

**Tentative Rulings
July 17, 2017
Department 2**

NOTE: This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b)(1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court’s website (www.shasta.courts.ca.gov) and are available by clicking on the “Tentative Rulings” link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

Special Set – Law and Motion – 8:30 a.m.

**CITY OF REDDING VS SHREE SHIVA, LLC
Case Number: 183558**

Tentative Ruling on Motion to Declare Vexatious Litigant: This is an action for receivership (among other things) concerning the property commonly known as the “Americana Lodge.” The complaint was filed October 17, 2015. A First Amended Complaint was filed November 12, 2015. The causes of action are for: (1) receivership, (2) drug abatement act, (3) public nuisance, (4) public nuisances per se, and (5) imposition of civil penalties. Shree Shiva answered the First Amended Complaint on May 3, 2016.

The City filed a Motion for Appointment of a Receiver on December 22, 2015. On January 20, 2016, the City and Shree Shiva jointly filed a Stipulation for Order Appointing Receiver, stipulating that “[t]he City is the prevailing party in this Action against Shree Shiva.” The Court executed an order appointing a receiver on January 22, 2015. Generally, the Stipulation and Order indicate that Shree Shiva would be given an opportunity to bring the Property into compliance, and that the Receiver would take over possession of the Property immediately if the steps toward compliance were not met. It also ordered that “Shree Shiva *and its agents* are hereby enjoined during the duration of the receivership from: ... (3) Transferring or encumbering *any interests in the Subject Property.*” Order on Receivership Stipulation (f: 01/22/16) (emphasis added). Shree Shiva filed an ex parte application to prevent the engagement of the Receiver on March 16, 2016, but the Court denied that application the following day. On March 22, 2016, the City filed a Notice of Receiver Taking Possession and Control of the Subject Property.

Since that time there have been numerous developments in this litigation. Shree Shiva filed for bankruptcy in late 2016. Shree Shiva’s counsel withdrew in January 2017. The owners of Shree Shiva, the Thakors (aka Bhupendrashinh B. Thakor and Kiransinh B. Thakor), purported to assign certain of their rights to one Narendra Sharma for the purchase price of one dollar. Sharma, seemingly purporting to stand in the shoes of both the Thakors and Shree Shiva to an extent, filed a federal lawsuit alleging, among other things, that the City violated the Fifth Amendment “takings” clause. Sharma filed several motions in the instant litigation seeking, among other things, permission to sue the Receiver in federal court, and when those motions were denied for lack of standing because Sharma was not a party to the instant litigation, he filed a motion for leave to intervene in this action. When the motion for leave to intervene was denied, Sharma filed a motion, pursuant to CCP § 663, seeking to set aside and vacate that denial.

On June 26, 2017, the City filed an ex parte application seeking to have Sharma deemed a vexatious litigant

pursuant to CCP § 391, citing the exigency that the City would be forced to oppose yet another meritless motion – the motion to set aside and vacate the denial – by Sharma if he was not deemed a vexatious litigant. In that application, the City sought the following remedies:

1. A finding that Sharma has repeatedly filed unmeritorious motions, pleading and other papers and has engaged in other frivolous tactics solely intended to cause unnecessary delay in the City's Action;
2. A declaration that Sharma is a vexatious litigant pursuant to CCP 391(b)(3);
3. A court order prohibiting Sharma from filing any new litigation or document in any court of this State without first obtaining leave of the presiding judge of the court per CCP section 391.7(a);
4. An Order that Sharma furnish security with this Court in an amount reasonable and sufficient to cover all the City's and the Receiver's attorney fees and costs incurred thus far as a result of Sharma's repeated and continued filings;
5. An Order instructing the Clerk of this Court not to accept for filing any new litigation of documents submitted by Sharma without an order from the Presiding Judge,
6. A warning be issued to Sharma that disobedience of the Court's order may be punished as contempt; and
7. An Order striking Sharma's Motion to Set Aside and Vacate.

At the hearing on the ex parte application, the Court set the matter for hearing on a Motion to Declare Vexatious Litigant on July 17, 2017, with a briefing schedule and notice to all parties. The matter has now been properly noticed and adequately briefed, with proof of service on file.

Request for Judicial Notice. The City filed two Requests for Judicial Notice (one with the moving papers, one with the reply papers to add documents that were filed after the original moving papers were filed). They seek judicial notice of numerous filings, as well as the docket, in the federal case related to the instant matter, namely, *Sharma v. City of Redding* (2:17-cv-00487-MCE-AC), pursuant to Evidence Code §§ 452(d) and (h) and 453. Because these are federal court filings, which are “[r]ecords of... any court of record of the United States,” the Court takes judicial notice of these documents.

Merits of Motion re Requiring Security. The law authorizes a party to bring a motion to require security or dismiss litigation (CCP § 391.1) or a motion to prohibit filing of new litigation (CCP § 391.7). The former imposes a stay upon being filed. CCP § 391.6. Both motions require a finding that the litigant adversely affected be found to be a “vexatious” litigant. CCP §§ 391.1 and 391.7. The statute provides a definition for a vexatious litigant, which includes the following:

(b) “Vexatious litigant” means a person who does any of the following:

...

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

CCP §391(b)(3). The Court finds that Sharma meets this definition. Sharma is “a person... acting in propria

persona” who has sought to intervene in this action and who recently filed a motion to set aside the order denying him leave to intervene.

The statute expressly defines “litigation” to “mean[] any civil action or proceeding, commenced, maintained or pending in any state *or federal* court.” CCP § 391(a) (emphasis added). Therefore, both Sharma’s activities in *the federal lawsuit* and *the instant case* may be considered for purposes of the present motion. Via judicially noticeable federal court documents and reference to the filings in the instant case, the City has established that Sharma has filed the following documents:

Date	Filing	Forum
Mar 06, 2017	Complaint	federal
Mar 06, 2017	Motion for TRO/Preliminary Injunction	federal
Mar 20, 2017	Motion to Set aside Order Appointing Receiver	state
Mar 20, 2017	Motion to Replace Sharma for Shree Shiva	state
Mar 20, 2017	Motion for Permission to Sue Receiver for Breach of Fiduciary Duty	state
Mar 20, 2017	Motion to Sue Receiver for Unpaid Wages	state
Apr 03, 2017	Request to Grant Late Reply to Motion for TRO/Prelim. Injunc.	federal
Apr 03, 2017	Response to Opposition to Motion for Preliminary Injunction	federal
Apr 03, 2017	Reply to Receiver’s Opp. To Motion for Preliminary Injunction	federal
Apr 05, 2017	Response to Opp. to Motion to Replace Sharma for Shree Shiva	state
Apr 05, 2017	Response to Opp. To Sharma’s Motion to Set Aside Receiver	state
Apr 10, 2017	[First] Application for Leave to Intervene	state
Apr 20, 2017	[Second] Application for Leave to Intervene	state
Apr 26, 2017	Letter to Judge England	federal
May 17, 2017	First Amended Complaint	federal
May 17, 2017	Motion to Set Aside Order Appointing Receiver as Void	federal
May 17, 2017	Request for Continuance of City’s Motion to Dismiss Complaint	federal
May 22, 2017	Response to Opp. To Application to Intervene	state
Jun 15, 2017	Motion to Set Aside and Vacate Order Denying Leave to Intervene	state
Jun 29, 2017	Objection to Magistrate Judges Findings and Recommendations	federal
Jun 30, 2017	Req. to File Amended Obj. to Magistrate Judge’s Findings & Recommendations	federal
Jun 30, 2017	Amended Obj. to Magistrate Judge’s Findings & Recommendations	federal

A court exercises its *discretion* in determining whether a person is a vexatious litigant. [Citation.] We uphold the court’s ruling if it is supported by substantial evidence. [Citation.] On appeal, we presume the order declaring a litigant vexatious is correct and [infer] findings necessary to support the judgment. [Citation.]

Fink v. Shemtov (2010) 180 Cal.App.4th 1160, 1169, quoting *Holcomb v. U.S Bank Nat. Assn.* (2005) 129 Cal.App.4th 1494, 1498-1499 (internal quotation marks omitted) (brackets in original) (emphasis added); see also *Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 219, citing *Taliaferro v. Hoogs* (1965) 237 Cal.App.2d 73, 75. In the instant case, this Court has been able to see, firsthand, the various tactics used by Sharma and their impact on the overall litigation. Viewed in context, it appears that Sharma is advancing a theory of the case that goes as follows: Shree Shiva owned the hotel in question; Shree Shiva agreed to the appointment of a Receiver to help fix up the various nuisance violations at the hotel property, but did not actually concede those violations; rather than fixing up those violations for Shree Shiva, the Receiver decided to sell the hotel to a third party for a “dirt cheap” price; that sale amounted to an unconstitutional “taking” in violation of the Fifth Amendment; the right to sue for the constitutional violation (among other related violations such as the Receiver breaching his fiduciary duty and failing to pay wages to those who continued working on-site at the hotel after it went into

Receivership) accrued to the Thakors, who owned Shree Shiva and were harmed by the diminished value of Shree Shiva, a limited liability company, once it lost ownership of the hotel property; the Thakors assigned their legal claims for that harm to Sharma for the price of one dollar; Sharma now has the legal right to sue for those alleged violations. To that end, Sharma filed a federal lawsuit against the City, but had to seek permission from this Court (as the Court that appointed the Receiver) before naming the Receiver in a lawsuit. See *Jun v. Myers* (2001) 88 Cal.App.4th 117, 124-125. That motivated Sharma to file four motions in the instant action – all of which were denied because Sharma was not a party to this litigation. Sharma then filed a Motion for Leave to Intervene. Notably, Sharma also re-filed his Motion for Leave to Intervene over the express prohibition of this Court. Order (f: 04/14/17), p. 1 (“The Court further accepts Sharma’s Application for Leave to File a Real Party in Interest Intervention... as his moving papers... The Court orders Sharma not to submit any other filings concerning the Application other than a reply brief, if so desired.”); see also Minutes (f: 05/26/17), p. 2 (“On April 20, 2107, Sharma filed a new ‘Application for Leave to File a Real Party in Interest.’ On its own motion, the Court strikes that document in its entirety as ‘not drawn or filed in conformity with...an order of the court.’ CCP § 436(b).”). The Court denied the Motion for Leave to Intervene on, *inter alia*, the following grounds:

The interest asserted by Sharma in his Complaint in Intervention is based upon the ‘Sale of LLC Interest Agreement’ in which the Thakors purportedly assigned the following to Sharma:

1.2 Assignment of Things in Action. Pursuant to California Civil Code Section 954, Seller hereby transfers all rights to any thing (“chose”) in action which Seller individually, jointly, or as a member of the Company may currently hold, or which may be subsequently acquired, if reasonably related to the Company, its real property holdings or business operations, as of the Effective Date of this Agreement; including without limitation the right to bring action against: (a) the government for inverse condemnation of the Company’s real property, as described in Paragraph, 4.1 (below); (b) Receiver, Richardson C. Griswold, appointed by the court in the civil action described in Paragraph 2.7 (below), for breach of fiduciary duty; and (c) any and all of the Company’s former legal counsel for legal malpractice.[ftnt omitted]

Application for Leave to File a Real Party in Interest Intervention (f: 04/10/17), Ex. 1, ¶ 1.2 (emphasis added). This purported transfer directly contravenes a previous order of this Court. Specifically, this Court’s Order of January 22, 2016 ordered that ‘Shree Shiva and its agents are hereby enjoined during the duration of the receivership from: ... (3) Transferring or encumbering any interests in the Subject Property.’ Order on Receivership Stipulation (f: 01/22/16) (emphasis added).

Minutes (f: 05/26/17), p. 4 (emphasis in original). The Court then noted that “the claims asserted by Sharma in the operative Complaint in Intervention are based solely on a transaction that is in violation of this Court’s order,” and that “the pleading appears to be based upon a false transaction, whereby Sharma purported to acquire some hybrid of both the Thakor’s interests and Shree Shiva’s interests for the purchase price of \$1.” Minutes (f: 05/26/17), p. 4.

In light of the history of this case, and the federal filings of which the Court has taken judicial notice, the Court finds that Sharma’s filings in this case have been unmeritorious, and thus satisfy the requirement of “repeatedly filing unmeritorious motions, pleadings or other papers” such that Sharma meets the definition of a vexatious litigant. CCP § 391(b)(3). The City has also shown that Sharma has “engage[d] in other tactics that are frivolous or solely intended to cause unnecessary delay.” CCP § 391(b)(3). The record here demonstrates that Sharma’s many efforts, when taken together, reflect overall frivolous tactics. Indeed, Sharma’s purported purchase of an assignment from the Thakors and/or Shree Shiva appears to be designed to circumvent the legal

requirement that a limited liability company can only be represented in court by an attorney. Weil & Brown, *Cal. Prac. Guide: Civ. Proc. Before Trial* (The Rutter Group 2016) ¶¶ 2:123-2:125; see also *Paradise v. Nowlin* (1948) 86 Cal.App.2d 897. Shree Shiva has been a party to this litigation since it began and its counsel withdrew in January 2017. Sharma's activities began shortly after that time. Sharma is not a licensed attorney. This improper motive lends significant weight to finding that Sharma's "tactic" is frivolous. Moreover, the purported assignment to Sharma was for the price of one dollar. This, too, lends significant weight to finding that Sharma's "tactic" is frivolous – indeed the lynchpin upon which Sharma's entire alleged involvement in this case rests stems from a transaction that is marked with the auspices of fraud. Moreover, as set forth above, the purported assignment to Sharma was in violation of this Court's order. Taken together, this litigation history and the "tactics" that are demonstrated in the record, show that Sharma has engaged in "other tactics" that are "frivolous," which also meet the statutory definition of a vexatious litigant. CCP § 391(b)(3).

The statute authorizing a motion to require security requires that, in addition to finding that a litigant meets the definition of vexatious under CCP § 391, a court must also find "that there is not a reasonable probability that he or she will prevail in the litigation against the moving defendant." CCP § 391.1. For the reasons outlined in this Court's prior rulings denying Sharma's four motions to set aside the court order appointing the Receiver, to replace Sharma for Shree Shiva, for permission to sue the Receiver for breach of fiduciary duty, and for permission to sue the Receiver for unpaid wages (see Minutes (f: 04/10/17)) and denying Sharma's motion for leave to intervene (see Minutes (f: 05/26/17)), which are outlined above, the Court finds that there is not a reasonable probability that Sharma will prevail in litigation against the City or the Receiver.

Merits of Motion re Prohibiting Filing of New Litigation. CCP § 391.7 provides:

In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a pre-filing order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as contempt of court.

Here, the Court finds that Sharma's continuous filings demonstrate that the procedure encompassed in CCP § 391.7 is appropriate to impose on Sharma, who meets the definition of a vexatious litigant.

Disposition. The City's Requests for Judicial Notice are **GRANTED**. The Motion to Declare Vexatious Litigant is **GRANTED**. A proposed order was filed with the ex parte papers that initiated the present motion, but a new proposed order on the motion has not been filed. The City is **ORDERED** to submit a proposed order within 5 court days.

In light of the imposition of the requirement to furnish a security under CCP § 391.3, the consequences for filing to do so as set forth in CCP § 391.4, and the imposition of the requirements set forth in CCP § 391.7, Sharma's Motion to Set Aside and Vacate the Court Order Denying the Application to Intervene will not be placed back on calendar until Sharma goes through the requirements of furnishing a security and obtaining permission to file such papers from the presiding judge. CCP § 391.4.

The Court has reviewed the Monthly Accounting for May 2017 that was filed June 22, 2017. No objections to that accounting were filed within the 10-day time frame. CRC 3.1183(b). Accordingly, the Court will execute the proposed order on the Monthly Accounting for May 2017. The Resolution Review re Status of Receivership that is set for July 24, 2017 is continued to **Monday, August 21, 2017 at 9:00 a.m. in Department 8**. The Receiver is **ORDERED** to file a Status Report apprising the Court of the status of the receivership at least five court days prior to that Resolution Review hearing. The Court notes that, other than the dates set forth above, there are no other dates on calendar in this matter.