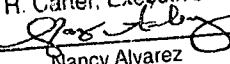


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7 CLAUDIO PALMIERI aka ETHAN KATH
and CRYSTAL CASTLES

FILED
Superior Court of California
County of Los Angeles

APR - 2 2018

Sherri R. Carter, Executive Officer/Clerk
By  Deputy
Nancy Alvarez

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

13 CLAUDIO PALMIERI aka ETHAN KATH,
14 an individual, and; CRYSTAL CASTLES, an
Ontario General Partnership,

15 Plaintiffs,

16 vs.

17 MARGARET OSBORN aka ALICE GLASS,
18 an individual, JUPITER KEYES, an
19 individual, and DOES 1 through 50, Inclusive,

20 Defendants.

CASE NO.: BC681889

**DECLARATION OF SHANE BERNARD,
ESQ. IN SUPPORT OF PLAINTIFFS'
MOTION FOR RELIEF FROM ORDER
GRANTING DEFENDANT'S SPECIAL
MOTION TO STRIKE PLAINTIFFS'
COMPLAINT PURSUANT TO C.C.P. §
425.16 AND ORDER OF DISMISSAL OF
ENTIRE ACTION**

Date: May 1, 2018

Time: 8:30 a.m.

Dept.: 31

Reservation No. 180329302148

Complaint Filed: November 3, 2017

Hon. Samantha P. Jessner

8416412018

DECLARATION OF SHANE BERNARD, ESQ.

I, Shane Bernard, declare as follows:

1. I am an attorney duly licensed to practice before this Court. I am an attorney with Bernard & Bernard, former counsel of record for Plaintiffs Claudio Palmieri (aka Ethan Kath) and Crystal Castles in this action. I submit this Declaration in support of Plaintiffs' Motion for Relief from Order Granting Defendant's Special Motion to Strike Plaintiffs' Complaint Pursuant to C.C.P. § 425.16 and Order of Dismissal of Entire Action, submitted concurrently herewith. I have personal knowledge of the facts contained within this declaration, and, if called upon as a witness, I could and would testify competently thereto.

2. Defendant Margaret Osborn (aka Alice Glass) filed a Special Motion to Strike Plaintiffs' Complaint Pursuant to C.C.P. § 425.16 (the "Motion to Strike") on December 19, 2017. The hearing on Defendant's Motion to Strike was originally set for January 9, 2018, and subsequently continued to February 23, 2018.

3. Plaintiffs' failure to file a timely and properly supported Opposition to the Motion to Strike was entirely the result of my mistakes, inadvertence, and neglect, for the following reasons:

a) In January 2018, my law office was in the process of restructuring due to termination of our only paralegal, a partner preparing for retirement, and another partner taking maternity leave.

b) Defendant's Motion to Strike was served at our office on December 26, 2017, during the office Holiday closure through January 3, 2018. My office inadvertently failed to calendar the deadline for Plaintiffs to oppose the Motion to Strike.

c) On January 17, 2018, Defendants filed a Notice of Non-Opposition to the Motion to Strike. Immediately after receiving the Notice of Non-Opposition, I contacted Defendant's counsel and informed her of my mistake.

d) My office attempted to file Plaintiffs' Opposition to the Motion to Strike on January 18, 2018, the day before the original hearing date.

8410412018

1 e) At the hearing on January 19, 2018, I informed the Court of my office's
2 mistake. The Court granted me the weekend (January 20-21) to prepare and file Plaintiffs'
3 Opposition to the Motion to Strike. The Court also continued the hearing to February 23,
4 2018.

5 f) Although I was able to prepare Plaintiffs' Opposition over the weekend, I
6 was not able to properly authenticate or lay foundation for the exhibits in support of the
7 Opposition, nor was I able to properly include tabs and indexing for the exhibits, as
8 required by the Court's rules, although the exhibits had been filed with the Court.
9 Additionally, I neglected to have Plaintiff Claudio Palmieri sign his declaration in support
10 of the Opposition under penalty of perjury. My office filed the deficient Opposition,
11 supported only by inadmissible evidence, on January 23, 2018.

12 g) I subsequently prepared a "sur-reply" in an effort to address the evidentiary
13 issues discussed above. On February 20, 2018, an employee of my office took the sur-
14 reply to the courthouse, paid the filing fee, and submitted a courtesy copy to
15 Department 31.

16 4. Plaintiffs' failure to file a timely and properly supported Opposition to Defendants'
17 Motion to Strike was entirely the result of my mistakes, inadvertence, and neglect. My former
18 clients, Plaintiffs Claudio Palmieri (aka Ethan Kath) and Crystal Castles, played no part in my
19 failure to timely file the appropriate motion.

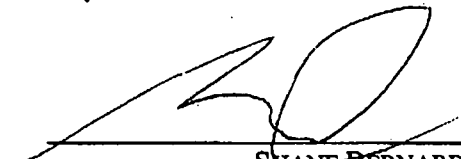
20 5. Plaintiffs, who are now represented by different counsel, would be severely
21 prejudiced if the Court does not grant them relief from the Order of Dismissal of Entire Action,
22 which effectively ends this case.

23 6. I respectfully request that Plaintiffs be afforded the opportunity to proceed in this
24 matter, with new counsel, and have their claims resolved on the merits.

25 7. Attached hereto as Exhibit A is a true and correct copy of the Reporter's Transcript
26 of Oral Proceedings held on Friday, February 23, 2018, which my office obtained directly from
27 the court reporter.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 1, 2018, at Los Angeles, California.



SHANE BERNARD

8/1/2018

8/10/11/2012

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

DEPT 31 HON. SAMANTHA P. JESSNER, JUDGE

CLAUDIO PALMIERI, ET AL,)
)
) PLAINIFF,)
 VS) CASE NO.: BC681889
)
 MARGARET OSBORN,)
)
) DEFENDANT.)
)

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS
FRIDAY, FEBRUARY 23, 2018

FOR THE PLAINTIFF:

BERNARD & BERNARD
BY: SHANE BERNARD, ESQ.
ONE WESTWOOD
SUITE 1175
10990 WILSHIRE BOULEVARD
LOS ANGELES, CA 90024

FOR THE DEFENDANT:

COLLINSON LAW
BY: VICKI GRECO, ESQ.
21515 HAWTHORNE BOULEVARD
SUITE 800
TORRANCE, CA 90503

REPORTED BY

JANE HONG-ELSEY; CSR 11975
OFFICIAL COURT REPORTER PRO TEM

04/04/2018

1 CASE NO: BC681889
 2 CASE NAME: CLAUDIO PALMIERI, ET AL VS.
 MARGARET OSBORN
 3 LOS ANGELES, CALIFORNIA FRIDAY, FEBRUARY 23, 2018
 4 DEPARTMENT 31 HON. SAMANTHA P. JESSNER, JUDGE
 5 APPEARANCES: (AS HERETOFORE NOTED)
 6 REPORTER: JANE HONG-ELSEY, CSR NO. 11975
 7 TIME: A.M. SESSION
 8

9 THE COURT: RECALLING PALMIERI VERSUS OSBORN.
 10 MR. BERNARD: GOOD MORNING, YOUR HONOR. SHANE
 11 BERNARD FOR THE PLAINTIFFS, CLAUDIO PALMIERI AND CRYSTAL
 12 CASTELES.

13 MS. GRECO: GOOD MORNING, YOUR HONOR. VICKI GRECO
 14 FOR DEFENDANT, MARGARET OSBORN, A.K.A., ALICE GLASS.

15 THE COURT: GOOD MORNING...

16 MS. GRECO, CAN I ASSUME THAT YOU SUBMIT ON THE
 17 TENTATIVE?

18 MS. GRECO: I DO, YOUR HONOR.

19 THE COURT: IS THERE ANYTHING ONE OF YOU WOULD
 20 LIKE TO SAY THAT YOU DIDN'T SAY IN YOUR PAPERS?

21 MR. BERNARD: YOUR HONOR, I WOULD LIKE TO ADDRESS
 22 TWO THINGS. ONE IS REGARDING THE FAILURE OF MY CLIENT TO
 23 DECLARE UNDER PENALTY OF PERJURY IN HER DECLARATION. OF
 24 COURSE, MY FAULT, DUE TO THE TIME CONSTRAINT, BUT NO
 25 EXCUSES.

26 HOWEVER, I'D LIKE TO ASK THE COURT TO GRANT ME
 27 LEAVE TO AMEND SO SHE CAN SIGN UNDER PENALTY OF PERJURY.

28 THE SECOND ISSUE WOULD BE TO -- I'D LIKE TO

04/04/2018

1 ADDRESS THE ISSUE OF ACTUAL MALICE; A FEW THINGS. ONE
2 REGARDING THE EXHIBITS. I DID FILE A SURREPLY REGARDING
3 AUTHENTICATION OF THOSE EXHIBITS.

4 THE COURT: COURT DID NOT RECEIVE IT SO WILL NOT
5 CONSIDER IT. IT'S UNTIMELY. THERE'S NO SUCH THING AS A
6 SURREPLY.

7 MR. BERNARD: I UNDERSTAND. IT'S A FEDERAL --

8 THE COURT: IT'S THE FIRST I'M HEARING ABOUT IT.

9 MR. BERNARD: THE REASON FOR IT, AGAIN, WAS
10 BECAUSE OF THE TIME CONSTRAINTS IN PREPARING THE MOTION. I
11 WOULD ASK THE COURT TO CONSIDER THOSE EXHIBITS. THOSE
12 EXHIBITS ARE ABSOLUTELY PERTINENT TO --

13 THE COURT: THEY SURE ARE. GO AHEAD.

14 MR. BERNARD: ABSOLUTELY PERTINENT TO PROVING THE
15 CLEAR AND CONVINCING STANDARD FOR ACTUAL MALICE HERE. IF
16 THE COURT -- I BELIEVE A COURTESY COPY WAS ALSO --

17 THE COURT: I DON'T ACCEPT COURTESY COPIES BECAUSE
18 OF EXACTLY WHAT'S GOING ON HERE. LAWYERS THINK IF THEY
19 DELIVER COURTESY COPIES, IT EXCUSES THEIR UNTIMELINESS.

20 MR. BERNARD: YOUR HONOR, IF YOU RECALL THE
21 LAST --

22 THE COURT: I RECALL.

23 MR. BERNARD: SHAKING IN FEAR BECAUSE OF MY --

24 THE COURT: AND I GAVE YOU TIME AND --

25 MR. BERNARD: YES, YOU DID. YOU GAVE ME A WEEKEND
26 AND I WOULD ASK THAT THE COURT EITHER PERMIT ME TO ARGUE --
27 TO MAKE MY ARGUMENT AND CONSIDER THOSE EXHIBITS; OR AT
28 LEAST, PUT THE MATTER OVER SO THE COURT CAN REVIEW THOSE

04/04/2018

1 EXHIBITS.

2 BECAUSE OF THE FACT WE DON'T -- BECAUSE OF THE
3 SLAPP MOTION, WE ARE NOT PERMITTED DISCOVERY. AND --

4 THE COURT: WELL, THAT'S NOT TRUE UNDER THE
5 STATUTE, OKAY? YOU'RE JUST WRONG. YOU CAN ASK FOR
6 DISCOVERY. YOU DIDN'T DO THAT.

7 MR. BERNARD: REGARDLESS, SINCE FILING THE MATTER,
8 I, THROUGH MY OWN INVESTIGATION, I'VE COME INTO A PLETHORA
9 OF DOCUMENTS.

10 THE COURT: PLETHORA, YES.

11 MR. BERNARD: PLETHORA.

12 THE COURT: EMPHASIS ON THE WRONG SYLLABLE. ONE
13 MAN'S PLETHORA IS ANOTHER WOMAN'S PLETHORA.

14 GO AHEAD.

15 MR. BERNARD: AND THOSE EXHIBITS ARE ABSOLUTELY
16 PERTINENT.

17 THE COURT: THEY SURE ARE. ANYTHING ELSE,
18 COUNSEL, YOU HAVEN'T SAID? YOU'VE NOW SAID THAT A COUPLE OF
19 TIMES.

20 MR. BERNARD: YOUR HONOR, WE HAVE HERE -- WHAT WE
21 HAVE HERE IS A VENDETTA --

22 THE COURT: WHAT WE HAVE HERE IS AN OPPOSITION
23 THAT DIDN'T COMPLY WITH THE RULES OF EVIDENCE. THAT'S WHAT
24 WE HAVE.

25 MR. BERNARD: I UNDERSTAND.

26 THE COURT: ANYTHING ELSE? WHICH I THINK IS A
27 HUNDRED PERCENT ON YOU.

28 MR. BERARD: YOU'RE ABSOLUTELY RIGHT, YOUR HONOR.

04/04/2018

1 I WOULD -- I WOULD ASK THE COURT, AGAIN, JUST --

2 THE COURT: I HEARD YOU THE FIRST THREE TIMES.
3 ANYTHING ELSE?

4 MR. BERNARD: JUST THAT MY NEGLIGENCE SHOULD NOT
5 BE A PUNISHMENT TO THE PLAINTIFF. AS I SAID TO YOU AT THE
6 FIRST APPEARANCE, THERE'S BEEN A BIT OF A SHAKE-UP AT MY
7 OFFICE. SINCE THEN, I'VE BEEN ABLE TO REMEDY THAT. THIS
8 UNFORTUNATELY FELL THROUGH THE CRACKS.

9 AGAIN, THE PUNISHMENT TO MY CLIENT, THE PLAINTIFF,
10 IS SO SUBSTANTIAL HERE WHEN WE HAVE SO MUCH EVIDENCE THAT
11 GOES, IN MY OPINION, ABOVE CLEAR AND CONVINCING TO PROVE
12 ACTUAL MALICE.

13 IF THE COURT WOULD REVIEW THOSE, MY EX-PARTE
14 APPLICATION, WITH THE AUTHENTICATION OF THOSE DOCUMENTS, I
15 HAVE NO DOUBT --

16 THE COURT: WHAT EX-PARTE APPLICATION?

17 MR. BERNARD: NOT EX-PARTE APPLICATION.

18 THE COURT: COUNSEL --

19 MR. BERNARD: MY LEAVE OF COURT.

20 THE COURT: ANYTHING ELSE YOU HAVE NOT SAID?
21 TAKE HIS ADVICE.

22 MR. BERNARD: NO, YOUR HONOR.

23 THE COURT: ANYTHING ELSE?

24 MS. GRECO: NO.

25 THE COURT: THE TENTATIVE WILL BECOME THE FINAL.
26 THE OSC IS SET FOR APRIL 3RD, 2018, 8:30, IN THE MORNING.
27 MOVING PARTY, I THINK I SAID GIVE NOTICE.

28 MS. GRECO: YES, YOUR HONOR. MAY I ALSO ASK IF I

04/04/2018

1 COULD SET MY MOTION FOR ATTORNEY'S FEES ON THAT SAME DATE,
2 FOR APRIL 3RD?

3 THE COURT: YOU HAVE TO LOOK ON THE COURT
4 RESERVATION SYSTEM. WE DON'T HAVE MUCH TO DO WITH THAT.

5 MS. GRECO: YES. THANK YOU.

6 THE COURT: THANK YOU.

7 (ADJOURNED.)

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04/04/2018

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

DEPT 31 HON. SAMANTHA P. JESSNER, JUDGE

CLAUDIO PALMIERI, ET AL,)
)
 PLAINTIFF,)
 VS) CASE NO.: BC681889
)
 MARGARET OSBORN,)
)
 DEFENDANT.)
 _____)

I, JANE HONG-ELSEY, C.S.R. NO. 11975, REPORTER OF THE ABOVE-ENTITLED COURT, DO HEREBY CERTIFY:

THAT I AM A CERTIFIED SHORTHAND REPORTER OF THE STATE OF CALIFORNIA, DULY LICENSED TO PRACTICE; THAT I DID REPORT IN STENOGRAPHIC ORAL PROCEEDINGS, PAGES 1 TO 5 UPON HEARING OF THE AFOREMENTIONED CAUSE AT THE TIME AND PLACE HEREIN BEFORE SET FORTH; THAT THE FOREGOING CONSTITUTE TO THE BEST OF MY KNOWLEDGE AND BELIEF, A FULL, TRUE, AND CORRECT TRANSCRIPTION FROM MY SAID SHORTHAND NOTES SO TAKEN FOR THE DATE: FEBRUARY 23, 2018.
DATED AT RIVERSIDE, CALIFORNIA; FEBRUARY 23, 2018.

JANE HONG-ELSEY; C.S.R., 11975

8470412018