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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MITCHELL ANTHONY PRODUCTIONS, LLC, Plaintiff and Respondent, v. ADRIENNE BARON et al., Defendants and Appellants.	B282974 (Los Angeles County Super. Ct. No. BC522687)

APPEAL from an order of the Superior Court of Los Angeles County, Mel Red Recana, Judge. Dismissed.

Law Office of Gary Kurtz and Gary Kurtz for Defendants and Appellants.

Orland Law Group and James J. Orland for Plaintiff and Respondent.

I. INTRODUCTION

Defendant Adrienne Baron appeals from discovery sanctions totaling $9,720. Plaintiff Mitchell Anthony Productions, LLC sued defendant for intentional misrepresentation and false promise. Plaintiff served discovery requests on defendant, including interrogatories and requests for production. Finding defendant's responses inadequate, plaintiff filed two separate motions to compel further discovery responses to the interrogatories and requests for production. Plaintiff also requested $4,860 as discovery sanctions in each motion. The trial court found in favor of plaintiff, and awarded plaintiff monetary sanctions against defendant and her counsel in full.

Defendant appeals from a nonappealable order. Defendant contends the order imposing discovery sanctions in the total amount of $9,720 is appealable pursuant to Code of Civil Procedure[1] section 904.1, subdivisions (a)(11) and (a)(12), which provide that a party can take an appeal from an interlocutory judgment or order "directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000)." Although the trial court issued one order, it imposed two separate sanctions on defendant. Separate sanctions, even if in one order, cannot be aggregated to exceed the $5,000 threshold for appealability. We will dismiss the appeal.

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[1] Further statutory references are to the Code of Civil Procedure unless otherwise indicated.

II. BACKGROUND

Plaintiff filed the fourth amended complaint, the operative pleading, on November 15, 2016. Plaintiff alleged claims for intentional misrepresentation, false promise, breach of oral contract, and unfair business practices in violation of Business and Professions Code section 17200 against defendant and others.

Plaintiff served interrogatories and a request for production of documents on defendant. On December 12, 2016, plaintiff moved to compel further response to its first set of interrogatories. Plaintiff requested sanctions in the amount of $4,860 to be jointly and severally imposed on defendant and her counsel. On December 21, 2016, plaintiff moved to compel further response to its first set of requests for production of documents on defendant. Plaintiff again requested sanctions in the amount of $4,860 to be jointly and severally imposed on defendant and her counsel.

On April 4, 2017, the trial court issued its order and granted plaintiff's motions to compel in full. The trial court also granted plaintiff's requested discovery sanctions in full. On May 31, 2017, defendant petitioned this court for a writ of mandate, seeking immediate relief from the court's granting of the motions to compel. Defendant did not seek relief from the sanction awards. On June 2, 2017, defendant filed a notice of appeal of the court's sanction awards.

III. DISCUSSION

Discovery sanctions exceeding $5,000 are appealable under section 904.1, subdivisions (a)(11) and (a)(12). (*Rail-Transport Employees Assn. v. Union Pacific Motor Freight* (1996) 46 Cal.App.4th 469, 475.) Defendant contends the April 4, 2017 sanction order is appealable, while plaintiff disagrees. The threshold issue here is whether the order imposing discovery sanctions was a monetary sanction exceeding $5,000. We conclude that because the only means by which defendant meets the $5,000 appealability threshold is through aggregation of the two discovery sanctions, the sanctions ruling is not presently reviewable.

The First District Court of Appeal extensively discussed aggregation of sanctions for purposes of appealability under section 904.1 in *Calhoun v. Vallejo City Unified School Dist.* (1993) 20 Cal.App.4th 39 (*Calhoun*). In *Calhoun*, a school employee filed a wrongful termination claim against a school district and an employees' union. (*Id.* at p. 41.) The trial court ordered the plaintiff to pay two separate monetary sanctions in the amount of $525 to each defendant. (*Ibid.*) The statutory threshold for appealability of a sanction at the time was $750. (*Ibid.*) Prior to the enactment of this statutory threshold, all monetary sanction orders, regardless of amount, were appealable as final orders on a collateral matter. (*Id.* at p. 44.)

The *Calhoun* court disagreed with a prior Court of Appeal opinion that suggested aggregation of monetary sanctions was possible for purposes of appealability. "In *Champion/L.B.S. Associates Development Co. v. E–Z Serve Petroleum Marketing, Inc.* (1993) 15 Cal.App.4th 56, 59, a majority opinion said 'there

may be situations where "aggregating" separate sanction awards in order to reach the $750 minimum may be appropriate.' The opinion gave an example in which a defendant makes three simultaneous discovery requests, the plaintiff opposes a motion to compel further discovery, and the court rules for defendant and issues three separate sanction awards of $600 each. The majority stated, 'In such a case, it could well be that it is the same conduct which is being sanctioned three times. If so, we think "aggregation" would be proper.' (*Id.* at p. 60.) The justices found no such circumstances in that case, however, and declined to aggregate. (*Ibid.*) In dissent, Justice Thomas F. Crosby, Jr., expressed 'vehement' disagreement with 'the majority's dictum concerning aggregation of a series of minuscule discovery sanctions awards[.]' (*Ibid.*)" (*Calhoun, supra*, 20 Cal.App.4th at p. 43.)

The *Calhoun* court rejected the suggestion that aggregation of sanctions should be used. "The majority in *Champion/L.B.S.* would ask whether the 'same conduct' is being subjected to multiple sanctions. (*Champion/L.B.S. Associates Development Co. v. E–Z Serve Petroleum Marketing, Inc., supra*, 15 Cal.App.4th at p. 60.) However, the very example given in that case—multiple sanctions after opposition to a motion to compel further discovery upon three discovery requests—illustrates the difficulty involved in applying such a standard: is there a single course of misconduct in opposing the motion to compel, or are there multiple instances of misconduct in failing to satisfy the three discovery requests? . . . [¶] Such standards for aggregation would inject an unwelcome dose of uncertainty into the appellate process. The Legislature intended to create a $750 'bright line' threshold for appealability of monetary sanction orders.

(*Champion/L.B.S. Associates Development Co. v. E–Z Serve Petroleum Marketing, Inc., supra*, 15 Cal.App.4th at p. 59.) A rule permitting aggregation of 'same conduct' or 'nonseparate' sanctions would blur that bright line. In close cases, such as the present one, the sanctioned party would be unsure whether to proceed by appeal or by writ petition. The wrong decision could prove to be procedurally fatal. Bright lines are often too arbitrary to be of much use in the substantive law, but they are usually quite serviceable and even preferred as procedural rules, which should serve as clearly marked guideposts rather than traps for the unwary." (*Calhoun, supra*, 20 Cal.App.4th at pp. 44-45.)

The *Calhoun* court analyzed the intent of the Legislature in creating the $750 threshold and determined the purpose "was to *restrict* the number of appeals from sanction orders." (*Calhoun, supra*, 20 Cal.App.4th at p. 44.) The Court of Appeal held: "We conclude that because of the Legislature's intent to reduce the number of appeals from monetary sanction orders and the confusion that would result from a rule permitting aggregation, multiple sub-$750 sanctions may not be aggregated under any circumstances to meet the appealable threshold of Code of Civil Procedure section 904.1, subdivision (k) [now subdivisions (a)(11) and (a)(12)]. We endorse a bright line rule that a sanction order is nonappealable if it does not impose any sanction exceeding $750, and thus an order requiring payment of multiple sanctions, none of which exceed $750, is nonappealable even if the total aggregated sanctions exceed $750." (*Id.* at p. 45.) We agree with the thorough and well-reasoned decision in *Calhoun*.

Under *Calhoun*'s bright line rule we will not aggregate the sanctions. Plaintiff filed two separate motions to compel defendant to provide further discovery. Each motion included a separate request for a monetary sanction to cover the costs of preparing the particular motion. Defendant opposed the motions to compel. The trial court analyzed each motion to compel separately and granted them: "counsel indicates that 10 hours were spent preparing each motion [*20 hours total*]. He anticipates spending another 2 hours preparing each reply [*4 hours total*] . . . Moving counsel's hour rate is $400/hr. . . . With two sets of filing fees ($120), the total sanctions award comes to **$9,720**, imposed jointly and severally against [appellant] and her counsel of record."

Defendant nonetheless argues that because the court issued "a single order direct[ing] payment of sanctions in the amount of $9,720," the order meets the jurisdictional requirements of section 904.1(a)(12). We disagree. In our view, characterizing the order as appealable simply because the trial court issued one order awarding two separate sanctions would unduly place form over substance.

"This does not leave the sanctioned party without an appellate remedy . . . . If the trial court has truly done wrong in imposing a small monetary sanction—not often the situation, in our experience—we can right the wrong quickly through a writ proceeding. If, as is more likely, the petitioner has no legitimate point to make, we can dispose of the writ petition summarily, without oral argument or a written opinion, and thus with minimum disruption of judicial resources. In either case, the appellate process is streamlined to the benefit of all concerned." (*Calhoun*, *supra*, 20 Cal.App.4th at p. 45; section 904.1, subd.

(b).) Indeed, here, defendant could have challenged the sanction rulings at the same time that she challenged by writ the order upon which those sanctions were based.

On this record, we reject defendant's characterization of the trial court's order as one monetary sanctions ruling. Defendant appeals from two monetary sanctions, neither of which exceeds $5,000. Accordingly, defendant cannot take a direct appeal from the April 4, 2017 sanctions order under section 904.1, subdivisions (a)(11) and (a)(12).

IV. DISPOSITION

The appeal is dismissed. Plaintiff is entitled to recover its appellate costs from defendant.

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KIM, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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