

November 19, 2013

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

JOHN MORIARTY,
Petitioner,

vs.

Case Appeal No.:
A137608

LARAMAR MANAGEMENT CORPORATION, et
al.,
Respondents.

REPORTER'S TRANSCRIPTION OF PROCEEDINGS

San Francisco, California

REPORTED BY:

Victoria A. Guerrero

CSR No. 8370, RPR, CRR

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APPEARANCES OF COUNSEL:

For the Petitioner:

LAW OFFICES OF ERIC L. LIFSCHITZ
ERIC L. LIFSCHITZ
345 Franklin Street
San Francisco, California 94102
Phone 415.553.6055 Fax 415.358.5647

For the Respondents:

MR. JOHNSON

1 San Francisco, California

2 Tuesday, November 19, 2013; 11:13 a.m.

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4
5 JUSTICE HAERLE: All right. The last case on
6 our calendar this morning is Moriarty versus Laramar
7 Corporation.

8 Mr. Johnson, before you start -- Mr. Johnson,
9 are there two argument -- two attorneys going to argue
10 on response, Counsel?

11 MR. LIFSCHITZ: No, your Honor. I'm going to
12 argue, but my cocounsel --

13 JUSTICE HAERLE: You are Mr. --

14 MR. LIFSCHITZ: Lifschitz.

15 JUSTICE HAERLE: You are Mr. Lifschitz. And
16 Mr. Darcy is not arguing?

17 MR. LIFSCHITZ: That wasn't the intent.

18 JUSTICE HAERLE: Why are there two lawyers up
19 here? Who is arguing with respondent?

20 MR. LIFSCHITZ: Oh, I will intend to argue,
21 your Honor.

22 JUSTICE HAERLE: All right. All right. All
23 right. All right. Okay. Okay. Fine. Mr. Johnson?

24 MR. JOHNSON: Thank you, your Honor.

25 May it please the Court, this is an appeal for

1 an order denying an anti-SLAPP motion that my client had
2 filed.

3 JUSTICE HAERLE: Before we -- I want to start.
4 Are you familiar with this Court's decision? This
5 Court's decision in Delois, D-e-l-o-i-s, and this
6 Court's decision in Hasimovich (phonetic), which was --
7 one was 2009, the other Hasimovich, was decided last
8 year.

9 MR. JOHNSON: Your Honor, I looked at Clark,
10 and I looked at a recent unpublished decision from --

11 JUSTICE HAERLE: No. I'm talking about this
12 Court's decision about what is and is not a SLAPP
13 motion.

14 MR. JOHNSON: Yes. When you say this Court,
15 your Honor --

16 JUSTICE HAERLE: Division 2 in the First
17 District.

18 MR. JOHNSON: -- you are referring to Division
19 2.

20 JUSTICE HAERLE: Yes, that's correct. You're
21 not familiar with the Delois case?

22 MR. JOHNSON: Yeah, I'm sorry. I did not read
23 that. I don't have the facts of it in front of me.

24 JUSTICE HAERLE: Have you read the opinion last
25 year we wrote in Hasimovich? Justice Richman and I were

1 on both panels. Justice Kline was, who is not here now,
2 will be this afternoon, was on it.

3 MR. JOHNSON: Your Honor, I believe I'm
4 familiar with the issues. If your Honor could point me
5 to a specific question or issue.

6 JUSTICE HAERLE: I just want to know if you
7 know both of them, both Hasimovich and Delois, we
8 decided, basically, that the idea that this was an
9 anti-SLAPP motion was just totally inappropriate,
10 totally wrong.

11 You didn't read those cases? You're not
12 familiar with the Delois or Hasimovich?

13 MR. JOHNSON: I don't have the facts in front
14 of me. I understand the doctrine, the rules that your
15 Honor is discussing.

16 JUSTICE HAERLE: Well, I'm surprised you
17 haven't read them. But they're both from this Court and
18 they bolt were anti-SLAPP cases.

19 MR. JOHNSON: I did read them, I just don't
20 have them freshly in my memory.

21 JUSTICE HAERLE: Go ahead, Counsel.

22 MR. JOHNSON: The issue that your Honor is
23 referring to, as I understand it, is that in a wrongful
24 eviction type of situation, the alleged misconduct of
25 the landlord is separate and apart, and a separate

1 subject of suit from the actual wrongful eviction suit.

2 And in this case, we have facts which I believe
3 distinguish it from the cases that follow the rules that
4 your Honor is discussing.

5 JUSTICE HAERLE: This is not an unlawful
6 detainer case, correct?

7 MR. JOHNSON: There was an unlawful detainer
8 action filed by my client, your Honor, that -- and that
9 is the subject of the complaint that was filed in this
10 action.

11 JUSTICE RICHMAN: Actually, it wasn't filed by
12 your client, but that's a whole 'nother issue.

13 MR. JOHNSON: That's a whole 'nother issue.

14 JUSTICE RICHMAN: It was passed over because it
15 hasn't really been briefed, but --

16 MR. JOHNSON: It was allegedly filed by my
17 client and the other Laramar defendants.

18 JUSTICE RICHMAN: Well, it can't be allegedly.
19 It was filed by whomever it was filed by. They allege
20 something in their complaint. But you know who alleged
21 the unlawful detainer and it was not your client here.

22 MR. JOHNSON: Correct. And on that basis, if
23 we get past prong one, then there can be no evidence to
24 support a prima fascia showing against my client.
25 That's one of the points that we can make.

1 JUSTICE HAERLE: We are talking about prong
2 one.

3 JUSTICE RICHMAN: But see, that goes to your
4 characterization that this was an unlawful detainer
5 case. There's a lot more alleged in this complaint than
6 a passing reference to a UD action that one of your
7 clients brought.

8 MR. JOHNSON: That's exactly correct, your
9 Honor. This is -- I think it's fair to say, this is a
10 mixed cause of action, this discusses --

11 JUSTICE HAERLE: Substantially so.

12 MR. JOHNSON: I'm sorry, your Honor?

13 JUSTICE RICHMAN: Why is it a mixed cause of
14 action?

15 MR. JOHNSON: Because there are multiple
16 theories alleged, including the habitability issue, as
17 well as a claim that there was a wrongful eviction
18 undertaken to permanently deprive Mr. Moriarty of
19 possession of the unit.

20 The complaint specifically alleges that actions
21 were undertaken to permanently deprive him of his right
22 of possession.

23 JUSTICE RICHMAN: You used the word mixed cause
24 of action. There are lots of cases including the one
25 you gave us reference to, which I'm not sure why you

1 cited it, Chung versus Cho, the new one where Judge
2 Epstein says, this is a mixed cause of action.

3 This case is 11 separate causes of action. All
4 of which you sought to strike. And you use the 11 as
5 apparently illustrative, but it's not a mixed cause of
6 action. It's 11 separate causes of action, isn't it?

7 MR. JOHNSON: There are 11 separate causes of
8 actions pleaded, your Honor. That's correct.

9 JUSTICE RICHMAN: And you're seeking to strike
10 them all?

11 MR. JOHNSON: And each of -- and our position
12 is that each of the 11 causes of action is, itself, a
13 mixed cause of action. Because there are 61 paragraphs
14 pleaded as general factual statements, all of which are
15 incorporated into each cause of action.

16 And, moreover, the second cause of action
17 incorporates the first 61 paragraphs as well as the
18 allegations of the first cause of action. So it's a
19 cumulative situation.

20 And within those factual allegations, our
21 allegations, both of habitability violations --

22 JUSTICE RICHMAN: Which is what Judge Quidachay
23 said this really was, was a habitability case, right?
24 That's what he said?

25 MR. JOHNSON: He said that's all it was, that's

1 correct, your Honor. We don't believe that's all --

2 JUSTICE RICHMAN: -- for a long time and
3 there's scads of cases out there on this issue, aren't
4 there?

5 MR. JOHNSON: There are many cases.

6 JUSTICE RICHMAN: Justice Haerle mentioned a
7 couple that we have written that you said you're not
8 familiar with.

9 But let's talk about a case that I assume you
10 are familiar with that isn't a SLAPP case, but it's
11 relied on by Moriarty in his brief called Chacon versus
12 Litke.

13 You're familiar with that case, right?

14 MR. JOHNSON: Yes, I am, your Honor.

15 JUSTICE RICHMAN: And they cited it four times
16 in their brief, didn't they?

17 MR. JOHNSON: Correct.

18 JUSTICE RICHMAN: For the proposition that
19 Justice Kline held that there's lots of these cases
20 where there can be, in effect, throwing people out that
21 are an unlawful detainer case.

22 MR. JOHNSON: We do not dispute that, your
23 Honor.

24 JUSTICE RICHMAN: Why is it that as an
25 advocacy, I'm a little curious, Mr. Johnson, why you

1 just ignored it in your reply brief.

2 MR. JOHNSON: I'm not sure that we needed to
3 address that case specifically because we addressed the
4 principle that supports our arguments in this case,
5 which is that there are more than one type of wrongful
6 conduct alleged, which gives rise to a mixed cause of
7 action based on the allegations in the pleading which
8 gets us --

9 JUSTICE RICHMAN: I think you should be careful
10 to call it a mixed cause of action. I mean, it's really
11 imprecise.

12 Because there are the cases, and we can talk
13 for as long as you want, we go to lunch, about Wallace
14 versus McCubbin, which the fifth -- Division 5 can't
15 really agree on itself.

16 But putting that aside, that was an attempt to
17 strike two of thirteen claims. And that's what was on
18 appeal. And Judge Needham said what he said, et cetera.

19 You're seeking to strike 11 out of 11, on your
20 reading, which I would say is myopic at best, which
21 never ever says what this case is based on, ever, which
22 is the fundamental language of all of the cases.

23 You never, in your brief, say what this case is
24 based on. You assume that it's an unlawful detainer
25 premise case. And there are so many cases that hold

1 against you, it is mind boggling to me that you've
2 ignored most of them. And I have to tell you that.

3 And it's particularly troubling that your firm,
4 and I guess you wrote the brief, ignored Chacon versus
5 Litke because your firm, as you know, was counsel of
6 record in this court on that case.

7 MR. JOHNSON: Yes, your Honor.

8 JUSTICE RICHMAN: And that is troublesome.

9 MR. JOHNSON: Your Honor, that was my case. I
10 am very familiar with it. I don't believe it's
11 dispositive on this case.

12 Our position is set forth in our brief. It was
13 set forth in trial. We don't dispute that there are
14 habitability issues here. We do dispute that
15 habitability issues are the only issues here.

16 There are 11 causes of action alleged. We
17 believe that those 11 causes of action are each mixed
18 causes of action. That is most clear in regard to the
19 11th cause of action, which is specifically stated as
20 being for wrongful eviction under the San Francisco
21 Grand Ordinance Section 37.9.

22 Now, it's clear, I mean, the law is very clear
23 that you can strike one cause of action. It's not as
24 clear whether you can strike a part of a cause of
25 action, which is what the Cho case talks about. And I

1 understand dispute from Mann to Taus to --

2 JUSTICE RICHMAN: Well, it may or may not be
3 disputed. It's Judge Needham that thinks Mann is
4 disputed. But he's the one who says that the Supreme
5 Court didn't mean what it says. He's a very good friend
6 of mine, don't misunderstand.

7 But, you know, I wouldn't put much stock in
8 McCubbin, if I were you, where there's all these other
9 cases. But that said, McCubbin didn't strike the entire
10 complaint. They didn't even have the nerve to ask for
11 that.

12 MR. JOHNSON: That's correct. In Wallace it
13 was a situation where there were two causes of action
14 that were subject.

15 Both of those causes of action were ultimately
16 stricken because there was no evidence submitted to
17 support those two causes of action, when they got to
18 prong two, after deciding that those two individual
19 causes of action were, at best, mixed causes of action,
20 based, at least in part, on protective conduct, which
21 gets you to prong two.

22 Our first position, your Honor, is that this
23 complaint, or some of the causes of action in it, fall
24 within prong one because they are based, in part, on
25 protected conduct. It is not merely incidental to --

1 JUSTICE RICHMAN: Is that a concession that
2 you're making here?

3 There's nowhere in your brief that you say that
4 some of them are this and some of them are that.

5 This is an all-or-nothing-motion as it was
6 made, isn't it?

7 MR. JOHNSON: I disagree, your Honor.

8 JUSTICE HAERLE: You're attacking all 11 causes
9 of action on your SLAPP motion, Counsel.

10 MR. JOHNSON: That's correct. We are. And I
11 address them individually in our opening brief. We
12 talked about each cause of action, in part. It was not
13 an all or nothing.

14 UNIDENTIFIED JUSTICE: But in the trial court,
15 in the trial court, did you ask in the alternative to
16 strike the 11th cause of action as a separate set?

17 If I go back and look at the record, will I
18 find that in your trial court brief? Or as Justice
19 Richman is suggesting, you presented this to Judge
20 Quidachay as an all-or-nothing proposition?

21 MR. JOHNSON: It was presented to Judge
22 Quidachay by another firm, your Honor. I think you're
23 correct that he did not request the individual cause of
24 action be struck. I would need to go back and review
25 that.

1 UNIDENTIFIED JUSTICE: So in this court, aren't
2 you bound by what happened by other counsel representing
3 your clients in the trial court?

4 MR. JOHNSON: Um, I would say that we are
5 permitted, since it's a de novo review, since all of the
6 causes of action were raised in the trial court, that we
7 can challenge them individually here.

8 JUSTICE HAERLE: Anything further, counsel?

9 JUSTICE RICHMAN: Are you familiar with another
10 case we wrote called Grewal versus Jammu.

11 MR. JOHNSON: I don't have the -- I mean, I've
12 got --

13 JUSTICE RICHMAN: Well, it's a case that I
14 wrote, that it got some amount of notoriety because it
15 was very lengthy and people wrote to the Supreme Court,
16 et cetera.

17 But I made -- I made -- I wrote an opinion that
18 basically asked the legislature or questioned whether or
19 not the idea that the losing defendant could file a
20 SLAPP motion in that case, basically frivolous, and then
21 appeal in a case. In that case it was four years after,
22 the case still hadn't gotten to trial.

23 And I was very concerned about the
24 appealability of a losing defendant and what they could
25 do with deep pockets and delay cases and frustrate the

1 system, et cetera. That's what I said in there.

2 And my question to you is, why isn't this one
3 of those cases?

4 MR. JOHNSON: Your Honor, there are good faith
5 grounds for every argument that we've made. I
6 understand just how powerful a tool the anti-SLAPP rules
7 can be for a defendant. I understand that the right of
8 appeal by losing defendant --

9 JUSTICE HAERLE: And the process of delaying a
10 litigation substantially.

11 MR. JOHNSON: I wouldn't say that it's a
12 powerful tool because it delays the process of
13 litigation. Certainly there was no attempt to delay the
14 process of this litigation, your Honor.

15 It's a powerful tool to protect the defendants'
16 rights who are being sued for protected conduct.

17 Which is what the legislature based the need
18 for this entire statute on; why this -- the Supreme
19 Court and the legislature declared it should be
20 interpreted broadly; and why, in mixed causes of
21 action -- and I understand that this is a difficult
22 decision. I understand that there are cases all over
23 the map. I understand your Honors' concerns.

24 Our position in this case is brought in good
25 faith. It's based on the multiple allegations of

1 differing types of conduct in the complaint.

2 You know, the Haight-Ashbury case is very clear
3 that if there is a laundry list of violations and some
4 of those violations are protected conduct, that entire
5 cause of action meets prong one. And that is the basis
6 for our argument.

7 I know your Honors understand that. I just
8 want to reassure your Honors that there is no intent
9 to --

10 JUSTICE RICHMAN: Let me just close with one
11 other observation, since you said everything's in good
12 faith. And obviously I have respect for your office and
13 I've seen your office in action. And I made a comment
14 that may have been critical of your advocacy insofar as
15 it ignored Chacon versus Litke.

16 But since you've made the representation that
17 every argument you've made here is in good faith, I have
18 a question about an issue in prong two, assuming we
19 would ever reach prong two.

20 And you argue in your brief that there's issue
21 preclusion based on the unlawful detainer, right?

22 MR. JOHNSON: That was raised in the trial
23 court, correct.

24 JUSTICE RICHMAN: No, it wasn't raised --

25 MR. JOHNSON: It was raised in my brief as

1 well, your Honor.

2 JUSTICE RICHMAN: Right. And I want to ask you
3 a question about that. Because in trying to set aside
4 the unlawful detainer below, Moriarity's lawyer argued
5 about the possible preclusive effect. That was
6 Mr. Lifschitz, as I understand it.

7 And he expressed his concern about a possible
8 preclusive effect. And Judge Quidachay was troubled by
9 that.

10 And here's what he said: How do you comment on
11 the other statements made by other counsel which related
12 to even if the Court were to say you can't get
13 possession at least with the judgment modified, I guess
14 something that you hear, you can't use it against them
15 in whatever they are going to do. That was his
16 question?

17 And your predecessor counsel, Mr. Dowling,
18 said, I don't know there is any collateral effect.
19 Certainly no issue preclusion, because nothing was
20 litigated where we have a default judgment. There is
21 nothing litigated. There was no evidence put before the
22 Court, so no fact issues got decided.

23 In claims of term, no cross complaints are
24 permitted. So not as if he could assert any affirmative
25 complaints.

1 So your predecessor acknowledged that there
2 couldn't be issue preclusion, didn't he?

3 MR. JOHNSON: He did, your Honor.

4 JUSTICE RICHMAN: And you're arguing on appeal
5 that there was.

6 Now, is that appropriate advocacy?

7 MR. JOHNSON: The issue preclusion effect goes
8 to the right of possession. And it's important in this
9 particular case because the plaintiffs are alleging that
10 their right -- their right of possession was interfered
11 with permanently.

12 The right of possession was permanently
13 interfered with only by way of the judgment in the
14 unlawful detainer action. That is one of the reasons
15 why this is a mixed cause of action.

16 So it is preclusive to that extent, but I would
17 agree with your Honor that it would not be preclusive
18 beyond that.

19 It is very important on the allegations with
20 regard to the loss of right of possession of the unit,
21 permanent loss of that right. That's one of the claims
22 they made. That's one of the harms they've alleged.
23 That harm can only arise from the unlawful detainer
24 action.

25 JUSTICE RICHMAN: Okay.

1 JUSTICE HAERLE: Mr. Lifschitz?

2 MR. LIFSCHITZ: Thank you, your Honors. I
3 appreciate this opportunity to appear before this Court.
4 I think the Court has really struck on the main issues,
5 so I will be brief.

6 Just a couple of points. First, one of your
7 Honors had made a statement that there was a passing
8 reference to the UD in the complaint. And I just want
9 to make a point that that is actually not correct.

10 The complaint makes zero reference to an
11 unlawful detainer action at all. The only -- you know,
12 defense did make a lot of hay about this wrongful
13 eviction statement in the caption and the Jarrow case
14 does point out that captions in a cause of action are
15 not indicative of what the claim itself is.

16 I would point out that the actual cause of
17 action in the wrongful eviction does make very clear
18 that they violated 37.9, as in the Chacon case, that my
19 esteemed colleague had argued in front of the Court,
20 related to the failure to provide relocation benefits
21 under 37.9.

22 So, you know, wrongful eviction has kind of
23 become the nomenclature for 37.9 causes of action. I
24 think it's similar to, we now have a 37.10 harassment
25 statute, which is referred to in the caption, in the

1 ordinance as a tenant harassment statute. However, the
2 word harassment does not actually exist anywhere in
3 37.10.

4 The same way 37.9 has kind of adopted the
5 nomenclature of the wrongful eviction portion of the
6 rent ordinance; but actually is not included, the word
7 wrongful eviction is not included in the rent ordinance,
8 in the statute.

9 But the cause of action itself did explicitly
10 and directly talk about the failure to provide
11 relocation benefits in compliance with 37.9(c) as well
12 as 37.9(a)(11) which deals with the relocation
13 obligations.

14 You know, in short, this whole appeal, the
15 petitioners are asking the Court to have read into the
16 complaint things that were never pled in the complaint.

17 And that they cannot imagine that there was
18 some other basis for our client deciding he had lost
19 possession of his home besides this complaint.

20 And I think as the Court is kind of -- has
21 acknowledged, you look at the complaint to see what the
22 allegations are. And as counselor pointed out, we have
23 61 paragraphs detailing habitability issues over a
24 nine-month period, that eventually resulted in our
25 client recognizing he was not getting his home back and

1 resulted in this lawsuit.

2 And, you know, just another thing (inaudible).

3 I appreciate that a little bit, but --

4 JUSTICE RICHMAN: We didn't hear what you said.

5 MR. LIFSCHITZ: I said you took some of my
6 arguments in terms of the identification of the
7 statements by Mr. Dowling here, plaintiff's original
8 counsel, who is in the courtroom as well, in terms of
9 his statement to Judge Quidachay to allay his concerns,
10 my concerns, that the UD could be used specifically to
11 delay the case.

12 You know, we are a year since we had that
13 hearing. The appeal was filed on the last possible day
14 to file an appeal. There were multiple extensions
15 requested by and granted to the petitioner to file their
16 appeal after they filed their original petition. That
17 is how it has taken my client a year.

18 And what I had said to Judge Quidachay was, you
19 know, we acknowledge we're not going to get possession
20 back of this apartment. But we don't want this to be
21 delayed.

22 And to use this case, this reason, this large
23 property management company, the defendant's one of the
24 largest property managers in San Francisco. I own a
25 small law practice. My first time in front of a Court

1 of Appeal. It's the first time I've had a SLAPP motion
2 appealed.

3 And we saw this happening. And we said to
4 Judge Quidachay, you know, this is what you can do.
5 Because we were able to demonstrate a lot of bad faith
6 and unclean hands in getting that UD in the first place.

7 The record shows there's an issue where a --
8 Mr. Dowling had given a declaration to the presiding
9 judge, that he had made every effort to contact my
10 client. And we had declarations showing that he had my
11 client's PO Box address, while he was temporarily
12 relocated and never used.

13 The last point is, just in addition to
14 identifying that Mr. Dowling tried to allay that concern
15 that this is what would happen, Mr. Dowling, in the
16 papers, in Exhibit 4 of our -- in his memorandum,
17 actually included the argument, Caption C, page 14.
18 Moriarty claims are barred by the Doctrines of Claim and
19 Issue Preclusion. They actually made that argument in
20 their original argument to the Court to undo the UD.

21 Then in oral argument stood in front of the
22 Court and said, there is no issue of preclusion. There
23 is no claimed preclusion. This is not an issue. You
24 can, you know, deny our request and make it default.

25 And then did exactly what we suggested was

1 going to happen. Made us wait a year to get to this
2 point to say a lawsuit with 62 allegations that
3 specifically detail habitability problems that we used
4 to get my client out of his rent-controlled apartment of
5 nearly 20 years, have to go to a Court of Appeal.

6 And my client, who has had to move out of the
7 area, he no longer lives in the Bay area because he was
8 not able to find housing, is stuck here waiting.

9 And unless the Court has others questions, I
10 would submit on that.

11 JUSTICE RICHMAN: Well, maybe the next time you
12 come, if it's in the same circumstances, you may have
13 the foresight to ask for sanctions. But nobody --

14 MR. LIFSCHITZ: Oh, we did ask for sanctions,
15 your Honor.

16 JUSTICE RICHMAN: For a frivolous appeal? I
17 don't think so.

18 MR. LIFSCHITZ: Did we not? I believe we asked
19 for sanctions for the appeal in this action. And would
20 be -- we would be remiss and greatly disturbed if we had
21 not and I would make --

22 JUSTICE RICHMAN: We'll look at that.

23 MR. LIFSCHITZ: I would make that request now
24 that we would be seeking our fees and sanctions for what
25 has been a -- exactly what you called it, your Honor, a

1 large firm with a large defendant using their resources
2 to try and subvert the law and prevent a small, you
3 know, office from trying to assert the rights of their
4 clients.

5 JUSTICE HAERLE: We'll check that, Counselors.
6 So thank you very much.

7 Mr. Johnson, anything further?

8 MR. JOHNSON: Yeah. There was no request for
9 sanctions. And I don't believe sanctions would be
10 warranted in this case, your Honor, for the reasons I
11 stated previously.

12 I would, you know, there was a question about
13 the preclusive effect of the UD. And counselor just
14 acknowledged that they're not disputing possession based
15 on the UD.

16 So the possession issue, it is a significant
17 issue and a basis for our motion.

18 JUSTICE RICHMAN: Well, you're right. They
19 don't ask for sanctions. It does say, that for all of
20 this should be affirmed and fees and costs for opposing
21 this appeal awarded to plaintiff. So if they win,
22 they'll get costs.

23 But obviously, that's not a sanction request.

24 MR. JOHNSON: Moreover, there was some
25 discussion, you know, somewhat ironically, in the

1 response with regard to the bad faith in obtaining the
2 unlawful detainer action.

3 Well, that would be the basis for the wrongful
4 eviction claim that's asserted in the pleadings.

5 UNIDENTIFIED JUSTICE: It could have been, but
6 they're saying the complaint isn't based upon that.

7 MR. JOHNSON: Well, but the complaint, you
8 know, does include some of those allegations.

9 JUSTICE RICHMAN: I will give you credit,
10 Mr. Johnson. You sit up there about as blissful as is
11 humanly possible to imagine.

12 Because, I'll tell you, you're lucky that we
13 didn't ask why this isn't a frivolous appeal on our own
14 motion. I'm speaking for myself. Which we rarely do.
15 But we've done it before.

16 JUSTICE HAERLE: He's speaking for me, too.

17 JUSTICE RICHMAN: Which we've done before.
18 This is borderline frivolous, I think.

19 And for you to read the cases the way you seem
20 to read them is somehow or another -- I must say, one of
21 the things you ignore, which we never even get to, is
22 that if -- if -- the unlawful detainer is part of this
23 case, and I suggest to you it's not, it is, at best,
24 incidental to what this case is about.

25 And you know how many countless cases there are

1 that deal with things that are incidental which are
2 ignored.

3 So for you to read it the way you read it and
4 ignore what you ignore and to stand up there in the face
5 of all of the law that's out there, I find it -- I'll
6 give you credit. It's unbelievable to me.

7 MR. JOHNSON: Your Honor --

8 JUSTICE RICHMAN: And I've seen you before and
9 you're a good lawyer, so it's nothing personal.

10 MR. JOHNSON: No. No. I hear you. Your
11 message comes across loud and clear. We are trying to
12 be strong advocates for our clients. If we pushed up
13 against the line, it was in good faith. We certainly
14 did not mean to cross any lines and border into bad
15 faith conduct.

16 We feel the arguments are colorable. But I
17 will say, I hear what you're saying, and I will
18 certainly take it to heart and will communicate the
19 message to others at my firm.

20 JUSTICE HAERLE: Thank you, Mr. Johnson. Thank
21 you counsel. And we are in recess.

22

23 (Proceedings ended at 11:40 a.m.)

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CERTIFICATE OF REPORTER

The undersigned CERTIFIED SHORTHAND REPORTER of the State of California does hereby certify:

That the foregoing was transcribed under my supervision from audio media to the best of my ability.

Said transcript being a true and correct copy of the proceedings thereof.

In witness whereof, I have subscribed my name this date: Wednesday, March 26, 2014



Victoria A. Guerrero

Victoria Guerrero, CSR No. 8370

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