Filed 10/11/12 DK Art Publishing v. City Art CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

DK ART PUBLISHING, INC., Plaintiff, Cross-Defendant and Respondent, v. CITY ART, INC., et al., Defendants, Cross-Plaintiffs and Appellants.	B229122 (Los Angeles County Super. Ct. No. BC370549)

APPEAL from orders of the Superior Court of Los Angeles County. Alan S. Rosenfield, Judge. Affirmed.

Gilbert, Kelly, Crowley & Jennett, Timothy W. Kenna, John J. Moura, Jeffrey Burt for Defendants, Cross-Plaintiffs and Appellants City Art, Inc., Ben Saiedian and David Saiedian.

Hinshaw & Culbertson, Linda L. Streeter for Appellants Ramin Azadegan and Law Offices of Ramin Azadegan.

Fraley & Associates, Franklin R. Fraley, Jr., Sue-Ann L. Tran for Plaintiff, Cross-Defendant and Respondent.

City Art, Inc., its owners Ben and David Saeidian (together referred to as City Art), and their attorneys Law Offices of Ramin Azadegan and Ramin Azadegan (together, Azadegan) appeal discovery sanctions ordered by the trial court, which mirrored the recommendations of the discovery referee. Those orders awarded attorney fees and costs as discovery sanctions to DK Art Publishing, Inc. (DK Art) in connection with 12 motions to compel which it brought against City Art.

City Art appeals the orders, contending that the discovery referee failed to disclose material facts, and that the appointment procedure was flawed, such that the referee should be disqualified. City Art also maintains that the sanction orders were contrary to law, resulted in a miscarriage of justice, and were an abuse of discretion. Azadegan joins in City Art's arguments, and also contends that the sanctions order against the attorney is improper, as there was no evidence that he advised his clients to misuse the discovery process. Finding no error, we affirm the orders.

FACTUAL AND PROCEDURAL SUMMARY[1]

Starting in October 2005, DK Art delivered to City Art original works of fine art and fine art prints on consignment and for repair, framing, safe-keeping, and resale. In late 2006, DK Art demanded the return of all of the art then in City Art's possession. When City Art refused the demand, DK Art filed this lawsuit. City Art cross-complained, alleging breach of a joint venture agreement.

In the course of prosecuting the lawsuit, DK Art propounded written discovery to determine what happened to the art and why City Art refused to return it. According to DK Art, City Art "responded largely with boilerplate objections and almost no substantive, responsive information." When meet and confer correspondence failed to resolve the matter, DK Art filed, in August 2008, seven motions to compel further

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[1] In addition to the substantial briefs submitted by the parties, DK Art filed four motions before this court, City Art filed two, and Azadegan filed one. We determine that none of the matters contained in the motions are necessary to a resolution of this appeal, and so deny all of the motions.

responses and for sanctions against City Art and Azadegan. DK Art continued the hearings on the seven motions multiple times while the parties continued to meet and confer by letter, telephone, and in person over an eight-month period. DK Art ultimately took the seven motions off calendar in exchange for City Art's promise to serve further, substantive responses to all of DK Art's discovery requests. "[A]fter one year of meeting and conferring, which included over fifty-five meet/confer letters, a two-hour in-person meet/confer, multiple meet/confers by telephone (one lasting over four hours), multiple agreements by DKA to continue the hearings on seven motions to compel and seven withdrawn motions to compel based on false promises," DK Art still had not received from City Art information which it deemed responsive to its discovery requests.[2]

On July 16, 2009, DK Art applied for the appointment of Hon. G. Keith Wisot (ret.) as a discovery referee pursuant to Code of Civil Procedure section 639, subdivision (a)(5). At that time, trial was set for September 25, 2009, and numerous discovery issues remained outstanding. City Art filed for bankruptcy on July 21, 2009. The motion for the appointment of a discovery referee was heard on August 12, 2009, and the appointment was ordered on September 14, 2009.

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[2] The matter before us on appeal concerns two orders granting 12 motions to compel and awarding discovery sanctions. The record on appeal includes 18 volumes of the appellants' appendix consisting of 5,062 pages, and two volumes of respondent's appendix running 393 pages, the bulk of which consists of the motions themselves together with supporting documentation, as well as the responding parties' opposition.

Because appellants do not challenge the sufficiency of the evidence to support the imposition of sanctions, we do not catalogue the nature of their responses to discovery. Typical of the responses is the following, as found by the Referee: Separate interrogatories addressed to each of City Art, David Saeidian and Ben Saedian asked "what inventories were taken from October 1, 2005 to October 1, 2007. Defendants' responses follow the same pattern of non-response previously noted [in responses to interrogatories provided in July 2008 and April 2009]. In this June 2009 response, defendants list 7 persons and entities, some addresses and phone numbers, and no further information with respect to any inventory."

On November 4, 2009, DK Art filed ten motions to compel further responses to discovery and for sanctions against City Art and its counsel. Two additional motions to compel were filed on December 9, 2009.

The Referee's signed Notice of Appointment, Consent & Certification, and Disclosure was served on all parties on February 8, 2010. The Disclosure indicated that the Referee was then serving as a Special Master to the Federal District Court on a matter in which DK Art's counsel, Franklin R. Fraley, Jr., represented a party.

The first hearing before the Referee on the motions to compel was held on April 12, 2010. The hearing concerned four of the 12 motions to compel, numbers 4, 5, 11 and 12. The Referee recommended that each of the motions to compel should be granted to require further responses. In addition, the Referee indicated at the hearing that he intended to recommend that discovery sanctions in the amount of $40,390 be ordered against City Art and its attorneys.

On or about May 3, 2010, City Art filed an ex parte application for "Stay of Enforcement of Discovery Referee's Orders" and for an order disqualifying the referee based on deficiencies in the latter's disclosures. City Art argued that the "Referee's disclosures are deficient because he disclosed that he was involved in a case in which one of the attorneys was [DK Art's] attorney in this case, Franklin R. Fraley, Esq. However, he failed to disclose the names of the parties to that case, the names of the other attorneys, whether or not the action was still pending, whether or not he has rendered any decisions in that action, and, if so, the dates, prevailing parties, and amounts of monetary damages, in any, for each decision." The court denied the application, ruling that the Referee's disclosure was adequate: "[T]hat's a complete disclosure. I don't find a basis for disqualifying. And you knew it, and you went forward with him. There's no basis for disqualification."

Appellants subsequently learned, in July 2011, the details which "the Referee's Disclosure omitted . . . : that, as of the date of filing and service of his Disclosure, he had served a Special Master for a total of eight years in a federal action (*REV 973 LLC v. John Mouren-Laurens*, et al, No. 98-10690 AHM, Central District California) in which

DK Art's counsel represented the plaintiff therein. The docket in the federal action reflects that as of the date of filing and service of his Disclosure, the Referee had already heard approximately nine motions and issued approximately 73 reports in that case."

The trial court adopted the Referee's recommendation contained in his Final Report and Recommendation #3 on October 27, 2010, and ordered monetary sanctions against City Art and its attorneys in the amount of $37,190, in reimbursement of the legal fees DK Art incurred in connection with the motions. City Art and Azadegan timely appealed the order.

The second motion to compel, with respect to motions 1, 2, 3, 6, 7, 8, 9, and 10, was heard by the Referee on November 5, 2010, and resulted in the Referee's Final Report and Recommendation #4. That report recommended that the trial court grant the eight motions and award $68,302.50 in monetary sanctions against City Art and their attorneys to reimburse DK Art the legal fees incurred in preparing the motions. On March 24, 2011, the trial court entered its order adopting that recommendation, from which City Art and Azadegan timely appealed. This court ordered the appeals consolidated.[3]

At the hearing on the Referee's Report #4, the trial court remarked: "The evasiveness and the failures that were initiated back in 2008 and which have continued since the appointment of the referee were stunning. And whether it was something that you could look at in isolation or not, I don't know. [¶] But if I were to try to look at this thing in isolation, a particular set, a particular small timeframe, a particular problem with a certain piece or set of discovery, I might come to the same conclusion that defense counsel urges on the court today. But unfortunately, I'm looking at this in combination. I'm looking at the history. I'm looking at how we got here and who created the problem. [¶] It is this court's opinion, after reviewing the referee's reports, that unfortunately the defendants and their prior counsel brought this on themselves."

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[3] A third sanctions order was issued on September 16, 2011, adopting Final Report and Recommendation #9 and imposing an additional sanction of $168,372.47. That order, also appealed, is not a part of this proceeding.

STANDARD OF REVIEW

This court reviews the trial court's order imposing discovery sanctions for an abuse of discretion. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 992; *Britts v. Superior Court* (2006) 145 Cal.App.4th 1112, 1123.) "'We resolve all evidentiary conflicts most favorably to the trial court's ruling, and we will reverse only if the trial court's action was ""'arbitrary, capricious, or whimsical.""' "'It is [the appellant's] burden to affirmatively demonstrate error and, where the evidence is in conflict, this court will not disturb the trial court's findings." To the extent that reviewing the sanctions order requires us to construe the applicable discovery statutes, we do so de novo, without regard to the trial court's ruling or reasoning.'" (*Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1286, quoting *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 401, citations omitted.)

CONTENTIONS

All appellants maintain that the orders are subject to reversal because the Referee did not make required disclosures at the time of his appointment, and because the orders were contrary to law and an abuse of discretion. City Art additionally argues that the referee appointment procedure did not comport with legal requirements, while Azadegan contends that the award of sanctions against the attorney must be reversed because there is no evidence that he advised his clients to misuse the discovery process, and because joint and several liability for sanctions levied against clients is not authorized by the discovery statute. We consider each contention in turn.

DISCUSSION

1. *The Referee's disclosures were adequate*

Appellants maintain that Judge Wisot's disclosure was inadequate for failing to disclose "Any significant personal or professional relationship the referee has or has had with a party, attorney, or law firm in the current case, including the number and nature of any other proceedings in the past 24 months in which the referee has been privately

compensated by a party, attorney, law firm, or insurance company in the current case for any services." (Cal. Rules of Court, rule 3.924(b)(2).) The Referee's Disclosure stated that "Mr. Fraley represents a party where the undersigned serves as Special Master to the federal district court." Appellants challenge the adequacy of this disclosure because it "did not disclose the name of the action, the number of proceedings held by the Referee, the number of orders issued, the time of association, the significant revenue realized by the Referee throughout the relationship or any other detail that might have been material to the Appellant's evaluation of the potential for the Referee to favor their adversary." Appellants conclude that the "pertinent details of the Referee's professional association with DK Art's counsel certainly deprived Appellants of a fully informed decision with regard to the impartiality of the Referee, and of a basis for objecting to that appointment."

There is no requirement that the referee disclose "the number of orders issued, the time of association, the significant revenue realized by the Referee throughout the relationship or any other detail that might have been material to the Appellant's evaluation of the potential for the Referee to favor their adversary." Rather, the Referee was required to disclose "the number and nature" of the proceedings in which he and Mr. Fraley were involved. The Referee's disclosure included the number of proceedings – one – and the nature of the Referee's involvement – Special Master. Thus, the disclosure fully complied with the requirements of the rule. We note as well that, if appellants determined that they needed more information than simply the number and nature of the proceedings in order to assess Judge Wisot's suitability for appointment as a referee, they were free to inquire of Mr. Fraley and/or Judge Wisot. They made no such inquiry, and there is no evidence that Mr. Fraley or the Referee in any way misrepresented any

particulars concerning their prior contacts.[4] There is thus no basis to disqualify the Referee based on inadequate disclosures.

2. *The appointment procedure was proper*

Appellants contend that the process by which the Referee was appointed did not comply with statutory requirements and that, as a result of those deficiencies, the Referee's appointment was unlawful and the orders entered on his recommendations should be set aside.

City Art first complains that DK Art and the court did not comply with Code of Civil Procedure[5] section 640,[6] which provides that if the parties cannot agree to a referee, each party is to submit to the court up to three nominees, among whom the court shall choose one or more to act as referee. According to City Art, "No nominees were allowed to be submitted by appellants. Appellants had no chance to object to a list of nominees from respondent." The argument is specious, as attorney Azadegan, by letter dated August 31, 2009, expressly agreed to the section of the proposed order appointing Judge Wisot.

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[4] Azadegan states in his opening brief that "the identity of the case still was not revealed by the Discovery Referee or DK Art's counsel in the course of the first disqualification proceeding in May and June 2010, even though concerns about the adequacy of disclosure and bias were raised therein." This statement suggests that DK Art and Judge Wisot withheld information requested by City Art or required to be disclosed by statute or rule. This suggestion is inaccurate, and emblematic of the tenor of appellants' conduct throughout the discovery process.

[5] Unless otherwise indicated, further statutory references are to this code.

[6] That section provides: "If the parties do not agree on the selection of the referee or referees, each party shall submit to the court up to three nominees for appointment as referee and the court shall appoint one or more referees, not exceeding three, from among the nominees against whom there is no legal objection. If no nominations are received from any of the parties, the court shall appoint one or more referees, not exceeding three, against whom there is no legal objection, or the court may appoint a court commissioner of the county where the cause is pending as a referee." (§ 640, subd. (b).)

City Art next contends that DK Art violated rule 3.921 of the California Rules of Court, which specifies that a motion for the appointment of a particular referee "must be accompanied by the proposed referee's certification . . . ."[7] However, appellants cite no authority for the proposition that failure to submit the certification with the motion naming a particular referee voids the appointment. The presumed purpose of the rule is to ensure that if the moving party seeks the appointment of a particular referee, and only that specific person, then the party must determine the availability of that person before seeking the appointment. Such was not the case here. Appellants point to no detriment suffered on account of the cited deficiency, nor authority for the suggestion that the consequence of a technical violation of the Rule 3.921 is to void the orders of the trial court which adopted the recommendations of the Referee.

Similarly, City Art argues that the form and content of the order appointing the Referee did not comply with the California Rules of Court. For instance, rule 3.920(c) of those rules provides that "A discovery referee must not be appointed under Code of Civil Procedure section 639(a)(5) unless the exceptional circumstances of the particular case require the appointment." The order itself recites the reasons for the reference as follows: "Given the number of pending discovery disputes, the amount of discovery that remains for the parties to complete, and the need to bring this action to trial without further delays due to discovery disputes, the parties will require prompt resolution of all discovery disputes to ensure that the parties are ready to try this action." Appellants argue, "The Order does not state that these are exceptional circumstances, nor were they." We do not agree.

In mid-July 2009, when DK Art sought appointment of a discovery referee, the parties had, over a year-long period and despite 55 meet/confer letters, a two-hour in-person conference and multiple meet/confer telephone conferences lasting up to four

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[7] The referee must certify in writing "that he or she consents to serve as provided in the order of appointment and is aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and with the California Rules of Court." (Cal. Rules of Court, rule 3.924(a)(1).)

hours, failed to resolve their discovery disputes; the trial was set for September 25; the trial court was not available to hear the first of DK Art's motions to compel until August 20, and then would hear only three motions per hearing date. In short, the appointment of a discovery referee was warranted by exceptional circumstances.

3. *The sanctions ordered were lawful*

Section 2023.030, subdivision (a) provides in pertinent part: "The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. . . . 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." ""Misuse of the discovery process includes failing to respond or submit to authorized discovery, providing evasive discovery responses, disobeying a court order to provide discovery, unsuccessfully making or opposing discovery motions without substantial justification, and failing to meet and confer in good faith to resolve a discovery dispute when required by statute to do so." [Citation.]' (*In re Marriage of Michaely* (2007) 150 Cal.App.4th 802, 809.)" (*Clement v. Alegre, supra,* 177 Cal.App.4th 1277, 1285.)

DK Art's 12 motions to compel detailed the discovery at issue, the relevance of that discovery to the parties' allegations, City Art's history of discovery misuse, and the specific factual and legal reasons why it believed City Art's discovery responses and objections lacked merit. In opposition, City Art detailed its version of events, the reasons why it believed that DK Art, rather than City Art, misused the discovery process, and the specific factual and legal reasons why it believed that its discovery responses and objections were adequate and proper. After reviewing the voluminous papers and holding two four-hour hearings, the Referee found that, factually, City Art's discovery responses and objections were meritless, evasive, and an egregious misuse of the discovery process, and remarked that "I can only summarize to say in 30 years, as a

public judge and as a private referee, I have never seen a more egregious misuse of discovery [than] demonstrated by defendants here nor have I ever made a statement such as the one I'm making now." The trial court reviewed Reports 3 and 4, considered the parties objections, heard oral argument on Report 4, adopted the Referee's findings, and ordered the sanctions at issue on appeal.

City Art points to comments which the trial court made at the hearing on the Referee's recommendations to establish that the court did not adequately review whether the Referee's recommendations were appropriate. Said the court: "There's an old saying that a friend of mine who lives down in the south, in Louisiana, said. 'If you don't want my peaches, don't shake my tree.' [¶] You had a little tree-shaking going on here, and certainly in the early stages. And apparently it has become now a case that has well exceeded George Washington and any given cherry tree. [¶] It is most unfortunate. It is absolutely most unfortunate. However, I think the defendants brought it on. Not you, present counsel, but I believe the defendants and their counsel are all responsible for bringing us to the point. [¶] The evasiveness and the failures that were initiated back in 2008 and which have continued since the appointment of the referee were stunning. And whether it was something that you could look at in isolation or not, I don't know. [¶] But if I were to try to look at this thing in isolation, a particular set, a particular small timeframe, a particular problem with a certain piece or set of discovery, I might come to the same conclusion that defense counsel urges on the court today. But unfortunately, I'm looking at this in combination. I'm looking at the history. I'm looking at how we got here and who created the problem. [¶] It is this court's opinion, after reviewing the referee's reports, that unfortunately the defendants and their prior counsel brought this on themselves."

Far from establishing that the trial court did not properly review the Referee's recommendations, the foregoing makes clear that the court was more than a little familiar with the history of discovery in this case, and that the tone set by the appellants in the early stages of discovery continued after the Referee was appointed. The Referee's Final Reports #3 and #4 laid out in great detail the specific discovery requests at issue in each

of the motions under consideration; the responses to discovery which the Referee deemed inadequate and the ways in which the responses were deficient; the decisional law applicable to these discovery issues; and the Referee's conclusions of law and fact. The trial court specifically stated that it had reviewed the Referee's reports; it considered the parties' objections, heard oral argument on Report #4, and adopted the Referee's findings. We reject as wholly unfounded the notion that the trial court failed to properly consider the basis of the sanctions order.

City Art next argues that the Referee refused to consider whether or not the discovery propounded by DK Art was supported by "good cause," nor balanced the necessity of the discovery against the burden of response, nor considered whether alternative means were available which would have assured DK Art received necessary information without unduly burdening City Art. In response to this objection the Referee noted that City Art had not sought a protective order at any stage of discovery, and concluded that it was not necessary to consider whether "the volume of plaintiffs' discovery requests creates a prima facie case of excessive and abusive discovery." Appellants argue that this conclusion is contrary to the mandate of section 2040.040, subdivision (a), which provides that sanctions should be not be awarded if "other circumstances make the imposition of the sanction unjust."

We conclude that the amount of discovery propounded by DK Art was immaterial to resolution of the discovery motions before the Referee. In ruling on such a motion, a court may only consider evidence that the parties present in declarations, affidavits, and/or judicially noticeable facts in the parties' papers for and against the motion. (*Smith, Smith & Kring v. Superior Court* (1997) 60 Cal.App.4th 573, 578.) The Referee and the trial court reviewed all papers and heard oral arguments on DK Art's 12 motions to

compel; neither the court nor the Referee were obligated to review any other evidence, let alone every discovery request and response in the case.[8]

Finally, Azadegan contends that the trial court erred by not taking into consideration his "substantial justification" for his position as required by section 2023.030, subdivision (a). The statute provides: "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 sanction unjust." Thus, "[t]he trial court was required to award sanctions against [appellants] absent a finding that [appellants] acted with substantial justification or that other circumstances made imposition of the sanctions unjust." (*Mattco Forge, Inc. v. Arthur Young & Co.* (1990) 223 Cal.App.3d 1429, 1436.)

A party's position in a discovery dispute is substantially justified if it has a reasonable basis in law or in fact and/or if the dispute is genuine. (*Nader Auto. Group, LLC v. New Motor Vehicle Bd.* (2009) 178 Cal.App.4th 1478, 1483; *Clement v. Alegre, supra*, 177 Cal.App.4th at p. 1292 [substantial justification exists when a genuine dispute exists].) It should be clear by now that both the Referee and the trial court concluded that the sanctioned parties did not act with substantial justification, because no genuine dispute existed. Both the Referee and trial court described appellants' conduct as "gamesmanship," the antithesis of a genuine dispute. The trial court expressed its frustration in trying to move this case forward: "[T]he resistance to the discovery process in this case has been somewhat profound. It's definitely outside the norm. [¶] . . . [¶] [O]ver and over and over again defendants and their counsel resist discovery. I couldn't handle it with admonishment, I couldn't handle it informally, I couldn't handle it by giving them more time. [¶] Time's up." "[W]e went around and around with these things . . . . [¶] But what was actually happening is discovery wasn't happening because of the

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[8] And contrary to any suggestion that DK Art's discovery requests were excessive or burdensome, during the meet and confer process City Art expressly agreed to respond to all of DK Art's discovery requests and did not ask DK Art to withdraw any discovery request.

sidetracking with all these issues." ". . . I believe the defendants and their counsel are all responsible for bringing us to this point."

In short, having granted DK Art's motions to compel, and having concluded that City Art's failure to fully comply with the discovery requests was the result of gamesmanship, engaged in for the purpose of thwarting the prosecution of the case, the court properly ordered sanctions to compensate DK Art for all reasonable expenses incurred as a result of the discovery dispute. (§ 2023.030.)

4. *Substantial evidence supported imposition of sanctions against attorney Azadegan*

Azadegan cites *Ghanooni v. Super Shuttle of Los Angeles* (1993) 20 Cal.App.4th 256 for the proposition that sanctions may be imposed against a lawyer pursuant to section 2023.030 only if the lawyer advises the client to misuse the discovery process. Azadegan contends, "In the face of clear and uncontroverted evidence that no such advice was provided by the lawyer here, the Discovery Referee and Superior Court made a fundamental error of law by nonetheless imposing monetary sanctions against a *lawyer* based on the standard applied to *parties* by the statute, which is misuse of the process itself. The Discovery Referee and Superior Court then compounded that error of law by also ordering that the lawyer be held jointly and severally liable for the *clients'* monetary sanctions, thereby violating the express limitation on lawyer liability provided by section 2023.030." The argument misses the mark.

In *Ghanooni, supra*, the misuse of discovery consisted of the plaintiff's refusal to submit to a physical examination. The appellate court ruled that the attorney could be liable for sanctions for his client's refusal to submit to a physical examination only if he advised the client to refuse. (20 Cal.App.4th at p. 261; accord *Corns v. Miller* (1986) 181 Cal.App.3d 195, 200 [defendants never provided their attorney with answers to interrogatories propounded by plaintiff; attorney could only be sanctioned for clients' failure to respond if he advised them not to respond].) The court did not say that the giving of advice is the only way an attorney can misuse the discovery process.

Section 2023.030, subdivision (a) authorizes the imposition of monetary sanctions on not only a "litigant" who misuses the discovery process, but on "one" who does so. (§ 2023.030, subd. (a) ["The court may impose a monetary sanction ordering that *one* engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct," italics added].) A simple reading of the statute makes clear that an attorney who engages in misuse of the discovery process may be sanctioned therefor. Thus, if there were no evidence that Azadegan engaged in the misuse of the discovery process, then the only basis to impose sanctions on him would be if he advised his clients to misuse the discovery process. However, the record is replete with evidence that the attorney was an active participant in the discovery abuse; there was thus no need for a further finding that he advised his clients to misuse the discovery process.[9]

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ARMSTRONG, Acting P. J.

We concur:

MOSK, J.

KRIEGLER, J.

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[9] Given that the monetary sanctions against Azadegan were imposed based upon his own conduct, and not that of his clients, we do not address the additional contention that joint and several liability was improper because it was based on the clients' conduct.