

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

**Department 3
Honorable William J. Monahan, Presiding**

Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 8/8/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (8/7/2024) you must notify the:

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling.
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court prefers in-person appearances or by Teams. If you must appear virtually, please use video.

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website.

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept., and line number.

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	24CV428732	Jill Murdock et al vs Epic Concrete Coatings LLC et al	Hearing: Demurrer to First Amended Cross-Complaint of Defendants/Cross-Complainants Eric Hartoon and Epic Concrete Coatings LLC by Plaintiffs/Cross Defendants Jill Murdock and Daniel Murdock Unopposed and the Demurrer is GRANTED WITH 15 DAYS LEAVE TO AMEND. The motion to strike is MOOT. Moving party to prepare order (for Lines 1 and 2 combined) and submit to court for signature.

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LINE 2	24CV428732	Jill Murdock et al vs Epic Concrete Coatings LLC et al	<p>Motion: Strike Defendants/Cross-Complainants Eric Hartoon and Epic Concrete Coatings LLC 's Prayer for Punitive Damages in the First Amended Cross-Complaint by Plaintiffs/Cross Defendants Jill Murdock and Daniel Murdock</p> <p>Unopposed and the Demurrer is GRANTED WITH 15 DAYS LEAVE TO AMEND. The motion to strike is MOOT.</p> <p>Moving party to prepare order (for Lines 1 and 2 combined) and submit to court for signature.</p>
LINE 3	24CV436591	Omar Gonzalez vs FORD MOTOR COMPANY et al	<p>Motion: Compel Arbitration and Stay Action by Defendant THE FORD STORE MORGAN HILL</p> <p>OFF CALENDAR.</p> <p>The moving party has been dismissed without prejudice from this action. (See Plaintiff's Request for Dismissal filed 7/31/2024 without prejudice of "Solely THE FORD STORE MORGAN HILL, entirely from action".)</p>
LINE 4	22CV408831	Thomas White vs Ariana Gabriel et al	<p>Hearing: Motion hearings to Stay Enforcement of Judgment by Plaintiff Thomas White</p> <p>Ctrl Click (or scroll down) on Line 4 for tentative ruling. The court will prepare the order.</p>
LINE 5	23CV427015	Citibank N.A. vs Beatrice Lujan	<p>Hearing: Objection to Defendant/Judgment Debtor Beatrice Lunan's Claim of Exemption by Plaintiff/Judgment Creditor Citibank N.A.</p> <p>APPEAR.</p> <p>Ctrl Click on Line 5 for tentative ruling for discussion at the hearing. The Judgment Creditor shall submit order(s) for the court's signature.</p>
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LINE 12			

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Calendar line 4

Case Name: Thomas White, et al. vs Ari Gabriel, et al.

Case No.: 22CV408831

Plaintiff Thomas White (“Plaintiff”)’s motion to stay enforcement of the order and judgment for attorneys’ fees and costs (without posting a bond) pending the outcome of his appeal is GRANTED.

Motion for Reconsideration

Defendants Ariana Gabriel and Julia Thompson (“Defendants”)’ opposition is mistaken that this is a motion for reconsideration under Code of Civil Procedure (CCP) section 1008. Plaintiff made an earlier and alternative request *in opposing the motion for fees and costs* (as implemented by judges in other cases) that the court, in its discretion, delay in issuing a SLAPP fees or cost order which might be mooted in the event of reversal. This request by Plaintiff which was denied did *not* address *enforcement* and the Defendants reference in their reply brief to automatic stay principles does not alter this fundamental fact.

The present motion is *not* a motion for reconsideration under CCP 1008. The exact questions of automatic stays (due to the later filing of an appeal) or staying *enforcement* was *not* before the court when it considered whether and in what amounts to award SLAPP fees and costs in the first instance.

Automatic Stay

Plaintiff’s motion to stay enforcement of the order and judgment for attorneys’ fees and costs on the ground that the filing of the appeal therefrom results in an automatic stay (see Code Civ. Proc. (“CCP”) section 917.1(d) and express statutory exceptions to the automatic stay do not include statutory fee awards (see CCP § 961(a); *Quiles v Parent* (2017) 10 Cal.App.5th 130 (*Quiles*)) is DENIED. This court exercises its discretion under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456 and finds *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400 (*Dowling*) persuasive authority that a SLAPP plaintiff’s perfecting of an appeal from a judgment awarding attorneys’ fees and costs to a prevailing SLAPP defendant under subdivision (c) of CCP section 425.16 does *not* automatically stay enforcement of the judgment without posting a bond.

Discretionary Undertaking

“Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency.” (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489.) “Every court has the inherent power to regulate the proceedings of matters before it and to effect an orderly disposition of the issues presented.” (*Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367, 1378.)

CCP section 995.240 authorizes a court to “‘waive a provision for a bond in an action or proceeding and make such orders as may be appropriate as if the bond were given.’ ([CCP], § 995.240.) Waiver of a provision for a bond requires a determination by the court that the principal ‘is indigent and is unable to obtain sufficient sureties,’ and requires the court to consider various factors, including ‘the character of the action or proceeding,’ and ‘the

potential harm to the beneficiary if the provision for the bond is waived.’ (*Ibid.*)” (*Sarkany v. West* (2022) 82 Cal.App.5th 801, 804-805 (*Sarkany*).)

CCP section 918 authorizes the trial court to temporarily stay the enforcement of a judgment or order, without regard to whether an appeal is or will be filed or a bond is posted, or the financial status of a party. It does not impose any bond requirement. However, CCP section 918, subsection (b) limits the length of a stay of enforcement imposed by the trial court *under section 918* when that stay applies to a money judgment to no more than 10 days beyond the deadline for filing a notice of appeal. (CCP § 918, subd. (b); *Sarkany, supra*, 82 Cal.App.5th at p. 809.)

No stay under CCP section 918 is made in this case. Instead, the court exercises its discretion to waive the CCP 917.1 requirement of a bond to stay the enforcement of a money judgment for attorneys’ fees and costs on appeal.

“Section 917.1 provides that as a general matter, ‘[u]nless an undertaking is given, the perfecting of an appeal shall not stay enforcement’ of a trial court judgment or order for the payment of money. ([CCP] § 917.1, subd. (a).)” (*Sarkany, supra*, 82 Cal.App.5th at p. 806, fn. 2.)

Section 917.1 also provides that “no undertaking shall be required pursuant to this section solely for costs awarded under Chapter 6 (commencing with Section 1021) of Title 14.” (CCP § 917.1, subd. (d).)

The court finds that “exceptional circumstances” exist supporting a discretionary stay of the judgment for fees and costs pending appeal *without* requiring Plaintiff to post any bond. (*Quiles, supra*, 10 Cal.App.5th at p. 136, fn. 2.)

Here, there is a split of authority between *Quiles, supra*, 10 Cal.App.5th 130 [perfecting of appeal automatically stays enforcement of fees and costs without undertaking] and *Dowling, supra*, 85 Cal.App.4th 1400 [perfecting of appeal does *not* automatically stay enforcement of judgment for fees and costs without undertaking].

Plaintiff clearly does *not* have the financial ability to post a bond for *even* the amount of the judgment (in excess of \$570,000) for the fees and costs awarded pending the outcome of this appeal.¹

Considering the amount of this judgment, Plaintiff is effectively indigent. There is no way he could obtain sufficient sureties to give a bond for *even* the amount of this judgment (let alone the higher amount required by CCP section 917.1(b)) given his limited assets and financial resources.

Plaintiff acknowledges that, regardless of the automatic stay, the court nevertheless has the discretion to require an undertaking pending appeal even as to judgments solely for

¹ “The undertaking shall be for double the amount of the judgment or order unless given by an admitted surety insurer in which event it shall be for one and one-half times the amount of the judgment or order. The liability on the undertaking may be enforced if the party ordered to pay does not make the payment within 30 days after the filing of the remittitur from the reviewing court.” (CCP § 917.1, subd. (b).) Since Plaintiff clearly does not have the financial ability to post a bond for *even* the amount of the judgment, Plaintiff clearly cannot post a bond for these higher amounts.

costs awarded in the trial court. (CCP § 917.9.) Courts “should only issue a discretionary stay of a money judgment in exceptional circumstances” and then only after considering the relative irreparable injuries cause to each side when allowing such relief. (*Quiles, supra*, 10 Cal.App.5th at p. 136 and fn. 2, citing Eisenberg, et al., Cal. Prac. Guide: Civil Appeals and Writs (The Rutter Group 2016) ¶ 7.282, p. 7-81.)

This is not a case where there is any evidence that the judgment debtor (Plaintiff) is hiding assets, or acting in bad faith, especially considering the conflict between *Quiles* and *Dowling* as to whether a bond is required to stay enforcement of these fees and costs.

Plaintiff cannot satisfy this judgment for SLAPP fees and costs exceeding \$570,000. Plaintiff has declared here under oath his very limited assets and his inability to satisfy any cognizable portion of the judgment involved. (White Decl., ¶¶ 4-12.) And, while Plaintiff may have expended certain resources on legal fees in the lower court (White Decl. ¶¶ 5, 13) there is no evidence that he is doing so on the present motion or appeal. (See White Decl., ¶¶ 4-13.)

As the court is aware from hearing the underlying fees motion, Plaintiff’s fees and costs were much less than the combined defendants’ request and were at an hourly rate below market (as awarded to defense counsel).

Allowing immediate enforcement by Defendants will result in substantial additional fees and costs and the promised collection efforts during appeal are outweighed by the *de minimus* nature of any such recovery.

That the court granted a motion to strike parts of the complaint under the anti-SLAPP statute (based on litigation privilege ground) in no way supports the conclusion that the case was or is being pursued in bad faith. If Plaintiff prevails on his SLAPP appeal, the judgment for fees and costs would be reversed.

The award of attorneys’ fees and costs will accrue interest during appeal. As part of the equitable balancing, Defendants present no evidence that staying execution will cause them any irreparable prejudice.

Accordingly, the court exercises its discretion under all the facts and circumstances to stay enforcement of the judgment for fees and costs pending the outcome of Plaintiff’s appeal *without requiring any bond*.

Conclusion

Plaintiff’s motion to stay enforcement of the order and judgment for attorneys’ fees and costs (without posting a bond) pending the outcome of his appeal is GRANTED.

The court will prepare the order.

Calendar Line 5

Case Name: Citibank N.A. vs Beatrice Lujan

Case No.: 23CV427015

The Original Claim of Exemption filed by Beatrice Lujan on 06/10/2024 and Notice of Opposition filed by Citibank N. A. on 6/10/2024. Served on the Judgement Creditor on 06/10/2024. The Sheriff's Office is currently holding \$229.54. (See Claim of Exemption Packet—Cover Sheet.)

Defendant/Judgment Debtor Beatrice Lujan's Claim of Exemption offers \$50 per pay period. Plaintiff/Judgment Creditor Citibank N.A. objects and requests that Judgment Debtor's Claim of Exemption be denied and that the wage garnishment be modified to yield no less than \$581.40 per pay period.

After review of the Judgment Debtor's financial statement the court finds the monthly expenses are reasonable. They show that the Judgement Debtor has \$288.60 per month extra after paying all expenses. Accordingly, the court finds that the Judgment Debtor's Claim of Exemption is denied and that \$75 per pay period (\$150 per month) is the reasonable amount that the wage garnishment shall be modified to yield.

This leaves the Judgment Debtor a buffer of \$138.60 per month above his monthly expenses.

Disposition of funds currently being held, if any. The Sheriff's Office is currently holding \$229.54. The sum of \$75 shall be released to the Judgment Creditor Citibank N.A. The Sheriff's Office may deduct its fees from these amounts. The balance of \$154.54 shall be released to the Judgment Debtor Beatrice Lujan.

Future withholding per pay period (Wage Garnishment) is \$75 per pay period (\$150 per month). The Sheriff's Office may deduct its fees from these amounts.

The Disposition of the Funds seized (Enforcement of Judgment) is that the wage garnishment of \$75 per pay period (\$150 per month) shall be released to the Judgement Creditor Citibank, N.A. The Sheriff's Office may deduct its fees from these amounts.

The order should not be stayed, pending appeal.

Judgment Creditor to submit Order Determining Claim of Exemption (Wage Garnishment) Judicial Counsel Form WG011 or an Order Determining Claim of Exemption (Enforcement of Judgment or Third-Party Claim for the court's signature.

The clerk shall promptly transmit a certified copy of the signed order to the levying officer at the Santa Clara County Sheriff's Office, 55 W. Younger Ave., San Jose, CA 95110.

Subject to Code of Civil Procedure ("CCP") section 703.610, the levying officer shall, in compliance with the order, release the property or apply the property to the satisfaction of the money judgment. (CCP §§ 703.580(e); 706.105(g).)

Judgment creditor to submit order(s) for court's signature.

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