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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

LUDMILA RUDYAK,

Plaintiff and Respondent,

v.

LEONID RUDYAK,

Defendant;

REGINA RUDYAK et al.,

Objectors and Appellants.

B267386

(Los Angeles County
Super. Ct. No. BD575948)

APPEAL from an order of the Superior Court of Los Angeles County, Robert E. Willett, Judge. Affirmed.

Law Offices of Paula S. Glickstein and Paula S. Glickstein for Objectors and Appellants.

Paul L. Cass; Donald H. Latzer for Plaintiff and Respondent.

INTRODUCTION

Appellants Regina Rudyak and Ginadan Capital, LLC appeal from an order imposing discovery sanctions in the amount of \$20,492.50 after they unsuccessfully opposed a motion to compel answers and the production of documents at an oral deposition. (See Code Civ. Proc., § 2025.480, subd. (j).)¹ Appellants contend the Civil Discovery Act (Discovery Act) (§ 2016.010 et seq.) does not authorize monetary sanctions against nonparties and, on that basis alone, they argue the order must be reversed. Contrary to Appellants' contention, monetary sanctions are authorized "against *any* party, *person*, or attorney who unsuccessfully makes or opposes a motion to compel," including a nonparty witness who has been ordered to testify pursuant to a deposition subpoena. (§ 2025.480, subd. (j), italics added; see also § 2023.030 [monetary sanctions, in general, authorized against "*anyone* engaging in conduct that is a misuse of the discovery process," including "any affected party, *person*, or attorney," italics added].) We affirm.

FACTS AND PROCEDURAL BACKGROUND

The pertinent facts are not in dispute. The underlying family law case began with the dissolution of Respondent Ludmila Rudyak's marriage to Leonid Rudyak, now deceased. Neither of Appellants Regina Rudyak and Ginadan Capital were parties to this matter.

On January 23, 2015, Respondent had Regina Rudyak personally served with two deposition subpoenas—one to appear and produce documents in her individual capacity, and one to

¹ Statutory references are to the Code of Civil Procedure, unless otherwise indicated.

appear and produce documents as a representative of Ginadan Capital. The depositions were set for February 13, 2015.

On February 10, 2015, Appellants' counsel served objections to the deposition subpoenas.

On February 13, 2015, Appellants failed to appear for the depositions.

On April 14, 2015, Respondent filed a motion to compel Appellants' appearances and document productions as set forth in the deposition subpoenas. Respondent also requested sanctions, pursuant to section 2025.480, in the amount of \$20,492.50 for attorney fees and costs incurred in connection with the deposition and motion to compel. On April 28, 2015, Appellants filed their opposition.

On May 11, 2015, the court held a hearing on Respondent's motion to compel. The court granted the motion and awarded sanctions in the requested amount; observing, "[s]anctions are mandatory since there's no successful opposition to the motion and the Court finds no substantial justification."

On July 13, 2015, Appellants filed a motion for reconsideration. On September 4, 2015, the court denied the motion. This appeal followed.

DISCUSSION

To compel the attendance, testimony, or production of documents by a nonparty witness, a litigant must serve the witness with a deposition subpoena. (§ 2020.010.) Under section 2020.220, personal service of a deposition subpoena upon a California resident requires the witness to appear, testify and produce whatever documents or things are specified in the subpoena; and also to appear in any proceedings to enforce discovery. (§ 2020.220, subd. (c)(3); Weil & Brown, Cal. Prac. Guide: Civil Procedure Before Trial

(The Rutter Group 2016) ¶ 8:535, pp. 8E-37 to 8E-38 (Weil & Brown, Civil Procedure Before Trial).)

Appellants contend the Discovery Act does not authorize monetary sanctions against a nonparty for failing to comply with a deposition subpoena. Specifically, they argue “[t]he only method for recouping attorney’s fees and costs, if any, incurred by the failure of a nonparty to comply with his or her duties under [s]ection 2020.220 is described in [section] 1992[.]” Section 1992 provides: “A person failing to appear pursuant to a subpoena or a court order also forfeits to the party aggrieved the sum of five hundred dollars (\$500), and all damages that he or she may sustain by the failure of the person to appear pursuant to the subpoena or court order, *which forfeiture and damages may be recovered in a civil action.*” (§ 1992, italics added.) Based on the italicized text, Appellants maintain that, “[i]n California[,] there is no legal authority to order discovery sanctions against a nonparty served with a deposition subpoena *in the same case in which the deposition subpoena was issued*, if at all.” (Italics added.) And, because Respondent sought sanctions in connection with her motion to compel, rather than by “filing a separate civil action,” Appellants argue the trial court lacked statutory authority to award sanctions against them. The argument is legally baseless.

Contrary to Appellants’ premise, section 1992 is not the only basis for obtaining monetary relief from a nonparty that fails to comply with a deposition subpoena. Rather, if a nonparty disobeys a deposition subpoena, the subpoenaing party may seek a court order compelling the nonparty to comply with the subpoena pursuant to section 2025.480. (Weil & Brown, Civil Procedure Before Trial, *supra*, ¶ 8:609.1, pp. 8E-74 to 8E-75; see *Unzipped Apparel, LLC v. Bader* (2007) 156 Cal.App.4th 123, 127 (*Unzipped*

Apparel) [considering timing of motion to compel pursuant to § 2025.480 when nonparty fails to comply with a deposition subpoena for business records].) If the nonparty opposes the motion without substantial justification, he or she “is subject to *sanctions*” pursuant to section 2025.480, subdivision (j). (Weil & Brown, Civil Procedure Before Trial, *supra*, ¶ 8:609.1, p. 8E-74.) That statute provides: “The court *shall* impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against *any* party, *person*, or attorney who unsuccessfully makes or opposes a motion to compel an answer or production, 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.” (§ 2025.480, subd. (j), *italics added*).²

² Though not critical to our analysis, we cannot ignore that, in opposing the motion to compel, Appellants relied upon the *Unzipped Apparel* case, which recognizes that section 2025.480 applies to a nonparty deposition subpoena. (See *Unzipped Apparel*, *supra*, 156 Cal.App.4th at pp. 127, 134 [recognizing 60-day time limit under section 2025.480, subdivision (b) applies to nonparty deposition subpoena requesting business records, just as it applies to a subpoena for an oral or written deposition].) In their opposition, Appellants argued Respondent’s motion to compel was untimely under *Unzipped Apparel*, because it was filed more than 60 days after Appellants served objections to the deposition subpoenas. (See *Unzipped Apparel*, at p. 136 [concluding objections served in response to a business records subpoena constitutes a “record of a deposition,” starting the 60-day clock under § 2025.480, subd. (b)].) The trial court rejected this argument because the subject deposition subpoenas requested oral testimony as well as documents. Thus, the court concluded the record of deposition was not complete until Appellants failed to appear and respond to questions, exactly 60 days before Respondent filed her motion to compel. Appellants do not challenge that ruling on appeal. In any

The procedure described above is precisely the procedure Respondent and the trial court followed here. Appellants were personally served with deposition subpoenas to testify and produce documents. They failed to comply with the subpoenas, prompting Respondent to bring a motion to compel together with a request for sanctions pursuant to section 2025.480. Having determined Appellants opposed the motion without substantial justification, the court ordered sanctions as mandated by section 2025.480, subdivision (j).³ There was no abuse of discretion.

event, the notable point is that Appellants acknowledged and, indeed, argued nonparty deposition subpoenas are subject to section 2025.480 in the trial court—a legal position they now retreat from on appeal.

³ In their reply brief, Appellants argue for the first time that the trial court abused its discretion insofar as it concluded sanctions were mandatory rather than discretionary. They rely on section 2023.030, subdivision (a), which provides: “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.” (Italics added.) We need not address the argument, which Appellants improperly raised for the first time in their reply brief without affording Respondent an opportunity to respond. In any event, the argument is meritless. As we have explained, the subject sanctions are authorized by section 2025.480, subdivision (j), and are therefore within the mandatory “shall” clause of section 2023.030, subdivision (a).

DISPOSITION

The order is affirmed. Ludmila Rudyak is entitled to her costs.

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GOSWAMI, J.*

We concur:

EDMON, P. J.

LAVIN, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.