom Pinnock is manipulating for his own ends, she is no less a victim of Pinnock's allegedly spurious tactics than is defendant. She has never filed a lawsuit in propria persona; thus there is no basis in law to circumscribe Humphrey's right to seek redress from the courts as there is in the case of the "obsessive and persistent [pro. per.] litigant[] whose conduct can cause serious financial results to the unfortunate object of his attack." (*Camerado, supra*, 12 Cal.App.4th at p. 842, quoting *First Western Development Corp. v. Superior Court* (1989) 212 Cal.App.3d 860, 867.) If, as defendant argues, Pinnock retains disabled persons to act as straw plaintiffs in these lawsuits, having entered into no genuine attorney client relationship with the named plaintiffs and with no ability on the part of the putative plaintiffs to control the litigation, then Pinnock is "an attorney at law acting in propria persona" (§ 391, subd. (d)), and is, as such, himself subject to the provisions of section 391 et seq.

DISPOSITION

The judgment of dismissal as well as the orders declaring Humphrey a vexatious litigant and requiring her to post bond and to seek leave of court before filing any subsequent litigation are reversed. Each party to bear their own costs.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.

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PROOF OF SERVICE

(C.C.P. §1013a; 2015.5)

STATE OF CALIFORNIA, COUNTY OF VENTURA:

I am employed in the County of Ventura, State of California. I am over the age of eighteen and not a party to the within action. My business address is 2625 Townsgate Road, Suite 330, Westlake Village, California 91361.

On September 6, 2011, I served the foregoing document(s) described as: **[proposed] Order** on the interested parties in this action as follows:

Pimock & Wakefield
Theodore A. Pimock, Esq.
7851 Mission Center Court, Suite 310
San Diego, CA 92108

BY MAIL I placed the above document(s) in sealed envelopes that I placed for deposit with the U.S. Postal Service at Westlake Village, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing documents for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Westlake Village, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY FEDERAL EXPRESS I placed the above document(s) in sealed envelopes and placed them for deposit with Federal Express, prepaid for next day delivery.

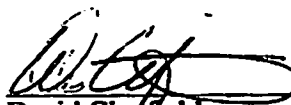
BY FACSIMILE I transmitted the above document(s) by facsimile transmission to the parties and facsimile numbers set forth herein,

BY PERSONAL SERVICE I handed the document to the above named counsel in Dept. B of the Los Angeles, Superior Court, West District.

State: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Federal: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 7, 2011, at Westlake Village, California.



David Chaffield

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**PROOF OF SERVICE
(C.C.P. §1013a; 2015.5)**

STATE OF CALIFORNIA, COUNTY OF VENTURA:

I am employed in the County of Ventura, State of California. I am over the age of eighteen and not a party to the within action. My business address is 2625 Townsgate Road, Suite 330, Westlake Village, California 91361.

On October 7, 2011 I served the foregoing document(s) described as: **ORDER** on the interested parties in this action as follows:

Theodore A. Pinnock, Esq.
David C. Wakefield, Esq.
P.O. Box 712739
San Diego, CA 92171
Fax: 619-923-2913

BY MAIL I placed the above document(s) in sealed envelopes that I placed for deposit with the U.S. Postal Service at Westlake Village, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing documents for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Westlake Village, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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BY FACSIMILE I transmitted the above document(s) by facsimile transmission to the parties and facsimile numbers set forth herein,

BY PERSONAL SERVICE I placed the above document(s) in sealed envelopes and I delivered them by hand to the offices of the addressee(s).

State: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Federal: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on October 7, 2011, at Westlake Village, California.



Dawn Masters

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4 Attorneys for Defendant
 5 Gingerbread Court L.P.

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14 GINGERBREAD COURT, L.P., a California
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES - WEST DISTRICT

BARBARA HUMPHREY,
 Plaintiff,
 v
 GINGERBREAD COURT, L.P., a California
 limited partnership, etc. et al,
 Defendants.

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