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Should You Withdraw Your Motion if the Other Side has Complied?

By Katherine Gallo



I have always been a strong advocate that you should be awarded sanctions if you had to bring a motion to get the relief you were entitled to even if the other side complied prior to the hearing on the motion. However in the case of *Evilsizor v. Sweeney* (2014) 230 CA4th 1304, the First District Court of Appeal had an interesting take on the issue.

Evilsizor involved a divorce action. The husband in the case subpoenaed the wife's bank records on August 9, 2013. Unbeknownst to him, his wife's father had an interest in the accounts. The father, as a third party, filed a motion to quash without meeting and conferring on September 5, 2013, which was received by the husband's attorney on September 9, 2013. The husband's attorney withdrew the subpoena and issued an amended subpoena. However, the father did not withdraw his motion to quash despite repeated requests from the husband's attorney. The husband eventually filed a response and requested attorney's fees. At the hearing on October 2, 2013 the trial court found that the father's delay in waiting to withdraw his motion to quash was without substantial justification and awarded the husband \$2,225 in attorney fees under C.C.P. §1987.2(a).

The Court of Appeal found that the trial court did not abuse its discretion and confirmed the sanctions award stating:

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“At the hearing, the trial court explained in detail the basis for the award: “In this particular situation, the timing of everything [is] extremely important. As I've indicated, while the original Motion to Quash was not, I believe, done in bad faith, the subsequent actions taken when [Sweeney's attorney] made it very clear that he was attempting to cure this issue, having no previous knowledge that [John] was even these—were on these bank accounts, he seemed to have gone to great lengths, basically, to try to avoid, number one, having to have this hearing, and number two, trying to address any concerns. The reality is, from the timing of it, I don't believe this department received any notice that there was even a request to drop the Motion to Quash until Friday September 27th after an interchange of correspondence that, I believe, began on September 10th.” The court concluded by ruling “this was an unnecessary situation where there were attempts to cure an issue, that Mr. Sweeney and his counsel had no idea about that there was correspondence for a period of almost three weeks regarding how this could be addressed and that there was no need to have this Motion to Quash the subpoena. How it was not until Friday, September 27th, now just several days prior to this hearing, that there was even a request to drop the motion, and this is after the Responsive Declaration was filed on September 19th, I don't believe that this type of expenditure of resources was necessary. And that's why I'm including the sanctions.”

Moral of the Story: You need to be reasonable and work with the other side.

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