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COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION 2

S. LOUIS MARTIN,) Case A145657
Plaintiff and Appellant)
V) Petition
GOOGLE, INC.) for
Defendant and Respondent) Rehearing
)
) 21 October 2015
_____)

Table of Contents

Introduction	4
Motion to Vacate the Strike Order	6
Motion to Vacate the Judgment	7
Other Considerations:	
Whose Fault Is This? The Arrow of Time!	10

Table of Authorities

Statutes

Ccp 425.16	4, 9
Ccp 904.1	11

Rules

CRC 3.1312	7
CRC 8.63	11
CRC 8.108	11

Cases

Maughan v. Google Tech., Inc. (2006)	143
Cal.App.4th 1242, 1246-1247	12

PETITION FOR REHEARING -- AND CALL FOR COMMON SENSE

Introduction

Summary: This introduces the problem of having two judgments and shows why the Defendant and the Court are to blame.

There is a most serious problem with the dismissal. It is this: The second Notice of Entry of Judgment should rule, not the first. Here is why:

First, the 425.16-based motion was untimely, as mentioned in the Plaintiff's Opening Brief and as can be determined from the Register of Action and an ordinary calendar; the motion should have been dismissed, not this appeal coming almost a year later. That late filing precludes all other issues of timeliness, I believe. Nevertheless, let us take up the issue raised by Google about the Plaintiff's alleged "untimeliness" -- keeping in mind that Google is the more untimely of the two, if the Plaintiff is to be considered untimely at all.

While Google wrote both Judgments, and while both contained substantial false statements (ignored here but not in the Opening Brief), both judges signed them without consideration or comment. And while both appear to say the same thing -- that Google prevails on procedural grounds and the Plaintiff loses, while ignoring all matters of substance -- there were substantially different issues present at both entries. (That is, there were issues of Substance, as opposed to purely Procedural ones.) It should also be noted that the entries were written over five months apart -- enough time for "competent new evidence" to manifest itself, which it certainly did as outlined in the Appellant's Opening Brief (E.g., Wall Street Journal leaks on FTC report, European Union lawsuit, ...).

The best way to view this is to look at the oppositions; that is, the Motion to Vacate the Strike Order and the Motion to Vacate the Judgment, the latter filed almost five months after the former. Both of these are contained in the 170-page Appellant's Appendix, which the court could examine to confirm this if the court so chose. But let us summarize a little the indications of Substantive issue evolution that took place in the five-month period between entries, should the court chose to not to look at the Appellant's Appendix. And please note: While considerable issues were added, previous ones did not disappear. They remain substantive to this day.

The Motion to Vacate the Strike Order raised these issues:

Summary: This shows the status of the case when the Motion to Vacate the Strike Order was filed.

1. The judge's statement that "the Plaintiff has failed to file an opposition to Defendant's motion, and has produced no evidence supporting a probability of success" is blatantly false.

2. Defendant S. Louis Martin filed multiple documents in opposition to the defendant's motion, which is easily provable from the Register of Actions; the plaintiff also had a high probability of prevailing in the case ...

3. Google's claim of "constitutionally protected rights" (as a "publisher") was thoroughly rebutted in the filed documents.

The Motion to Vacate the Judgment raised these issues:

Summary: This shows the status of the case when the Motion to Vacate the Judgment was filed. It is clearly more advanced.

1. Google's Declaration of Proposed Judgment was five months late in being filed; and it was not properly served on the Plaintiff. According to CRC 3.1312(a), it must be filed within five days of granting of the order, ...
2. The Plaintiff's documents have not been made visible in the Register of Actions and no explanation has ever been made for this....
3. Moreover, it appears that the judge in this case has never read the majority (any?) of the filed documents by Dr. S. LOUIS MARTIN.
4. Huge bias has been shown throughout all proceedings. From suppression of most of the Plaintiff's documents to extending deadlines for filing by Google (a pattern, by the way, continued in the Appeals Court), ...

5. Perhaps the greatest irregularity in this case is the judge's perjury, clearly viewable in the Register of Actions. In the judge's Strike Order of 13 November 2014, he states ...

6. There is also the matter of Google's hacking attacks. They have now been proven and the results can be seen in a second attachment to the cancelled 22 April 2015 Case Management meeting.

7. There has been significant new evidence in the case:

a. The disclosure of leaked documents concerning the 2013 "ruling" by the FTC regarding Google disclosed that the actual investigators concluded that Google was guilty of anticompetitive behavior, ...

b. The European Union's anticompetitive body has initiated a lawsuit against Google on the same grounds as raised by S. LOUIS MARTIN....

c. Since the revelation of the leaked documents to the Wall Street Journal, the US Congress will resume its investigation into Google's anticompetitive behavior.

8. Throughout this case a double standard has been applied: One to the gilded hand of Google, quite another to poor-boy S. LOUIS MARTIN. Beyond extraordinarily generous extensions of deadlines to Google on its filings ...

9. Every time a Case Management meeting is scheduled, it gets cancelled when significant documents are filed by Dr. S. Louis Martin. When he is prepared with new documents and related information, such as easy-to-prove allegations of perjury by the judge and proven hacking attacks by the Defendant, ...

10. The whole case is tainted by politics and money....

Further discussed in the hearing on 29 June 2015 was the judge's failure to follow the clear procedures in 425.16 (b)(1) and (c) (1). This is of course a major sticking point in this case but seems of no concern to the court. And one new item of "competent new evidence" was mentioned. The statements made by Harvard Law School professor Michael Luca and Columbia Law School professor Tim Wu that Google was breaking antitrust law.

I don't know how to describe the above other than sickening!

Other Considerations: Whose Fault Is This? The Arrow of Time ...

Summary: This section shows, in common sense and practical terms, why the second judgment must be considered the ruling one. In short, it avoids the chaos and societal disorder of time running backwards.

There is also the matter that the first Notice of Entry of Judgment was improper; Google failed to prepare the "proposed order" and also failed to serve what it failed to prepare. And that is the whole reason that Presiding Judge John K. Stewart ordered Google to "show cause" on 8 April 2015 and a proper Notice of Entry of Judgment was filed by the court on 23 April 2015. As Presiding Judge, Stewart would not have ordered this unless he felt there was a ***serious procedural defect***. Thus, what else was the Plaintiff to think other than that the second notice was the authentic one? His assumption is more than reasonable. In all walks of life and procedural matters requiring common sense, second (modified, corrected ...) decrees rule over previous ones. This is not only common sense, it is a practical necessity of orderly living. It is so even at the zoo. If the boa constrictors are not be fed rats on Wednesday, even though they were previously fed rats on Wednesday, going forward they are

not be fed rates on Wednesday! Events move forward with the "arrow of time", which is a common law of physics. When events move "forward" against the flow of time, you know you are in another world.

Finally, there is this to consider: Google caused the problem of the second judgment by failing to file the "proposed order" but wants Plaintiff Martin to pay the price for it. Moreover, the appeal dismissal comes but a week after Google was granted, in violation of CRC 8.63, a very generous extension of its time to file its brief, had the case proceeded; and it also came but two days after Plaintiff Martin filed an opposition, which makes the dismissal appear punitive. All a bit ironical, to say the least. Granting the dismissal also makes meaningless the idea of a legitimate extension of an appeal filing date per CRC 8.108. If the first Notice of Entry is taken to be real the notice, then the concept of extension is invalidated, which I do not think the law intends. Again, the Defendant and the court are using Procedural Law to deny Substantive Law its place. The assault by Procedural Law in fact leaves Substantive Law standing at the door, a second class citizen. It is as if to say that the letter of the law, the quibble, outweighs the substance, even when the letter of the law is being shamelessly gamed. From this perspective, Justice looks a lot more like Injustice. And it says that ccp 904.1 doesn't count when the court or the Defendant makes a mistake. Then, only *some* judgments can be appealed.

I would ask the court to be sensible and practical and reconsider its decision. And I would ask it to observe the big progression of Substantive matters of law that occurred between the two motions to vacate, reminding itself that time moves forward, not backwards, even in California courts of law. I know of no statute or rule of court that declares otherwise, nor any case law that contradicts this, *Maughan v. Google Tech.* included.

Dr. S. Louis Martin

/s/ Dr. S. Louis Martin

21 October 2015