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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FIX THE CITY, INC. et al.,

Plaintiffs and Respondents,

v.

CITY OF LOS ANGELES et al.,

Defendants;

HOLLYWOOD CHAMBER OF
COMMERCE,

Intervener;

RICHARD MACNAUGHTON,

Objector and Appellant.

B263181

(Los Angeles County
Super. Ct. No. BS138370)

APPEAL from order of the Superior Court of Los Angeles County, John A. Torribio, Judge. Dismissed in part; sanctions imposed.

Angel Law and Frank P. Angel, for Plaintiffs and Respondents.

No appearance for Defendants.

No appearance for Intervener.

Richard MacNaughton, in pro. per., for Objector and Appellant.

I. INTRODUCTION

On March 25, 2015, Edward W. Pilot and Richard MacNaughton filed a notice of appeal on behalf of plaintiffs, SaveHollywood.Org and People for Livable Communities. In addition, although it is not entirely clear, the notice of appeal was also filed on behalf of Mr. MacNaughton. For brevity's sake, SaveHollywood.Org, an unincorporated association, will be referred to as plaintiff. The notice of appeal challenges two orders. The first challenged order is a judgment under Code of Civil Procedure section 904.1, subdivisions (a)(3) through (13). The second challenged order is one removing "petitioner's attorney over petitioner's objection." The notice of appeal does not identify the date upon which the challenged orders were entered. But, the parties agree the trial court entered the challenged orders on March 9, 2015. On March 9, 2015, Mr. MacNaughton was enjoined from filing any court papers on plaintiff's behalf. In addition, Mr. MacNaughton was ordered to pay plaintiff \$26,600 in attorney fees and costs pursuant to Code of Civil Procedure section 128.7.

Plaintiff, represented by Frank P. Angel, has moved to dismiss the appeal because it is frivolous and seeks an additional award of attorney fees as monetary sanctions. We agree the appeal of plaintiff, the unincorporated association, filed by Mr. MacNaughton and Mr. Pilot must be dismissed. Mr. MacNaughton and Mr. Pilot were not authorized to file a notice of appeal on behalf of plaintiff. Further, the appeal by Mr. MacNaughton as to the judgment imposing Code of Civil Procedure section 128.7 monetary sanctions against him is not frivolous and may not be dismissed. Further, as to Mr. MacNaughton, plaintiff is entitled to monetary sanctions incurred in seeking to dismiss the appeal filed by him on its behalf. At present, no other monetary sanctions may be imposed against Mr. MacNaughton. As to Mr. Pilot, the monetary sanctions motion is denied.

II. PROCEEDINGS IN THE TRIAL COURT AND ON APPEAL

The following evidence is taken from the: dismissal motion; opposition to the dismissal motion and related filings; and the record in the present case and *Fix The City v. City of Los Angeles* (Mar. 24, 2015, B257712) [nonpub. opn.]. Before turning to an analysis of the proceedings, it is appropriate to describe the two entities using plaintiff's name. As will be explained, plaintiff is identified in its mandate petition as an unincorporated association. In addition, the individuals who participated in the governance of the unincorporated association created a separate corporation. The corporation's president was George Abrahams. The corporate secretary was Fran Reichenbach. As will be noted, Mr. Abrahams and Ms. Reichenbach are also members of plaintiff's Legal Committee. At the time the sanctions motion was litigated, the corporation was in the process of obtaining nonprofit status.

Plaintiff, represented by Mr. MacNaughton, filed one of three related cases challenging environmental approvals of the Hollywood Community Plan Update by the City of Los Angeles. Plaintiff filed its environmental lawsuit on July 18, 2012. According to the mandate petition, plaintiff was also known as People for Livable Communities. Plaintiff is described as follows in part: "For all times herein relevant, [SaveHollywood.Org, also known as People for Livable Communities] was and is an unincorporated association of residents of Los Angeles County who were concerned about the quality of life in the City of Los Angeles. . . . [¶] [] SaveHollywood.Org is composed of persons who are homeowners, residents and business owners in Los Angeles, most of whom live in Hollywood, and prior to its formation, . . . made timely comments on The Hollywood Community Plan." On November 2, 2012, Frank P. Angel was associated as counsel for plaintiff.

On September 16 and 17, 2013, the trial was held on plaintiffs' motion for issuance of a peremptory writ of mandate. Mr. MacNaughton did not attend the trial. The trial was held before Judge Allen J. Goodman who eventually issued a peremptory

writ of mandate. Judge Goodman requested that plaintiff and its co-plaintiffs submit one joint request for a statement of decision.

An ex parte hearing was held on January 31, 2014. Mr. Angel filed an application on behalf of the corporation, not plaintiff, to have Mr. MacNaughton recused as counsel. As noted, plaintiff is an unincorporated association. The corporation, which also has the title SaveHollywood.Org, erroneously sought to have Mr. MacNaughton recused as counsel in this litigation. According to Mr. Abrahams, a member of plaintiff's Legal Committee, the recusal motion resulted from a mistaken belief by the corporation's directors board that it was a plaintiff in this litigation. Ms. Reichenbach explained she erroneously believed that the corporation had succeeded the unincorporated association. According to Ms. Reichenbach, several of Mr. MacNaughton's statements had led to her misunderstanding plaintiff's status as an unincorporated association. Eventually, the motion to recuse Mr. MacNaughton was withdrawn because it was filed on behalf of the corporation, which is not a party to the environmental litigation. Meanwhile, on February 11, 2014, Judge Goodman entered judgment in plaintiff's favor in the environmental lawsuit. Judgment was also entered in favor of the co-plaintiffs.

On February 28, 2014, Mr. MacNaughton gave notice of an ex parte application seeking to remove Mr. Angel as plaintiff's counsel. Mr. MacNaughton's request for ex parte relief was denied and the hearing on motion to discharge Mr. Angel was continued until March 7, 2014. The hearing on the ex parte motion to relieve Mr. Angel was held before Judge Goodman on March 7, 2014. On March 25, 2014, Judge Goodman denied Mr. MacNaughton's motion to disqualify Mr. Angel as plaintiff's counsel with prejudice. As noted, the motion filed by Mr. Angel to disqualify Mr. MacNaughton had been withdrawn by plaintiff. On September 24, 2014, Judge Goodman denied Mr. MacNaughton's request to have a supplemental notice of preparation prepared.

As noted, on February 11, 2014, Judge Goodman entered judgment in plaintiffs' favor. While the appeal from the February 11, 2014 judgment was pending before us, the dispute over who was representing plaintiff was litigated. On November 10, 2014, Mr. MacNaughton filed a dismissal motion with this court on plaintiff's behalf. At first, the

determination of the dismissal motion was deferred to the panel which would decide the appeal's merits. (*Fix the City v. City of Los Angeles* (Nov. 18, 2014, B257712) [nonpub. order].) However, shortly thereafter, it became apparent that the counsel issue would have to be resolved before the filing of a respondent's brief on plaintiff's behalf. Mr. MacNaughton, in a letter filed December 17, 2014, argued that no contentions could be presented on plaintiff's behalf. Mr. MacNaughton noted there had been no adjudication of the dismissal motion previously filed on November 10, 2014. On December 18, 2014, a proposed respondent's brief on plaintiff's behalf was lodged by Mr. Angel's law firm.

On December 19, 2014, this court ordered each side to submit declarations as to who represents plaintiff. (*Fix the City v. City of Los Angeles* (Dec. 19, 2014, B257712) [nonpub. order].) Mr. MacNaughton, purporting to act on plaintiff's behalf filed Mr. Blue's declaration. By contrast, Mr. Angel filed declarations by Ms. Reichenbach, Jim Van Dusen, Rosemary DeMont and Mr. Abrahams. These four declarations stated that only Mr. Angel was authorized to represent plaintiff. On December 26, 2014, the dismissal request of plaintiff was denied by this division's presiding justice. The December 26, 2014 order denying the dismissal motion in part states: "The dismissal motion by plaintiff, Hollywoodians Encouraging Logical Planning is granted. The dismissal motion of plaintiff, Save Hollywood.Org, filed by Richard S. MacNaughton is denied. Mr. MacNaughton has no authority to file such a motion on behalf of Save Hollywood.Org. No costs in favor of any party are awarded as to Hollywoodians Encouraging Logical Planning." (*Fix the City v. City of Los Angeles* (Dec. 26, 2014, B257712) [nonpub. order].) Also on December 26, 2014, this division's presiding justice issued the following order, "Mr. MacNaughton is to file no further papers as counsel for SaveHollywood.Org." (*Fix the City v. City of Los Angeles* (Dec. 26, 2014, B257712) [nonpub. order].) Mr. MacNaughton then purported to file objections on plaintiff's behalf to the December 26, 2014 order. The request for permission to file objections was denied as Mr. MacNaughton did not represent plaintiff. And since Mr. MacNaughton did not represent plaintiff, no objections could be filed on its behalf. (*Fix the City v. City of Los Angeles* (Dec. 31, 2014, B257712) [nonpub. order].)

On January 8, 2015, Mr. MacNaughton, purporting to represent plaintiff, filed a supersedeas petition and stay request. On January 16, 2015, the supersedeas petition was denied. (*Fix the City, Inc. v. City of Los Angeles* (Jan. 16, 2015, B257712) [nonpub. order].) As noted, the dispute concerning representation of plaintiff occurred prior to the filing of our opinion on the merits. On March 24, 2015, we issued our unpublished opinion dismissing the appeal of defendants. (*Fix the City v. City of Los Angeles* (Mar. 24, 2015, B257712) [nonpub. opn.].) On April 15, 2015, Mr. MacNaughton's review petition challenging the order denying his supersedeas petition was denied by our Supreme Court. (*Fix the City v. City of Los Angeles* (Apr. 15, 2015, S224288) [nonpub. order].) In terms of our unpublished opinion dismissing the appeal, no review petition was filed. On June 4, 2015, our remittitur issued in connection with the judgment entered on February 11, 2014 by Judge Goodman.

III. SANCTIONS MOTION

A. Moving Papers

While the appeal was pending, on August 26, 2014, represented by Mr. Angel, plaintiff served its Code of Civil Procedure section 128.7 sanctions motion. The motion was served via electronic mail and overnight express. The Code of Civil Procedure section 128.7 sanctions motion was filed on September 18, 2014. The sanctions motion was served and filed while the appeal from Judge Goodman's February 11, 2014 judgment issuing a writ of mandate in the environmental dispute was pending. The basis of the sanctions motion was that: Mr. MacNaughton had filed a motion to compel preparation of an environmental impact report on plaintiff's behalf; Mr. MacNaughton knew that he could not file the motion because he had been terminated as plaintiff's counsel; the primary reason Mr. MacNaughton filed the motion to compel preparation of an environmental impact report was for an improper purpose; and the improper purpose was to needlessly increase plaintiff's litigation costs. The monetary sanctions motion

was based upon declarations filed by Mr. Abrahams, Ms. Reichenbach, Mr. Van Dusen, and Jessica Cheng, who is an associate in Mr. Angel's law firm. As noted, the challenged pleading filed by Mr. MacNaughton was the motion for an order compelling the filing of a notice of preparation of an environmental impact report. On July 16, 2014, an ex parte application was filed for an order shortening time for a motion to compel the filing of a notice of preparation of an environmental impact report. The motion was filed by Mr. MacNaughton on plaintiff's behalf. The opposition to the motion to compel the filing of a notice of preparation of an environmental impact report was filed on September 5, 2014. On September 24, 2014, Judge Goodman denied Mr. MacNaughton's motion to compel the filing of a notice of preparation of an environmental impact report.

As noted, Mr. Angel was retained as associated counsel for plaintiff on November 2, 2012. Until January 15, 2013, the Legal Committee of plaintiff consisted of Mr. Abrahams, Mr. Blue, Ms. Kruse, Mr. MacNaughton, Ms. Reichenbach and Mr. Van Dusen. On January 15, 2013, Mr. Blue sent an e-mail to the other legal committee members. In the e-mail Mr. Blue resigned from that body. Mr. Blue wrote: "I would like to have my name removed from any official papers of [plaintiff] and no longer be part of [plaintiff's] board. I am still opposed to the Hollywood Community Plan, but I cannot support how [plaintiff] is being handled." Mr. Blue's e-mail went on to express dissatisfaction with the manner in which a letter of support from the Sierra Club, Los Angeles Chapter was handled by Mr. Abrahams. The letter sought Sierra Club assistance in the present lawsuit. The letter requested that the Sierra Club intervene in the present lawsuit. Also, Mr. Abrahams requested the Sierra Club help raise funds for the lawsuit.

On February 8, 2014, Ms. Reichenbach received an e-mail from Mr. MacNaughton directing her, *as a member of the legal committee*, to not speak at a city council meeting. On February 11, 2014, Mr. MacNaughton sent a notice to Ms. Reichenbach concerning a February 12, 2014 meeting of the Legal Committee. The purpose of the meeting was to discuss a proposal to "terminate" Mr. Angel's as plaintiff's counsel. Mr. Abrahams, plaintiff's president, described the events: "On Tuesday, February 11, 2014, I received notice from Mr. MacNaughton, purportedly for a February

12 meeting of the Legal Committee to terminate [Mr. Angel's] legal services in this case. To my surprise, Mr. MacNaughton claimed that Ms. Reichenbach and I had 'resigned' from, and were no longer members of, the Legal Committee, even though just that past Saturday, February 8, he sent me an e-mail ordering me, as a member of the Legal Committee, to refrain from attending a Los Angeles City Council meeting concerning the [Hollywood Community Plan Update]. He addressed this e-mail to me, specifically as a member of the unincorporated association's Legal Committee. But three days later, Mr. MacNaughton suddenly claimed that the Legal Committee consisted of only himself, Ms. Kruse, Mr. Blue (who had long since resigned) and Mr. Van Dusen."

On February 12, 2014, Mr. Abrahams attended the "Legal Committee" meeting noticed by Mr. MacNaughton. Mr. Abrahams explained that he had not resigned from plaintiff's Legal Committee. Mr. Abrahams was barred from voting. Mr. Abrahams reiterated his objection to not being permitted to vote. Ms. Reichenbach was also present at the February 12, 2014 meeting. Her extensive complaints about the February 12, 2014 meeting paralleled those of Mr. Abrahams. Like Mr. Abrahams, she objected to being denied the right to vote at the February 12, 2014 meeting. Mr. MacNaughton, Ms. Kruse, and Mr. Blue voted to terminate Mr. Angel as plaintiff's counsel. Both Mr. Abrahams and Ms. Reichenbach denied that they had ever resigned from the Legal Committee. Mr. MacNaughton was advised in writing by Ms. Reichenbach of her objections to the foregoing which were concurred in by Mr. Abrahams and Mr. Van Dusen.

On February 19, 2014, Ms. Reichenbach e-mailed a notice of a February 22, 2014 Legal Committee meeting to Mr. Abrahams, Ms. Kruse, Mr. MacNaughton and Mr. Van Dusen. On February 22, 2014, plaintiff's Legal Committee held a meeting. Attending the meeting were Ms. Reichenbach, Mr. Van Dusen and Mr. Abrahams. This constituted a quorum. Mr. MacNaughton and Ms. Kruse were not present. Rosemary DeMonte was added as a member of the Legal Committee pursuant to unanimous vote of those present. At the February 19, 2014 meeting, the legal committee approved Mr. Angel's filing of a motion to discharge Mr. MacNaughton as one of plaintiff's attorneys. And the Legal Committee agreed that Mr. Angel should represent plaintiff. Since February 22, 2014,

the Legal Committee has consisted of Mr. Abrahams, Ms. DeMonte, Ms. Kruse, Mr. MacNaughton, Ms. Reichenbach and Mr. Van Dusen. The foregoing makeup of the Legal Committee was confirmed in the declarations of: Mr. Abrahams; Ms. Reichenbach; Mr. Van Dusen; and Ms. Cheng.

On July 7, 2014, plaintiff's Legal Committee met and voted to discharge Mr. MacNaughton as its counsel. Mr. Abraham wrote a letter on behalf of plaintiff to Mr. MacNaughton. Mr. MacNaughton was advised that he had been discharged as plaintiff's counsel.

On July 16, 2014, Mr. MacNaughton filed a motion to compel the filing of a notice of preparation of an environmental impact report. These and other papers were filed without consultation with the plaintiff's Legal Committee. Mr. MacNaughton was not authorized to file the motion to compel the filing of a notice of preparation according to Mr. Abrahams and Ms. Reichenbach. Further, Ms. Cheng was never notified in advance of any intention to file a motion to compel the filing of a notice of preparation. On September 24, 2014, Judge Goodman denied Mr. MacNaughton's motion to compel the filing of a notice of preparation of an environmental impact report.

B. Sanctions Motion Opposition

1. The initial opposition

The synopsis to Mr. MacNaughton's opposition to the sanctions motion states: "The Motion for Sanctions rests on the false representation that Judge Goodman has previously determined that Richard MacNaughton did not represent the unincorporated association, [SaveHollywood.Org], which operates through its Legal Committee. Judge Goodman made no such ruling, but he did state on the record that Mr. MacNaughton represented [SaveHollywood.Org], the unincorporated association, that is, the Legal Committee." (Fn. omitted.) The omitted footnote asserts that there are two entities using the name SaveHollywood.Org. One is plaintiff which is an unincorporated association

governed in material part by its Legal Committee. The other entity utilizing the name SaveHollywood.Org is a corporation which was formed after the mandate petition was filed. According to the opposition: plaintiff misrepresented Judge Goodman's March 25, 2014 minute order; Judge Goodman never ruled that Mr. MacNaughton could not represent plaintiff; and the sanctions motion did not request that a determination be made as to who represents plaintiff.

The opposition relies on five different documents. First, the opposition refers to Judge Goodman's March 25, 2014 order denying with prejudice Mr. MacNaughton's motion to recuse or disqualify Mr. Angel's law firm from representing plaintiff. Second, the opposition cites to the following language in Judge Goodman's September 24, 2014 ruling, "Because of the ruling on this motion, this Court need not intercede, at least at this stage in the internal affairs of the entity; that internal dispute need not and will be not resolved in this proceeding." Third, the opposition cites portions of Judge Goodman's September 18, 2014 tentative ruling on the motion to compel defendants to provide a notice of issuance of an environmental impact report: "[T]here are indications there are two organizations with the same name, one an unincorporated association and the other a corporation, and that counsel making the ex parte application and motion represents the original an unincorporated entity. Until the principals of those organizations resolve the dispute over the apparent continued existence of the original unincorporated entity – which was the entity which filed this action – that prior entity may appear and be represented by counsel of its choice."

Fourth, the opposition cites to portions of the reporter's transcript of the September 18, 2014 hearing. The September 18, 2014 hearing resulted in the order denying the motion to compel the filing of a notice of preparation. At one point during that hearing, Judge Goodman, while speaking to Mr. MacNaughton, stated: "I have the understanding, from what was filed by Mr. Angel's firm, that the unincorporated entity, whether it existed then, no longer exists now. But that is the only entity that you might represent. If it was merged into, subsumed or superseded by the corporation, then I don't understand your basis for representing it since it's clear from the documents that were

filed by Mr. Angel's firm that you're not authorized to represent the incorporated entity." Mr. MacNaughton was given until September 22, 2014, to file a declaration from an authorized representative of plaintiff. That declaration was to explain why Mr. MacNaughton could still represent SaveHollywood.Org. At one point in the hearing, Mr. MacNaughton "vigorously denied" the inference he was abandoning plaintiff. Judge Goodman responded: "I don't think it's a matter of abandoning. I think your client may have dismissed you. But we'll find out."

Fifth, the opposition relies upon the reporter's transcript of the September 24, 2014 hearing before Judge Goodman. The opposition cites to the following statement of Judge Goodman: "With respect to the SaveHollywood.Org representation. The documents leave me with a certain lack of clarity. Let me ask a question -- and I'll ask whoever might want to respond to that just to wait his or her turn and everyone can respond. [¶] I am looking for something that tells me as of a recent date -- I'm not looking for today, but a recent date -- when the unincorporated SaveHollywood, which I think everybody agrees is [plaintiff], in addition to the H.E.L.P., but [plaintiff] with which we're concerned in this part of today's hearing, had specifically revoked authorization for Mr. MacNaughton appear on its behalf." Further, the opposition cited to statements by Mr. MacNaughton at the September 24, 2014 hearing that: "The legal committee without Robert Blue is not the correct legal committee. [¶] . . . A legal committee that has not had Mr. Blue is what we say is a bogus legal committee. It cannot be the real one. He's been on it from day one and he is still on it. And that's in the Robert Blue declaration." Further, Mr. MacNaughton stated at the hearing, "But I think there is agreement that in 2012 the legal committee was set up with six members." According to Mr. MacNaughton, any Legal Committee that excluded Mr. Blue was not a "bona fide legal committee" because he never had resigned from that body.

2. The supplemental opposition

The supplemental opposition asserts: the Legal Committee represented by Mr. Angel is not that of plaintiff; any Legal Committee which does not have Mr. Blue as a member is not plaintiff's Legal Committee; and Ms. Reichenbach and Mr. Abrahams had constructively resigned from plaintiff's Legal Committee. Additionally, the supplemental opposition concludes: "Starting in September 2013 [Mr.] Angel began a pattern of misrepresentations in order to have himself made lead attorney. He has permitted two individuals, [Ms.] Reichenbach and [Mr.] Abrahams, to sign false declarations under penalty of perjury. [Mr.] Angel has also caused [Ms.] Reichenbach and [Mr.] Abrahams to constructively resign from The Legal Committee in order to create the false impression that The Corp was the true [plaintiff] and [Mr.] MacNaughton should be removed because he refused to follow the Corp's instruction."

3. Plaintiff and the Legal Committee

Mr. MacNaughton and Mr. Pilot filed papers which, to use their words, distinguished plaintiff's "Real Legal Com. from the Bogus Entity." Mr. MacNaughton and Mr. Pilot filed the declarations of Ms. Kruse and Mr. Blue. The declarations state that Ms. Kruse and Mr. Blue, along with Mr. MacNaughton formed the unincorporated association entitled "SaveHollywood.Org aka People for Livable Communities" in 2011. In the spring of 2012, the Legal Committee was formed and its members were Mr. MacNaughton, Mr. Blue, Ms. Kruse, Ms. Reichenbach, Mr. Abrahams and Mr. Van Dusen. On August 29, 2012, a corporation utilizing the name SaveHollywood.Org was formed for fundraising purposes and Ms. Kruse and Mr. Blue were "board" members and worked closely together on raising monies. Beginning in November, 2012, Ms. Kruse attempted to develop a relationship with the Sierra Club. However, a letter sent by Mr. Abrahams in January 2013 to Julio Bermejo with the Angeles Chapter of the Sierra Club destroyed efforts to develop a relationship with that entity. Mr. Blue was "furious" at Mr.

Abrahams because of the mishandling of the letter to the Sierra Club. Mr. Blue's anger at the mishandling of the Sierra Club letter led him to resign from the corporation's board. Ms. Kruse resigned as a corporate board member on February 21, 2014, because Mr. Angel engaged in a conflict of interest by representing both the corporation and plaintiff. Mr. Blue resigned from the corporate board on January 15, 2013.

Both Ms. Kruse and Mr. Blue declared that he had never resigned from plaintiff's Legal Committee, only the corporation's board. According to Mr. Blue, the corporation handled fundraising in the website while plaintiff's Legal Committee managed the litigation. In Mr. Blue's opinion, fundraising and managing the litigation were two separate worlds. According to Mr. Blue: "After I resigned from the Corp Board, I continued on [plaintiff's] Legal Committee. No one ever mentioned that they thought I had resigned from the Legal Committee. I have received a number of emails where [Mr.] Abrahams and [Ms.] Reichenbach continued to include me in all the emails concerning The Legal Committee. [¶] [] The first I heard any claim that I was not a member of the Legal Committee was in February 2014, when [Mr.] Angel began to claim that he represented the Legal Committee. In order to explain my absence from his Legal Committee, [Mr.] Angel asserted, for the first time, that I had resigned in January 2013."

Ms. Kruse explained why Ms. Reichenbach and Mr. Abrahams were not members of the Legal Committee: "After [Mr.] Angel's claim that the [corporation] was [plaintiff] was shown to be false, we attempted to re-establish a cooperative relationship with [Ms.] Reichenbach and [Mr.] Abrahams. Because they had constructively resigned from the Legal Committee, we invited them to attend the February 12, 2014 meeting as observers. When both [Ms.] Reichenbach and [Mr.] Abrahams refused to participate in a Legal Committee which had [Mr.] Blue as a member, it was not possible to re-admit [Ms. Reichenbach and [Mr.] Abrahams. Another member of the Legal Committee, [Mr. Van] Dusen said he was resigning from the Legal Committee and departed with Ms. Reichenbach and Mr. Abrahams, but he later sent an email stating he had not resigned. This matter has remained open as [Mr. Van] Dusen has made no effort to cooperate with the Legal Committee and instead associates with [Ms.] Reichenbach and [Mr.] Abrahams

who are now pressing a new bogus version of the Legal Committee.” Attached to Ms. Kruse’s and Mr. Blue’s declaration is an e-mail exchange which sheds no light on any alleged resignations from the Legal Committee.

C. The Ruling

On March 9, 2015, the Judge John A. Torribio ruled on the sanctions motion. Judge Torribio ruled: Mr. Blue resigned from the legal committee on January 15, 2013; Judge Goodman’s ruling denying the motion to recuse Mr. Angel is subject to collateral estoppel treatment or is the law of the case; the only way that Judge Goodman could deny the motion to recuse Mr. Angel was if Mr. Blue’s resignation letter was valid; Judge Goodman’s ruling was not appealed and is the law of the case; this court found that Mr. Angel was the attorney for plaintiff; Mr. MacNaughton was terminated as counsel for plaintiff on July 7, 2014; Mr. MacNaughton violated Code of Civil Procedure section 128.7, subdivision (b)(3) by filing the ex parte application and motion to compel the notice of preparation of an environmental impact report; Mr. MacNaughton had no authority to bring such a motion; the primary purpose for which the motion to compel the notice of preparation an environmental impact report was to needlessly increase litigation costs and harass plaintiff; and this has led to expenses which should not have been incurred. Judge Torribio ordered Mr. MacNaughton to modify the July 16, 2014 motion to state it was filed solely on behalf of Hollywoodians Encouraging Logical Planning. In addition, Mr. MacNaughton was enjoined from filing any court papers on behalf of or holding himself out as plaintiff’s counsel and was ordered to pay \$27,600 in monetary sanctions. In addition, Judge Torribio’s order concludes, “This motion is without prejudice to any conduct that occurred after August 28, 2015.”

D. Evidence presented in connection with the present sanctions and dismissal motion

Mr. Angel filed a declaration indicating that plaintiff had not authorized the filing of the notice of appeal. Mr. Angel also referred to the appellate court determinations in connection with Mr. MacNaughton's status as plaintiff's counsel. Mr. Angel explained that on July 7, 2014, Mr. Abrahams spoke to Mr. MacNaughton. Mr. MacNaughton was advised that he had been terminated as plaintiff's counsel. Mr. MacNaughton refused to accept the decision. As a result, a Code of Civil Procedure section 128.7 sanctions motion was filed. Mr. Angel further authenticated various documents pertinent to this litigation. In responding to Mr. MacNaughton's actions on the appellate level, as of July 10, 2015, Mr. Angel spent substantially in excess of 70 hours. Mr. Angel's billing rate is \$600 per hour.

In addition, Ms. Cheng has filed a declaration stating that she spent 65.2 hours responding to Mr. MacNaughton's conduct following his termination as legal counsel in July 5, 2014. Ms. Cheng bills at a billing rate of \$300 per hour. Therefore, Ms. Cheng's declaration states she is entitled sanctions in the amount of \$32,625. Ms. Cheng's declaration concludes: "Mr. MacNaughton's behavior is, in my opinion, inexcusable, and his relentless attacks against the individual judges and justices rule who against him, myself, Mr. Angel, and his former client seem to me a severe violation of his duties as an officer of the court. Mr. MacNaughton's unceasing invective, impugning the ethics and integrity of anyone who dares disagree with him, has caused significant emotional distress not only to myself, but also the members of [plaintiff's] governing board, who have been bewildered and intimidated by Mr. MacNaughton's conduct. Counsel for the City of Los Angeles, Fix the City, Inc., and La Mirada Neighborhood Association also expressed frustration to me about the confusion caused by Mr. MacNaughton's false claims that he represents [plaintiff]. This ordeal has been extremely tiresome and stressful."

IV. DISCUSSION

A. Our Power To Dismiss and Impose Sanctions

Our Supreme Court has defined a frivolous appeal thusly: “[An] appeal should be held to be frivolous only when it is prosecuted for an improper motive - to harass the respondent or delay the effect of an adverse judgment - or when it indisputably has no merit - when any reasonable attorney would agree that the appeal is totally and completely without merit. (See *Estate of Walters* [(1950)] 99 Cal.App.2d [552,] 558-559.)” (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.) We have the power to dismiss frivolous appeals. (*Roberson v. City of Rialto* (2014) 226 Cal.App.4th 1499, 1513; *In re Marriage of Gong & Kwong* (2008) 163 Cal.App.4th 510, 516.) Upon receipt of the dismissal and sanctions motion, we permitted all the parties to file briefs, gave notice in writing we were considering imposing sanctions and held oral argument. (Cal. Rules of Court, rule 8.276; see *Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 196.) Additionally, we requested supplemental briefing concerning certain aspects of the merits of Judge Torribio’s Code of Civil Procedure section 128.7 orders.

B. The Filing of the Notice of Appeal on Behalf of Plaintiff by Mr. MacNaughton Warrants Dismissal and the Imposition of Monetary Sanctions Against Him

1. Mr. MacNaughton’s filing a notice of appeal on behalf of plaintiff

We conclude Mr. MacNaughton is not authorized to file the notice of appeal on behalf of plaintiff. And no reasonable attorney in Mr. MacNaughton’s place would have thought she or he would be authorized to do so. Prior to January 15, 2013, the Legal Committee consisted of Mr. Abrahams, Ms. Reichenbach, Mr. MacNaughton, Mr. Blue, Ms. Kruse and Mr. Van Dusen. On January 15, 2013, Mr. Blue expressly requested his name be removed from *all of plaintiff’s official papers*. And Mr. Blue wanted to no

longer be a member of plaintiff's board. Mr. Blue's dissatisfaction arose from Mr. Abraham's handling of a letter to Mr. Bermejo seeking Sierra Club support of *plaintiff's lawsuit*. On February 12, 2014, a Legal Committee meeting was held and despite his resignation, Mr. Blue was allowed to vote. Mr. Abrahams and Ms. Reichenbach were not allowed to vote. There is no equitable or legal basis for prohibiting Mr. Abrahams and Ms. Reichenbach from voting. There is no evidence of any authority vested by any plaintiff's bylaws that permitted a Legal Committee member, who had resigned, from voting. Further, there is no legal or equitable basis for concluding that Mr. Abrahams and Ms. Reichenbach had resigned from the Legal Committee. Thus, at the February 12, 2014 meeting, there was a tie vote among Legal Committee members as to whether Mr. Angel remained as counsel.

Any ambiguity as to Mr. Angel's status was resolved on February 22, 2014. On February 19, 2014, Ms. Reichenbach e-mailed a notice of a Legal Committee meeting. Ms. Reichenbach, Mr. Van Dusen and Mr. Abrahams, who constitute a quorum, met. They elected Ms. DeMonte as a Legal Committee member. There is no evidence the addition of Ms. DeMonte was improper under any equitable or legal principles. The Legal Committee unanimously voted to have Mr. Angel continue to represent plaintiff. Further, the Legal Committee authorized Mr. Angel to secure Mr. MacNaughton's discharge as counsel. On March 25, 2014, Judge Goodman denied Mr. MacNaughton's motion to disqualify Mr. Angel as plaintiff's counsel with prejudice. On July 7, 2014, the Legal Committee voted to discharge Mr. MacNaughton as its counsel. Mr. MacNaughton was advised in writing by Mr. Abrahams of the Legal Committee's determination in this regard.

Further, other orders were issued which were inconsistent with Mr. MacNaughton acting as plaintiff's counsel. During the appeal from Judge Goodman's February 11, 2014 judgment granting the mandate petitions, an issue arose concerning Mr. MacNaughton's authority to represent plaintiff. This division's presiding justice, after allowing briefing and the submission of declarations, ruled that Mr. MacNaughton was not authorized to represent plaintiff on appeal from the February 11, 2014 judgment.

Further, a three justice panel of this division denied Mr. MacNaughton's supersedeas petition. Additionally, our Supreme Court denied Mr. MacNaughton's review petition which challenged this court's rulings that he could not represent plaintiff. (As we will explain, the collateral estoppel and law of the case doctrines may be inapplicable to this case. But any lawyer in Mr. MacNaughton's position would have taken heed of the views of three Court of Appeal and seven Supreme Court Justices.) Finally, Judge Torribio resolved credibility issues in his Code of Civil Procedure section 128.7 against Mr. MacNaughton. On these facts, no reasonable lawyer could conclude Mr. MacNaughton, who was fully aware of all of the pertinent proceedings, was authorized to represent plaintiff. Mr. MacNaughton's filing of a notice of appeal on behalf of plaintiff was a frivolous act. Thus, the purported appeal of plaintiff, SaveHollywood.Org, is dismissed.

We now turn to the issue of the amount of monetary sanctions on appeal that should be imposed on Mr. MacNaughton. As noted, the only conduct we can judiciously determine is frivolous at this stage of the proceedings is the filing of the notice of appeal by Mr. MacNaughton on plaintiff's behalf. The dismissal motion raises various other issues. Monetary sanctions may not be imposed for those other contentions at this stage of the proceedings because they are not frivolous. Two attorneys, Mr. Angel and Ms. Cheng, performed work on the dismissal motion. Mr. Angel has spent "in excess of 70 hours" responding to Mr. MacNaughton's "frivolous and unauthorized actions" on appeal and charges a billing rate of \$600 per hour. Ms. Cheng has expended 43.55 hours drafting the dismissal motion and supporting declarations. She charges a billing rate of \$300 per hour. Plaintiff has secured only a partial success in its dismissal effort. We have the authority to impose monetary sanctions in the case of a partially frivolous appeal. (*Pollock v. University of Southern California* (2003) 112 Cal.App.4th 1416, 1431-1432; *Maple Properties v. Harris* (1984) 158 Cal.App.3d 997, 1010.) In determining the appropriate amount of sanctions on appeal, we consider: the amount of attorney fees incurred by plaintiff seeking to dismiss the unauthorized appeal; the amount of Judge Torribio's sanctions award against Mr. MacNaughton; the degree of objective

frivolousness and delay; and the need to discourage like conduct in the future. (*Singh v. Lipworth* (2014) 227 Cal.App.4th 813, 830; *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 33-34.)

Only Ms. Cheng's declaration directly refers to the dismissal motion. Most of Ms. Cheng's analysis in the dismissal motion relates to the fact Mr. MacNaughton can no longer represent plaintiff. Portions of the dismissal motion involve limited discussion of the disentitlement doctrine and the merits of Judge Torribio's sanctions award. As will be noted, we do not believe that an appellate challenge *to the merits* of Judge Torribio's sanctions award is frivolous. But the degree of frivolousness in terms of Mr. MacNaughton's efforts to represent plaintiff is significant. We base that conclusion on the declarations demonstrating the Legal Committee discharged Mr. MacNaughton as counsel in the present litigation. And, the degree of frivolousness is significant because of the continued judicial rejection of Mr. MacNaughton's belief that he is entitled to represent plaintiff. As to whether any sanction is appropriate in terms of deterrence of future conduct on his part, we cannot make any definitive findings in that regard at present. After considering these matters, we assess monetary sanctions in favor of plaintiff against Mr. MacNaughton in the sum of \$9,000. This is calculated by apportioning 30 hours for Ms. Cheng's time spent addressing the issue of Mr. MacNaughton's authority to represent plaintiff. Upon finality of this opinion, the \$9,000 in monetary sanctions is ordered payable forthwith to plaintiff by Mr. MacNaughton. When this opinion is final, the clerk of this court is ordered to notify the State Bar of California of the sanctions award. The clerk of this court is to forward a copy of this opinion to the State Bar of California along with the notification. (Bus. & Prof. Code, § 6086.7, subdivision (a)(3); see *Huschke v. Slater* (2008) 168 Cal.App.4th 1153, 1164.) We need not address the question of whether Mr. MacNaughton has prosecuted the appeal for an improper motive; to harass or delay the judgment. (*In re Marriage of Flaherty*, *supra*, 31 Cal.3d at p. 650; see *Lubetzky v. State Bar* (1991) 54 Cal. 3d 308, 316.)

2. Remaining sanctions issues

There are several remaining sanctions issues which warrant briefer comment. First, we deny the sanctions request as to Mr. Pilot. Mr. Pilot has explained that he was only seeking to assist a friend, Mr. MacNaughton, and denies knowledge of the frivolous nature of the appeal. And, upon the frivolousness issue having been raised, Mr. Pilot has withdrawn from representing any other party in this litigation. This is a close case in terms of the imposition of sanctions against Mr. Pilot. He has made a serious error in assisting Mr. MacNaughton in filing the notice of appeal. That being said, our Supreme Court has explained that sanctions should be used only sparingly in the most egregious of cases. (*Lubetzky v. State Bar*, *supra*, 54 Cal. 3d at p. 316; *In re Marriage of Flaherty*, *supra*, 31 Cal.3d at p. 650.) The reason for limiting the imposition of monetary sanctions to the most egregious cases is to minimize punishing the assertion of a client's rights of access to the courts. (*In re Reno* (2012) 55 Cal.4th 428, 513-514; *Lubetzky v. State Bar*, *supra*, 54 Cal. 3d at p. 316; *In re Marriage of Flaherty*, *supra*, 31 Cal.3d at p. 650.) As to Mr. MacNaughton, the filing of the notice of appeal on plaintiff's behalf constitutes a most egregious case. However, as to Mr. Pilot, his conduct does not fit within the category of the most egregious of cases. Moreover, Mr. Pilot has not engaged in the abusive conduct described in Ms. Cheng's May 29, 2015 declaration. Therefore, the request for the imposition of any monetary sanctions as to Mr. Pilot is denied.

Second, there remains the question of whether Mr. MacNaughton's appeal as to the imposition of sanctions imposed upon him are frivolous. We are only addressing at this stage whether the contentions are frivolous. In terms of the challenge to Judge Torribio's imposition of sanctions upon Mr. MacNaughton, a reasonable attorney would conclude the appeal has merit. (*In re Marriage of Flaherty*, *supra*, 31 Cal.3d at p. 650; *Finnie v. Town of Tiburon* (1980) 199 Cal.App.3d 1, 16.)

Judge Torribio's ruling states in material part: "Judge Goodman's ruling denying the [MacNaughton] group's motion to recuse [Mr. Angel's law firm] is collateral estoppel or law of the case. The only way that Judge Goodman could deny the motion is

if the Blue letter of resignation was valid. If it was not valid, the actions of the [MacNaughton Legal Committee] would have been valid in terminating [Mr. Angel's firm]. Second, this ruling was never appealed and is the law of the case." It can be reasonably asserted that the foregoing is the gravamen of Judge Torribio's order imposing sanctions on Mr. MacNaughton.

Judge Torribio's exercise of discretion relied in part on the law of the case and collateral estoppel doctrines apply to Judge Goodman's prior order. A reasonably competent attorney could argue that the law of the case doctrine has no application to a trial court's ruling such as Judge Torribio's order imposing monetary sanctions. The law of the case doctrine may not be premised upon the decision of a trial judge; only an appellate court. (*Lawrence v. Ballou* (1889) 37 Cal. 518, 521 ["The doctrine that a previous ruling has become the law of the case has no application except as to the decisions of appellate [c]ourts."]; *Lennane v. Franchise Tax Bd.* (1996) 51 Cal.App.4th 1180, 1186 ["A potential issue is law of the case, but *that* doctrine cannot apply because no *appellate* court in this litigation ever actually determined the question."].)

Further, a nonfrivolous argument can be made that collateral estoppel principles apply to neither Judge Goodman's ruling nor those of this court and the Supreme Court. As noted, Judge Torribio ruled that the question of the Legal Committee's membership had previously been determined by Judge Goodman, this court and our Supreme Court. In order for collateral estoppel principles to apply, an issue of fact or law had to be determined by a valid and final judgment. (Rest.2d Judgments, § 27; see *People v. Carter* (2005) 36 Cal.4th 1235, 1240.) Judge Goodman entered judgment in favor of plaintiff and its co-plaintiffs in the environmental action on February 11, 2014. Judge Goodman denied Mr. MacNaughton's motion to have Mr. Angel discharged as plaintiff's attorney on March 25, 2014, with prejudice. No valid and final judgment was entered between March 25, 2014, and March 9, 2015, the date the Code of Civil Procedure section 128.7 monetary sanctions order was issued. Thus, Judge Goodman's March 25, 2014 order denying Mr. MacNaughton's motion to recuse Mr. Angel was never the subject of a final judgment when Judge Torribio's sanctions order issued.

Further, it can be reasonably argued that the December 26, 2014 decision by this division's presiding justice that Mr. Angel represents plaintiff is not entitled to collateral estoppel effect. That decision was made in the context of a dispute as to whether to permit the filing of a respondent's brief or dismiss plaintiff's appeal. It can be argued that an order signed by a single justice is not a binding determination of the cause's merits. (Cal. Const., art. VI, § 3 ["Concurrence of 2 judges present at the argument is necessary for a judgment."]; *In re Christopher A.* (1991) 226 Cal.App.3d 1154, 1161 ["A fundamental principle is that any determination of the merits of a cause by this court that is to bind the parties *must* have the agreement of two justices (Cal. Const., art. VI, § 3) which was not done here."]; accord *Kowis v. Howard* (1992) 3 Cal.4th 888, 900 [treating an order by a single justice the same as a summary denial of a writ petition]; *Delmonico v. Laidlaw Waste Systems, Inc.* (1992) 5 Cal.App.4th 81, 83, fn. 1 [an order of a single justice is not entitled to law of the case treatment]; *Estate of Crabtree* (1992) 4 Cal.App.4th 1119, 1123, fn. 1 [decision by presiding justice was "not binding" on the parties because it was not concurred in by another justice].) Further, the summary denial of Mr. MacNaughton's supersedeas petition is not subject to collateral estoppel effect. (*Kowis v. Howard, supra*, 3 Cal.4th at p. 896; *Hoversten v. Superior Court* (1999) 74 Cal.App.4th 636, 640.) And there is no authority for the proposition that the denial of a review petition by our Supreme Court is entitled to collateral estoppel effect.

Plaintiff argues that Mr. MacNaughton did not appeal from Judge Goodman's March 25, 2014 order refusing to recuse Mr. Angel. An order refusing to recuse an attorney is immediately appealable. (*Meehan v. Hopps* (1955) 45 Cal.2d 213, 216-218; see *Ponce-Brannen v. Trustees of Cal. State University* (1996) 48 Cal.App.4th 1656, 1661, fn. 3.) Thus, plaintiff contends that res judicata principles apply because the appealable judgment is now final. (*In re Matthew C.* (1993) 6 Cal.4th 386, 393; *Law Offices of Stanley J. Bell v. Shine, Browne & Diamond* (1995) 36 Cal.App.4th 1011, 1023-1026.) We may consider the entire record for determining whether the same issue has been decided by an appealable judgment. (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 511; *Murphy v. Murphy* (2008) 164 Cal.App.4th 376, 401.) Judge

Goodman's March 25, 2014 order merely refused to order the recusal of Mr. Angel. Judge Goodman never ruled that Mr. MacNaughton could not represent plaintiff. Later, on September 4, 2014, Judge Goodman was compelled to revisit the issue of who represents plaintiff. This arose in the context of Mr. MacNaughton's effort to compel defendants to file a notice of preparation of an environmental impact report. Judge Goodman ruled in connection with whether Mr. MacNaughton had the authority to act on plaintiff's behalf as follows: "This inconsistency -- and the entirely opaque nature of the operations of the unincorporated association -- lead the Court to conclude that this is not the forum in which the dispute between various factions of the unincorporated entity SaveHollywood.Org, or their counsel, is best resolved. [¶] The Court urges the various contending lawyers and firms find a way to resolve their dispute. [¶] Because of the ruling on this motion, this Court need not intercede, at least at this stage in the internal affairs of the entity; that internal dispute need not and will not be resolved in this proceeding." A perfectly legitimate argument can be made the entirety of the record demonstrates Judge Goodman never ruled that Mr. MacNaughton could not represent plaintiff. And a corollary of this argument is that Judge Torribio incorrectly ruled Mr. MacNaughton's failure to appeal from Judge Goodman's March 25, 2014 order is of legal consequence. Based upon the foregoing collective analysis, a reasonable attorney could conclude that Mr. MacNaughton's appeal is not meritless insofar he is challenging Judge Torribio's monetary sanctions order.

One aspect of our analysis bears emphasis. In discussing whether it was frivolous of Mr. MacNaughton to believe he had the authority to file the notice of appeal, we discussed the prior orders issued by this court and our Supreme Court. We also referred to Judge Goodman's March 25, 2014 order refusing to recuse Mr. Angel as plaintiff's counsel. That is different from the analysis concerning collateral estoppel, res judicata and the law of the case doctrine in Judge Torribio's monetary sanctions order. In assessing frivolousness, both this court and Judge Torribio may consider the declarations and plaintiff's Legal Committee's authority. Our dismissal and sanctions order was not premised upon collateral estoppel, res judicata and the law of the case doctrine

considerations. Judge Torribio's monetary sanctions order was expressly premised on those considerations.

No doubt, it can be contended that other portions of Judge Torribio's monetary sanctions order are sound. But a non-frivolous argument can be made that Judge Torribio should reconsider his ruling without regard to the res judicata, collateral estoppel and law of the case analyses. In the past, after finding partial material errors in monetary sanctions orders, appellate courts have remanded the cause for reconsideration by the trial court. (*Lind v. Medevac, Inc.* (1990) 219 Cal.App.3d 516, 524; *Jansen Associates, Inc. v. Codercard, Inc.* (1990) 218 Cal.App.3d 1166, 1171-1172; *Fegles v. Kraft* (1985) 168 Cal.App.3d 812, 814-818.) To sum up, competent attorneys could conclude an argument that material parts of Judge Torribio's ruling are erroneous is not frivolous. And, competent attorneys could conclude that a nonfrivolous argument can be made that the entirety of the monetary sanctions order should be reversed and remanded for reconsideration.

Third, plaintiff argues that the entirety of the appeal should be dismissed based upon the disentitlement doctrine. The disentitlement doctrine is a discretionary tool to be applied after balancing competing equitable considerations. (*Stoltenberg v. Ampton Investments, Inc.* (2013) 215 Cal.App.4th 1225, 1230; *In re E.M.* (2012) 204 Cal.App.4th 467, 474.) Here, we have taken other steps to ensure the integrity of the litigation process. We have dismissed the frivolous appeal filed by Mr. MacNaughton and Mr. Pilot filed on plaintiff's behalf. Further, we imposed substantial monetary sanctions personally against Mr. MacNaughton for his frivolous conduct in filing the notice of appeal. As can be noted, there are legitimate questions about the scope of Judge Torribio's monetary sanctions order. We decline to dismiss the entirety of the appeal based upon the disentitlement doctrine at this point. Needless to note, it may be appropriate to do so in the future but for now the better course of action is to decide the merits of Judge Torribio's monetary sanctions order.

C. Improper Ex Parte Communication Contention

Mr. MacNaughton argues that there has been an improper ex parte communication between members of this court and Ms. Cheng. According to Mr. MacNaughton, the presiding justice's clerk has communicated with Ms. Cheng and this communication is an improper ex parte discussion. No such communication has ever occurred. No judicial attorney of any member of this court has ever had any discussion with Ms. Cheng. Further, if Ms. Cheng spoke with a deputy clerk of this court, that is not an inappropriate communication. The clerk's office responds to inquiries about cases from the public. If any lawyer in this case were to speak to a deputy clerk, such would not be inappropriate ex parte communication. No justice of this division has ever communicated with any deputy clerk about the merits of this case. No inappropriate ex parte communications have occurred with Ms. Cheng or any other lawyer.

V. DISPOSITION

The appeal of plaintiff, SaveHollywood.Org, is dismissed. Plaintiff is to recover its costs incurred on appeal from objector, Richard MacNaughton. No costs are awarded against Edward W. Pilot. Monetary sanctions are imposed against the objector as discussed in this opinion.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

KRIEGLER, J.

BAKER, J.