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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

BEL AIR GLEN  
HOMEOWNERS  
ASSOCIATION,

Plaintiff and Respondent,

v.

RAYNA MIKE a/k/a RAYNA  
MASLARSKA,

Defendant.

B265920

Los Angeles County  
Super. Ct. No. SC103955

JOEL F. TAMRAZ, Objector and  
Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge. Affirmed.

Joel F. Tamraz, in pro. per., for Objector and Appellant.

Raiskin & Revitz and Steven J. Revitz for Plaintiff and Respondent.

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## **INTRODUCTION**

Attorney Joel Tamraz appeals an order imposing \$2,000 in monetary sanctions upon him based on misuse of the discovery process. Mainly, Tamraz asserts the sanctions order is erroneous because he did not counsel his client to engage in the alleged discovery abuse. Because Tamraz failed to oppose the motion for sanctions below, he did not introduce any evidence in the trial court which supports his position on appeal. He has therefore failed to carry his burden to demonstrate error on the part of the court. We reject Tamraz's additional complaints as forfeited because he failed to provide any pertinent case authority or cogent legal analysis on point. Accordingly, we affirm the sanctions order.

## **FACTS AND PROCEDURAL BACKGROUND**

In 2009, Bel Air Homeowners Association (Bel Air) obtained a judgment against Tamraz's client, Rayna Maslarska, who the parties refer to as Rayna Mike (Mike). In 2014, as part of its postjudgment collection efforts, Bel Air propounded a request for documents and a set of interrogatories to Mike. Tamraz, on Mike's behalf, filed a motion seeking protective orders concerning both discovery requests, which motion the court subsequently found to be without merit. The court then ordered Mike to serve answers, without objections, to the interrogatories and to produce the requested documents by January 28, 2015. In addition, the court imposed a \$3,000 sanctions award against Mike and Tamraz jointly, noting that "sanctions against Tamraz are justified because he should have known, before filing either of the Motions, that they were without merit and the motion for a protective order with regard to the

Request for Documents was not only substantively but procedurally improper.”

On March 12, 2015, after Mike failed to comply with the court’s discovery order, Bel Air filed a second motion for monetary sanctions against Mike and Tamraz.<sup>1</sup> Shortly thereafter, on April 3, 2015, Tamraz filed a substitution of attorney indicating he would no longer be Mike’s counsel of record. Neither Tamraz nor Mike filed a written opposition to Bel Air’s second motion for sanctions, and neither appeared at the hearing on the motion.<sup>2</sup> The court granted the motion and imposed sanctions against Mike and Tamraz, jointly and severally, in the amount of \$2,000. The court’s order states, “[s]anctions are awarded against Tamraz as a result of his active role in representing Mike in failing to comply with the [prior discovery] Order.” Tamraz timely appeals.

### **CONTENTIONS**

Tamraz contends no substantial evidence supports the court’s sanctions order. In addition, he apparently contends the court could not properly impose sanctions upon him because he was no longer counsel of record at the time the court issued the sanctions order.

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<sup>1</sup> The motion was served on Tamraz on March 11, 2015.

<sup>2</sup> Tamraz has not provided a transcript or settled statement of the hearing.

## DISCUSSION

### 1. The sanctions award is appealable.

Code of Civil Procedure section 904.1, subdivision (a)(12),<sup>3</sup> authorizes an appeal from a sanctions award in excess of \$5,000. Here, Tamraz appeals from a sanctions order in the amount of \$2,000—less than the amount required by the statute. However, a discovery sanctions order against a party’s attorney is directly appealable (regardless of the size of the sanction) if the sanctioned attorney has been substituted out of the pending litigation. The order is final as to the attorney because he or she is no longer involved in the underlying action. (See *Barton v. Ahmanson Developments, Inc.* (1993) 17 Cal.App.4th 1358, 1361; see also Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2016) ¶ 2:105, p. 2-70.) Because Tamraz is no longer counsel of record below, the sanctions order is final as to him and is therefore appealable as a final judgment under section 904.1, subdivision (a)(1).

### 2. Standard of review

“We review the trial court’s ruling on a discovery sanction under the deferential abuse of discretion standard. (*Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545.)” (*In re Marriage of Chakko* (2004) 115 Cal.App.4th 104, 108.) “A court’s decision to impose a particular sanction is ‘subject to reversal only for manifest abuse exceeding the bounds of reason.’ (*Kuhns v. State of California* (1992) 8 Cal.App.4th 982, 988.)” (*Electronic Funds Solutions v. Murphy* (2005) 134 Cal.App.4th 1161, 1183.)

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<sup>3</sup> Further undesignated section references are to the Code of Civil Procedure.

**3. The court did not abuse its discretion in imposing sanctions upon Tamraz.**

Tamraz asserts the court's sanctions order is improper because, in his view, there is no evidence he committed any discovery abuse or counseled his client to do so. We disagree.

"Misuses of the discovery process, include but are not limited to, . . . [d]isobeying a court order to provide discovery." (§ 2023.010, subd. (g).) The Civil Discovery Act provides in pertinent part: "To the extent authorized by the chapter governing any particular discovery method . . . , the court, after notice . . . and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process: [¶] (a) . . . If a monetary sanction is authorized by any provision of this title, the court *shall* impose that sanction *unless* it finds that the one subject to the sanction acted with *substantial justification* or that other circumstances make the imposition of the sanction unjust." (§ 2023.030, italics added.)

The burden of proving substantial justification for failing to comply with a discovery order compelling answers or production of documents is on the party against whom sanctions are sought. (See Evid. Code, § 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting"]; see also Evid. Code, § 550 [party with burden of producing evidence]; *Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1435.) Thus, in the proceedings below, the burden was on Tamraz to prove he acted with substantial justification with respect to the court's order to comply with the discovery requests.

Tamraz claims there is no evidence he actively participated in his client's failure to comply with the court's discovery order. He says, for example: "After Mr. Tamraz was already out of the case, *and without any evidence, whatsoever*, to show that Mr. Tamraz in some manner induced Ms. Mike not to answer the interrogatories submitted subsequent to the judgment Judge Rosenberg then claimed that Mr. Tamraz 'actively participated' in Mike's actions, *without any evidence whatsoever to support that statement*, and imposed sanctions of \$2,000 on Mr. Tamraz *for nothing, whatsoever*." We disagree.

First, we note that Tamraz failed to oppose the motion for sanctions in the trial court. It is well established that a party's failure to raise a specific challenge in the trial court generally forfeits the claim on appeal. " "[I]t is fundamental that a reviewing court will ordinarily not consider claims made for the first time on appeal which could have been but were not presented to the trial court." Thus, "we ignore arguments, authority, and facts not presented and litigated in the trial court. Generally, issues raised for the first time on appeal which were not litigated in the trial court are waived. [Citations.]" ' [Citation.]" (*Kashmiri v. Regents of University of California* (2007) 156 Cal.App.4th 809, 830.) Because Tamraz failed to litigate the issue of his misuse of discovery in the trial court, we could reject his argument on the basis of forfeiture.

Nevertheless, we conclude substantial evidence supports the court's sanctions order. In support of its motion for sanctions, Bel Air submitted a declaration from its counsel describing Tamraz's obstructive attitude and conduct, and attaching correspondence from Tamraz in which he denied his client had been ordered to produce discovery without objection—a fact

confirmed in the court’s written order. In that correspondence, Tamraz also reasserted the arguments made in the motion for protective orders—arguments which the court had already rejected as meritless. Tamraz failed to present any contrary evidence below. Although Tamraz was served with a copy of the motion for sanctions, he did not file a written opposition to the motion, he did not appear at the hearing on the motion, and he did not provide any evidence to the court which would have supported a finding that he acted with substantial justification in connection with the conduct at issue. Accordingly, Tamraz failed to carry his burden below to establish that he acted with substantial justification. Given the absence of evidence in the record to support Tamraz’s contentions on appeal, he fails to carry his burden to demonstrate error here as well. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [affirming the well settled principle that on appeal, “[a]ll intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown”].)

**4. Tamraz forfeited his other arguments by failing to present supporting legal authority or intelligible analysis.**

Tamraz’s brief hints at several other arguments. For example, Tamraz includes a heading which states, “[t]he court did not have jurisdiction to impose sanctions against Tamraz.” The section which follows contains no legal analysis of any kind—let alone on the issue of jurisdiction—nor does it contain a single citation to a case, statute, or any other pertinent material regarding any jurisdictional issue. We decline to consider the issue further. (See, e.g., *Landry v. Berryessa Union School Dist.*

(1995) 39 Cal.App.4th 691, 699-700 [issue that is not supported by pertinent or cognizable legal argument may be deemed abandoned].) For the same reason, we reject Tamraz's suggestion that the court lacked authority to impose discovery sanctions upon him because he was not counsel of record at the time the court imposed its sanctions award, notwithstanding the fact that he was undisputedly counsel of record at the time the misconduct occurred. Because Tamraz fails to cite any authority suggesting the Legislature intended such an absurd result, we decline his invitation to create such authority for his benefit.

#### **DISPOSITION**

The sanctions order is affirmed. Respondent to recover its costs on appeal.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

ALDRICH, J.