

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 04/25/2019

TIME: 01:33:00 PM

DEPT: C66

JUDICIAL OFFICER PRESIDING: Sherri Honer

CLERK: Debby Lamm

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: 30-2010-00425532-CU-OE-CXC CASE INIT.DATE: 11/16/2010

CASE TITLE: **Quiles vs. Koji's Japan Incorporated**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 73033652

EVENT TYPE: Under Submission Ruling

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 04/11/2019 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Having taken plaintiff's motion to require an undertaking under submission and having considered the moving and opposing papers filed by the parties and argument of counsel, the court now rules as follows:

Plaintiff's motion is GRANTED. As a condition to the stay of enforcement of judgments for amounts owed by defendant Arthur J. Parent, Jr. to plaintiff Amanda Quiles, defendant shall post an undertaking in the amount of \$781,344.14. In the event defendant fails to post an undertaking by 5/22/19, the stay of enforcement shall be lifted.

Given the date by which defendant must post an undertaking, the hearing on defendant's motion to tax costs is advanced from 5/9/19 and rescheduled to 6/13/19 at 1:30 p.m. in Department C66. Plaintiff's supplemental opposition is due 9 court days before the hearing.

Discussion:

Plaintiff Amanda Quiles seeks an undertaking pursuant to Code of Civil Procedure (CCP) § 917.9(a)(3). Plaintiff cites *Quiles v. Parent* (2017) 10 Cal.App.5th 130, in support of plaintiff's request. Defendant Arthur Parent contends CCP § 917.9(a)(3) is inapplicable, because the award of post-judgment attorney fees and enforcement costs was made pursuant to CCP §§ 685.040 and 685.070 and the FLSA, and CCP § 917.9(a)(3) only applies to a judgment solely for costs awarded pursuant to Chapter 6 (commencing with Section 2021) of Title 14 of the CCP. Defendant further distinguishes *Quiles, supra*, on the grounds *Quiles* concerned an award of prejudgment fees and costs.

It is not necessary for the court to decide which parties' contention is correct. Under either scenario, defendant would be required to post an undertaking – if not under CCP § 917.9(a)(3), then under CCP § 917.1(a)(1).

- Undertaking under CCP § 917.1(a)(1) or CCP § 917.9(a)(3):

Generally, upon perfection of an appeal, an automatic stay is imposed and enforcement of a judgment is stayed pending the appeal. (CCP § 916.) There exists, however, a long-standing statutory rule that money judgments are not automatically stayed on appeal. (CCP § 917.1(a)(1).)

Pursuant to CCP § 917.1(a)(1), “[u]nless an undertaking is given, the perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order is for ... [m]oney or the payment of money ...” An order awarding post-judgment fees and costs is an award for the payment of money. (*Quiles, supra*, 10 Cal.App.5th at 136-137.)

To the extent defendant contends *Quiles* held “a cost-only judgment, including attorneys' fees awarded as costs, is not a ‘money judgment’” (opposition 8:11-14), defendant misstates the holding. Citing authority decided prior to a 1993 amendment to CCP § 917.1, the *Quiles* court indicated it had been a “well established” rule that a judgment consisting solely of costs is not a money judgment *requiring an undertaking*, because if a judgment for costs was deemed a money judgment, virtually every judgment would fall within the money judgment exception, which could not have been consistent with the legislature's intent. (*Quiles, supra*, 10 Cal.App.4th at 137-138.) According to the *Quiles* court, this well-established rule that a judgment consisting solely of costs is not a money judgment requiring an undertaking was codified in 1993. (*Id.* at 138.)

Specifically, in 1993, CCP § 917.1(d), was amended to add the following language: “no undertaking shall be required pursuant to this section solely for costs awarded under Chapter 6 (commencing with section 1021) of Title 14.” According to *Quiles*, whether or not a money judgment consisting solely of costs is exempt from the requirement of an undertaking to stay enforcement of a money judgment depends on if the costs and attorney fees awarded were “costs awarded under Chapter 6 ... of Title 14.” (*Quiles, supra*, 10 Cal.App.5th at 139.)

CCP § 917.9(a)(3), also references Chapter 6 of title 14. According to Section 917.9(a)(3), perfecting an appeal shall not stay enforcement of a judgment or order in cases not provided by sections 917.1 to 917.8, “if the trial court, in its discretion, requires an undertaking ... [where the] judgment against appellant is solely for costs awarded to the respondent by the trial court pursuant to Chapter 6 (commencing with section 1021) of Title 14.”

Either the attorney fees and costs at issue were awarded under Chapter 6 of Title 14, or they were not. If, as defendant contends, they were not, then section 917.1(a)(1) applies, and defendant is required to post an undertaking to stay enforcement of the subject order on appeal. If, as plaintiff contends, they are part of Chapter 6 of Title 14, then section 917.9(a)(3) applies, and defendant is required to post an undertaking to stay enforcement. Defendant cannot argue that the subject fee award was issued under Chapter 6 of Title 14 for purposes of section 917.1(d), but was not issued under Chapter 6 of Title 14 for purposes of section 917.9(a)(3).

- Whether a Discretionary Undertaking Is Warranted Under Section 917.9(a)(3)

Assuming *arguendo* Chapter 6 of Title 14 applies, the court must determine whether to exercise its discretion to require an undertaking to stay enforcement pending appeal. The court finds grounds exist which support the imposition of an undertaking.

"Equity demands that, as between respondent and appellant, the appellant who seeks the stay should assume the risk." (*In re Murphy's Estate* (1971) 16 Cal.App.3d 564, 568.) Here, there is no evidence of conditions that will ensure a diligent and rapid prosecution of the appeal. Further, defendant has not shown plaintiff's ability to collect on the judgment will be protected pending the appeal. Based on the evidence submitted, including, but not limited to, the stipulation as to defendant's net worth and defendant's post-judgment litigation conduct of delay and in making payments only when apparently, strategically necessary, it does not appear defendant will satisfy the judgment once the appeal is resolved. Accordingly, the court orders defendant to post an undertaking.
Clerk to give notice.

IT IS SO ORDERED.



Hon. Sherri L. Honer
Judge, Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Civil Complex Center
751 W. Santa Ana Blvd
Santa Ana, CA 92701

SHORT TITLE: Quiles vs. Koji's Japan Incorporated

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
30-2010-00425532-CU-OE-CXC

I certify that I am not a party to this cause. I certify that a true copy of the Minute Order was mailed following standard court practices in a sealed envelope with postage fully prepaid as indicated below.
The mailing and this certification occurred at Santa Ana, California on 04/26/2019

Clerk of the Court, by: Debra Hamm, Deputy

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CLERK'S CERTIFICATE OF SERVICE BY MAIL