

**APPELLANT REQUESTS
ORAL ARGUMENT**

B258027

COURT OF APPEAL – SECOND DIST.

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

FILED

ELECTRONICALLY

Jun 5, 2015

JOSEPH A. LANE, Clerk

KLEWIS Deputy Clerk

MARY CUMMINS,
Defendant and Appellant,

v.

AMANDA LOLLAR, BAT WORLD SANCTUARY
Plaintiffs and Appellees

Appeal from Order of Los Angeles Superior Court
Case No. BS140207, Honorable Robert Hess

APPELLANT'S OPENING BRIEF

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**Court of Appeal
State of California
Second Appellate District**

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number: B258027

Case Name: Amanda Lollar, Bat World Sanctuary v Cummins

Please check the applicable box:

- There are NO interested entities or parties to list in this certificate pursuant to California Rules of Court rule 8.208(d).

Interested entities or parties are listed below:

None

 Dated: June 5, 2015
Signature of Party Submitting Form

Printed Name: Mary Cummins

Party Represented: Defendant

IDENTITY OF PARTIES AND COUNSEL

APPELLANT:

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STATEMENT OF THE CASE

Defendant, Appellant Mary Cummins (“Cummins”) appeals from a June 19, 2014 order on motion to quash, modify subpoena, request for protective order CCP § 1987.1 filed in the Los Angeles Superior Court Department 24. The order was made on post judgment subpoena of bank records requested by Plaintiffs, Appellees. Appellant argues that the court abused its discretion in denying Appellant’s motion to quash, limit, issue protective order on post judgment subpoena of bank records. The subpoena as it stands would give private, confidential, banking records of many others who are not a party to the suit, not named in the subpoena, who weren’t legally served to Plaintiffs who have a very long history of abusing discovery. Plaintiffs have posted all discovery documents online and have used confidential discovery data to harass, oppress and illegally access the bank account of others.

STATEMENT REGARDING ORAL ARGUMENT

Defendant Appellant believes that oral argument will significantly aid in clarifying the issues involved in this appeal. This case presents important issues regarding post judgment subpoenas, proper discovery and publicly sharing confidential information of unrelated third parties. Currently

Appellant has a bad back injury and is awaiting surgery. Appellant requests to appear by phone.

COURT RECORD ON APPEAL

Appellant was never notified there was no court reporter so there would be no reporter's transcript. Appellant was never notified that an appeal is not possible without a reporter's transcript. Appellant filled out the online form requesting the transcript from the court. There was no reply. Appellant contacted Appellees' counsel to try to get a settled statement under California Rules of Court Rule 8.137. Counsel did not reply. Appellant tried all other means to create, recreate a court record.

Appellant files along with this appeal Motion for Judicial Notice. The motion is to include Appellant's motions and specifically sworn Declarations in the superior court filings in the Clerk's Transcript Vol 1 of 1, p 1-182 (CT p 1-182, Declarations CT p 31, p 48-50, 73-74, 102-103). The declarations filed in the superior court were never stricken, debated or denied by the court or Appellees. Appellant's declarations are a true and correct record of important statements and events that took place in the hearings. This information is vital to this case as the Judge, Clerk did not notify Appellant there was no court reporter and did not write clerk minutes or a minute

order. Appellees wrote the court order and the Judge merely signed it. Appellant would be denied a fair trial and due process if these documents are not added to the court record. Other unrelated third parties would also be permanently harmed if this order is not reversed.

Appellant believes Appellees may have recorded the audio of the hearings as Counsel was on court call. If a full audio recording exists, Appellant would agree to that being a part of the court record in lieu of reporter's transcript.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant Cummins submitted 100% factual fair, privileged reports, video, photos to authorities about Texas Appellees Amanda Lollar, Bat World Sanctuary violations of the Animal Welfare Act, Texas Parks & Wildlife Department, Texas Health Department and other government agencies (CT pg 25 p 1). Appellees were investigated. Violations were found. The main USDA veterinarian stated Appellee Lollar caused "pain, suffering and death," "violated the Animal Welfare Act," (CR p 19) Appellees lost their USDA permit (CL p 20) and were reprimanded by many government agencies for violations (CR p 21-23).

In retaliation Appellant Cummins was falsely, frivolously sued for defamation, breach of contract by Appellees, Texas case 352-248269-10 (CT pg 25 p 2). Even though Appellees never showed any elements of defamation, breach of contract, they admitted they had no proof of any damages, admitted they had no proof of causation in trial, Appellant lost the trial court in the amount of approximately \$6,176,000. In fact Appellant was never even told which items Appellees believed were defamatory until two months after the trial in the form of the court order. Appellant immediately appealed the case in Texas.

The Second Court of Appeals Court in Texas released their opinion¹ April 2015, 18 months after the case was submitted. The Court reversed the breach of contract claim and associated liquidated damages and attorney fees by Appellee Bat World Sanctuary. The defamation claim was not reversed. The Appeals court ruled that “defamation is assumed” and need not be proven. Appellant proved in appeal that every phrase in the court order was not defamatory. Appellees never even replied to any of the statements in their brief. Even though Appellees never made a gist claim, the Appeals court ruled that Plaintiffs actually claimed every word ever

¹ Texas appeal opinion <http://www.search.txcourts.gov/Case.aspx?cn=02-12-00285-CV&coa=coa02>

posted was defamatory. As yet Appellant has still never received a list of the supposed defamatory statements.

The judgment was reduced to \$6,000,000. Appellant filed motion to vacate the sister state judgment in whole or part. That case will not be heard until August 3, 2015. Appellant is appealing that one defamation claim to the Supreme Court of Texas.

Appellees filed sister state judgment in California November 6, 2012 (CT p 2).

Appellees sent a subpoena dated March 10, 2104 (CT p 158) to One West bank requesting “any and all statements for accounts held on behalf of the Debtor Mary Cummins SSN (redacted).”

February 18, 2014 Appellant filed Motion to Quash, Modify Subpoena and for Protective Order CCP 1987.1 (CT pg 24).

June 19, 2014 Court filed Order Motion to Quash, Modify Subpoena, Protective Order CCP 1987.1 (CT pg 136).

ARGUMENT

Appellant argues that Judge Hess abused his discretion by not quashing, limiting the scope of the subpoena or granting a protecting order on the results of the subpoena.

1. The Subpoena Should Be Quashed Because It Is Not Relevant

CCP § 2017.020 (a) “The court shall limit the scope of discovery if it determines the the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this motion pursuant to a motion for protective order by a party or other affected person.”

A motion for protective order was filed February 18, 2014 (CT p 24). The requested financial records requested are not reasonably calculated to obtain information pertinent to the matter at hand. Defendant has no assets, car, job, money or bank accounts of any type (CT p 24, 49). Defendant has not paid a bill since the account was seized. Defendant has many debts all unpaid. There is nothing left to take from Defendant. Plaintiffs already know the last balance in the account which was zero (CT p 49). The account was closed by the bank with a negative balance.

Defendant has been deemed indigent by the States of Texas and California (CT p 51-56). Defendant proceeded in forma pauperis in the Texas case and this California appeal. There was a lengthy indigence hearing and the Texas Judge ruled Defendant was indigent as of October 2012 (CT p 51-56). Defendant provided a copy of her bank statement

which showed only the name and balance which was about \$200 at that time. Defendant provided through discovery of the Texas case her bank statement again, just the name and balance. That data was then used to try to illegally access her account when Plaintiff Lollar pretended to be Cummins. The Banks contacted Defendant about the attempted access. Defendant filed a police report which was submitted in this case (CT p 93).

Plaintiffs already have ample proof that Defendant is penniless. In fact Plaintiff Lollar has admitted this many, many times on the Internet making fun of the fact that Appellant has a “net worth less than zero.” The bank statements will not lead to any assets or income of any kind of Appellant as there are none.

2. The Subpoena Should Be Quashed Because Plaintiffs Waived Any Further Right to Attempt to Access These Records

Once a party has received a response to a demand for inspection of documents, that party has 45 days to move for an order compelling further response; failure to do so results in the party’s waiver of its right to compel a further response. (CCP § 2031.310.)

Here, the demand for these exact same documents was made November 6, 2012 in Plaintiffs’ First Post Judgment Request for Production. Plaintiffs requested “Item 1 Any and all bank statements, deposit slips and bank records” (CT p 83). Defendant replied December 5, 2012 and did not give Plaintiffs her bank statements. Plaintiffs then filed a

motion to compel post trial discovery on January 2, 2013 (CT p 84). That motion was denied by operation of law 75 days later on March 17, 2013.

Plaintiffs filed their second identical motion to compel post trial discovery September 2013. That motion was also denied by operation of law (CT p 132).

Therefore, it is improper for Plaintiffs to seek the exact same information from a third-party custodian of records over a year later after they have been denied by operation of law not once but twice on the same motion for the same records. Plaintiffs have waived their right to these documents and their attempt to make an end-run around the acceptable discovery procedures by seeking the same non-party records is improper.

3. Defendant and Unrelated individuals and businesses have a Right of Privacy to their Confidential Financial Records

CCP § 2017.020 (a) “The court shall limit the scope of discovery if it determines the the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this motion pursuant to a motion for protective order by a party or other affected person.”

The subpoena (CT 158, SSN redacted) requests the “bank statements” of Defendant at One West bank. These statements include copies of the front and back of every check made by Defendant and received by Defendant. The front of the checks have the names, home addresses, phone numbers, bank account numbers, routing numbers, bank names, signatures, drivers license numbers ... of unrelated parties. The backs of

the check have the signature, bank account number, bank name, routing number of unrelated third parties.

"Financial files are within a constitutionally protected zone of privacy, set forth under Article I, Section 1 of California's Constitution, and this protection applies both to such records. The standard applicable to general discovery, i.e. that items need only be reasonably calculated to lead to the discovery of admissible evidence, is inapplicable to the discovery of items protected by a right to privacy in which the threshold requirement is that such items must be directly relevant. *Britt v. Superior Court* (1978) 20 Cal. 3d 844; *Tylo v. Superior Court* (1997) 55 Cal.App.4th 1379.

"While the filing of the lawsuit by petitioner may be something like issuing a fishing license for discovery, as with a fishing license, the rules of discovery do not allow unrestricted access to all species of information. Discovery of constitutionally protected information is on a par with discovery of privileged information and is more narrowly proscribed than traditional discovery." (*Britt v. Superior Court*, *supra*, 20 Cal.3d at pp. 852-853.)

Although corporations, businesses, organizations typically are not afforded the same privacy protections as people, corporations do have limited privacy rights, and courts have upheld a corporation's privacy interest where the records sought contained confidential financial information unrelated to the issues of the case. (See *Ameri-Medical Corp. v. WCAB* (1996) 42 Cal.App.4th 1260, 1286-89.) In this case the presiding Judge quashed the subpoena as overly broad. On appeal, the court

concluded that the corporation medical clinic had a limited right to privacy in its financial information unrelated to the issues of the case.

Therefore Plaintiffs do not have the right to financial data, information of other people not named in the subpoena. Plaintiffs also do not have the right to unrelated private and confidential information of Defendant such as mother's maiden name, security questions, answers to security questions, passwords...

4. The unrelated third parties were not served with the subpoena.

As per CCP §1985.3(b) all parties must be served with the subpoena. Financial documents of third parties are in the bank records. These third parties have not been noticed of this subpoena. They have been deprived of the due process of law to file motions to quash so their private, confidential data and information is not shared with the others and the public.

5. The subpoena is overly broad to time, parties, scope

CCP § 2017.020 (a) "The court shall limit the scope of discovery if it determines the the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this motion pursuant to a motion for protective order by a party or other affected person."

The subpoena (CT p 158, item 3) is overly broad requesting "Any and all statements for accounts held on behalf of Debtor Mary Cummins SSN ***-**-****." (SSN redacted). There is no limit to type of records requested, time period requested, specific name or account number. As the subpoena is

written the bank would not know how many years of bank statements are being requested or what specific type of statements are requested.

6. The requested “bank statements” will be used for the ulterior motive to oppress, embarrass, harass Defendant, friends of Defendant, clients of Defendant and unrelated third parties.

CCP § 2023.010. Misuses of the discovery process include, but are not limited to, the following:

(a) Persisting, over objection and without substantial justification, in an attempt to obtain information or materials that are outside the scope of permissible discovery.

(b) Using a discovery method in a manner that does not comply with its specified procedures.

(c) Employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.”

Plaintiffs have a long history of abusing discovery requests and confidential financial data. October 2, 2011 Plaintiffs posted a copy of Defendant’s ex-lawyer’s check on their public website. They did not even redact his personal information, account number, signature or routing numbers. After Defendant and her attorney sent an email demanding that Plaintiffs remove the check (CT p 133), Plaintiffs merely removed the routing number and bank account number. They left the signature, name, address, check number, name of bank on the Internet to this day.

If Plaintiffs were to receive Defendant’s bank statements which include checks of other people, they would instantly end up on the Internet in order

to oppress, embarrass, harass Defendant, friends of Defendant, family of Defendant, clients of Defendant and unrelated third parties. Plaintiff and others could easily use these checks, data, information to cause financial harm to many, many people. Banks no longer rely on actual checks but merely copies to transfer money. Anyone could use these records to steal money from others. The entities would all have to cancel their bank accounts to secure their money.

Plaintiff Amanda Lollar illegally used Defendant's protected social security number, driver's license number, bank account information, mother's maiden name, date of birth to try to access Defendant's bank account and the bank account of a non-profit. Defendant was notified by the banks, listened to the audio recording of the calls at two different banks, identified Plaintiff Lollar as the caller and filed a police report. If Plaintiffs received this confidential financial information, Plaintiff Lollar would surely use it to try to access the bank accounts of family members, friends and other unrelated third parties as is her nature. Fortunately for Defendant Plaintiff was not able to withdraw funds from Defendant's bank account because it only had no balance at the time.

CONCLUSION

For the foregoing reasons, the trial court's order on the subpoena should be reversed. The subpoena should be quashed and void. In the alternative, the subpoena should be limited in scope to one year, only to the name of the debtor "Mary Cummins," all third party information should be redacted, all confidential data of Defendant (SSN, Driver's License, Date of Birth, Mother's Maiden Name, account passwords, security questions and

answers...) should be stricken, only check records and all records should be under a protective order only to be viewed by Attorney Watts and never shared with anyone else or posted on the Internet.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mary Cummins". The signature is written in black ink and is positioned above a horizontal line.

Mary Cummins

Appellant In Pro Per

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1)

Pursuant to California Rule of Court 8.204(c)(1), I certify that the text of this brief consists of 2,756 words. In so certifying, I am relying on the word count of Apple iPages, the computer program used to prepare this brief.

DATED: June 5, 2015

Respectfully submitted,

By *Mary Cummins*
Mary Cummins
Appellant in Pro Per

PROOF OF SERVICE BY MAIL
(FRCivP 5 (b)) or
(CCP 1013a, 2015.5) or
(FRAP 25 (d))

I am Plaintiff in pro per whose address is 645 W. 9th St. #110-140, Los Angeles, California 90015-1640. I am over the age of eighteen years. I further declare that on the date hereof I served a copy of:

APPELLANT'S OPENING BRIEF

on the following parties by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at 645 W. 9th St. #110-140, Los Angeles, CA 90015-1640.

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Judge Robert Hess, Dept 25
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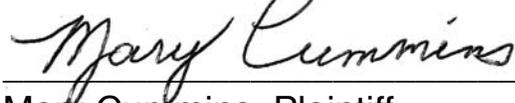
Supreme Court of California

350 McAllister Street
San Francisco, CA 94102-4783

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this day, June 5, 2015, at Los Angeles, California.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mary Cummins". The signature is written in black ink and is positioned above a horizontal line.

Mary Cummins, Plaintiff

Dated: June 5, 2015

645 W. 9th St. #110-140

Los Angeles, CA 90015

**APPELLANT'S APPENDIX
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Relevant Trial Court Orders, Notices

1. Order Motion Quash, Modify Subpoena, Protective Order
06/19/2014 (CT 136)
2. Subpoena for bank records (CT 158)