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7 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
8 COUNTY OF ORANGE - CENTRAL JUSTICE CENTER
9

10 THE SPARTAN ASSOCIATES, INC.) Case No.30-2015-
11) 00805807
12 Plaintiff,)
13 vs.) **MEMORANDUM OF POINTS**
14 GARY HUMPHREYS, an individual;) **AND AUTHORITIES IN**
15 KAREN HUMPHREYS, an individual) **OPPOSITION TO MOTION TO**
16 and DOES 1 through 25 Inclusive) **VACATE JUDGEMENT**
17 Defendants.) Unlimited Civil-
18) [Amount Exceeds
19) \$25,000.00]
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And Related Cross-Action)
_____)
_____)

Date: March 15, 2019
Time: 9:30 a.m.
Dept: C-16

Action Filed: August 21,
2015

Judgment Entered: April
20, 2017

Judgment Affirmed on
Appeal: Oct. 21,2018

Cal. Supreme Court
Review Denied: Jan. 30,
2019

1 Defendants/Cross-Complainants/Judgment Creditors Gary Humphreys and Karen
2 Humphreys in opposition to the motion of Cross-Defendant/Judgment Debtor Adam Bereki to
3 vacate the judgement entered in this matter submits the following memorandum of points and
4 authorities.

5 I.

6 **INTRODUCTION**

7 This action arises out of a home remodel project which began in April of 2012
8 in Newport Beach, California. The parties opposing this motion, Gary Humphreys and
9 Karen Humphreys (the Humphreys) were the husband and wife owners of the property
10 to be remodeled and the moving party Adam Bereki (Mr. Bereki) was the contractor
11 with whom the Humphreys contracted to perform the work.

12 From the beginning, work on the project did not progress smoothly and was
13 “red tagged” i.e. shut down on at least two separate occasions by the City of Newport
14 Beach. In August of 2013, a year and a half into the project, with the work once again
15 at a city ordered standstill and the project far from completed, the Humphreys
16 terminated Mr. Bereki and hired another contractor to finish their project.

17 This action was initiated by The Spartan Associates, Inc. (Spartan), a
18 corporation wholly owned by Mr. Bereki and the alleged general contractor on the
19 project, to recover from the Humphreys amounts Spartan claimed it was owed by the
20 Humphreys.

21 The Humphreys filed an amended cross-complaint, the first cause of action of
22 which was against Mr. Bereki, under California Business & Professions Code
23 §7031(b) for disgorgement of the compensation paid by them to Mr. Bereki. The
24 basis of the first cause of action of the amended cross-complaint was the alleged
25 unlicensed status of Mr. Bereki at the time the contract was entered into and at the
26 time the work was performed.

1 On motion of the Humphreys, which was unopposed, the first cause of action
2 of the amended cross-complaint, was ordered severed, to be tried separate from and
3 prior to the remaining causes set forth in that pleading. The trial on the severed first
4 cause of action of the amended cross-complaint commenced on March 27, 2017
5 before Judge David Chaffee in Department C-20 of this Court and concluded on
6 March 28, 2017. Mr. Bereki appeared, testified and examined witnesses at that trial.
7 At the conclusion of the presentation of evidence which consisted of both the
8 testimony of witnesses on direct and cross examination and the introduction of
9 documents, the Trial Court found that Mr. Bereki was the party who had contracted
10 with the Humphreys, that the work performed by and under Mr. Bereki required that
11 he possess a license issued by the California State Contractor's License Board and that
12 at no time, either at the time the contract was entered into or when the work was
13 performed, did Mr. Bereki possess such a license. The Trial Court ruled that the
14 Humphreys were the prevailing party on both the complaint and the first cause of
15 action of the amended cross-complaint and as such were entitled to recover from Mr.
16 Bereki all compensation paid by the Humphreys during Mr. Bereki's involvement on
17 the project.

18 Mr. Bereki appealed the trial court's judgement to the Court of Appeal, Fourth
19 District, Division Three. Both Mr. Bereki's opening brief and his reply brief raised
20 and addressed his claim that the trial court lacked jurisdiction over both him and the
21 subject matter of the action and that he was denied due process protections guaranteed
22 by the U.S. Constitution. Oral argument was heard on October 16, 2018 before a panel
23 comprised of the Honorable Justices O'Leary, Aronson and Goethals at which Mr.
24 Bereki again asserted the trial court's lack of jurisdiction and denial of due process.
25 Following submission of the matter, the Appellate Court, with the concurrence of all
26 three justices, affirmed the judgment of the trial court awarding Respondent's their
27

1 costs on appeal.

2 On or about December 10, 2018, Mr. Bereki filed with the California Supreme
3 Court a petition for review of the Court of Appeals decision, once again raising as
4 grounds for review the claimed lack of jurisdiction of the trial court and claimed
5 denial of due process. The petition for review was denied on January 30, 2019 and
6 the case was remitted to this Court for entry of costs on Appeal.

7 Mr. Bereki, who clearly lacks a sufficiently developed understanding of
8 jurisdictional and constitutional law, has repeatedly raised the issues of jurisdiction
9 and due process and has been heard on those issues multiple times and apparently is
10 unable to accept the fact that his position has no basis in law. There is no basis, either
11 procedurally or substantively which would allow this court, at this juncture of the
12 litigation to so much as entertain Mr. Bereki's motion much less grant it.

14 II.

15 **CHRONOLOGY OF THE CASE AS IT**
16 **PERTAINS TO THIS MOTION**

17 The chronology of this case relevant to the pending motion is as follows:

18
19 On March 27, 2017 trial in this matter commenced in Department C-20 of the
20 Orange County Superior Court before the Honorable David Chaffee, the parties having
21 waived jury. The trial was on the complaint of the plaintiff The Spartan Associates, Inc.
22 (Spartan) against the Humphreys and on the cross-complaint of the Humphreys against Mr.
23 Bereki and Spartan. Mr. Bereki participated in the trial representing himself, examining and
24 cross-examining witnesses, presenting documentary evidence and giving testimony on his
25 own behalf.

1 At the conclusion of the presentation of evidence consisting of both the testimony of
2 witnesses and the introduction of documentary evidence, and after argument of counsel, the
3 Trial Court ruled in favor of the Humphreys on the first cause of action of their cross
4 complaint for disgorgement and on the complaint of Spartan and judgement was entered
5 accordingly on April 20, 2017.

6
7 On June 13, 2017 Mr. Bereki filed his notice of appeal from the judgment of the
8 court with the California Court of Appeal, Fourth District, Division Three.

9
10 On October 16, 2018, after the submission of briefs in which Mr. Bereki's
11 claims as they relate to the trial courts jurisdiction over the action and Mr. Bereki were
12 raised and addressed, oral argument was held before a panel comprised of the
13 Honorable Justices O'Leary, Aronson and Goethals. Following submission of the
14 matter, the Appellate Court, with the concurrence of all three justices, affirmed the
15 judgment of the trial court awarding Respondent's their costs on appeal.

16
17 On about December 10, 2018, Mr. Bereki filed with the California Supreme
18 Court a petition for review of the Appellate Court's decision once again raising his
19 claims of lack of jurisdiction as grounds for granting the petition.

20 On January 30, 2019 the California Supreme Court denied the petition for
21 review and on January 31, 2019 the Appellate Court issued its Remittitur of the case
22 back to the trial court for entry of costs on appeal .

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III.

MOVING PARTY'S CLAIM IS BARRED UNDER

THE DOCTRINE OF RES JUDICATA

The doctrines of res judicata and judicial estoppel rest on the ground that a party who has litigated a matter or has had an opportunity to do so should not be permitted to litigate it again to the harassment and vexation of his or her opponent. Public policy and the interests of litigants alike require that there be an end to litigation Busick v. Workmen's Comp. Appeals Bd. (1972) 7 Cal. 3d 967, 972; Rubenstein v. Rubenstein (2000) 81 Cal. App. 4th 1131, 1144. The rule of res judicata is to prevent vexatious litigation and to require the parties to rest on one decision in their controversy; res judicata bars not only the reopening of the original controversy, but also subsequent litigation of all issues that **were or could have been** raised in the original suit Torrey Pines Bank v. Superior Court (1989) 216 Cal. App. 3d 813, 821.

None of the "issues" on which Mr. Bereki is basing his motion are being raised here for the first time. Mr. Bereki has asserted the same tired and strained arguments in his post judgment motions to the trial court, in his appeal of the trial courts judgment and in his petition for review filed with the State Supreme Court. Further, even if these issues had not already been raised and rejected as ill founded, there is not a single issue raised here that could not have been asserted at the time of trial or in Mr. Bereki's appeal. This case may stand as the poster case for why public policy demands that there be an end to litigation. Mr. Bereki has been heard on these issues and he has lost, not only at trial but at the appellate level. That should be the end of it.

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IV.

THE TRIAL COURT HAD BOTH THE REQUISITE SUBJECT MATTER AND PERSONAL JURISDICTION TO RENDER JUDGMENT IN THIS MATTER.

In the event the Court determines that the instant motion warrants consideration, the facts of this case establish that the trial court had both personal jurisdiction over Mr. Bereki and subject matter jurisdiction over the case and that the judgment entered by the trial court and affirmed by the court of Appeal was proper and beyond attack at this level.

As to the question of the trial court's jurisdiction over the subject matter of this case, Cal Const, Art. VI § 10 states in pertinent part "*The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.*

Superior courts have original jurisdiction in all other causes...."

"The superior court is a court having jurisdiction in all civil actions and proceedings, with stated exceptions, and it is a court of general jurisdiction...." Richardson v. Superior Court of Los Angeles County (Cal. App. 1934), 138 Cal. App. 389,391.

In that this case is not one involving matters reserved for the Supreme Court, courts of appeal or the appellate division of the superior court, the superior court was the appropriate court to adjudicate the issues raised in the matter and had jurisdiction over the subject matter of the action. As for personal jurisdiction over Mr. Bereki, Cal Code Civ

1 Proc § 410.50 states “(a) *Except as otherwise provided by statute, the court in which an*
2 *action is pending has jurisdiction over a party from the time summons is served on him as*
3 *provided by Chapter 4 (commencing with Section 413.10). A **general appearance by a party***
4 *is equivalent to personal service of summons on such party.*”

5 An appearance for any purpose other than to question the jurisdiction of the court is
6 general. Pfeiffer v. Ash (Cal. App. 1949), 92 Cal. App. 2d 102. Mr. Bereki by substituting in
7 as his own attorney in this matter in propria persona, filing his answer to the Humphrey’s
8 cross-complaint seeking a determination of the issues and appearing at and presenting his
9 case in defense at the trial of this matter , has made a general appearance and thus has
10 voluntarily submitted to the trial court exercising personal jurisdiction over him.

11
12 V.

13 **CONCLUSION**

14
15 Although Mr. Bereki couches his motion to vacate the judgment as being grounded in a
16 claimed lack of jurisdiction by both the trial court to have rendered judgment and the court
17 of appeal to have affirmed that judgment, in reality the motion is nothing more than an
18 attempt to relitigate the same issues he has raised in his appeal of the trial court’s judgment
19 and in his petition to the State Supreme Court. While Mr. Bereki correctly points out that a
20 motion to challenge a judgment on the basis it is void may be brought at any time, he clearly
21 fails to understand that once that challenge has been brought and has been determined to be
22 without merit, he is barred from reasserting that challenge except to a court of review at a
23 higher level. Simply put, Mr. Bereki has shot his wad on this issue at all levels of review
24 with the exception of the United States Supreme Court and for that reason this motion should
25 be removed from the law and motion calendar as having been improperly filed or
26 alternatively, denied.

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For the reasons set forth above it is requested that the court refuse to hear the pending motion as having been improperly filed or alternatively deny the motion.

Respectfully Submitted

Date: February 28, 2019

**William
Bissell**

Digitally signed by William Bissell
DN: cn=William Bissell, o, ou,
email=wbissell@wgb-law.com,
c=US
Date: 2019.03.04 09:50:24 -08'00'

William G. Bissell,
Attorney for Defendants Cross-Complainants
Gary Humphreys and Karen Humphreys

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PROOF OF SERVICE

I am employed in the County of Orange, State of California.

I am over the age of 18 and not a party to the within action; my business address is 14 Corporate Plaza Drive Suite 120, Newport Beach, CA 92660.

I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. On March 4, 2019, I served the within:

**Memorandum of Points and Authorities
in Opposition to Motion to Vacate Judgment**

by placing the envelope for collection and mailing, following the above practices addressed to:

Adam Berekı
818 Spirit
Costa Mesa, CA 92626

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

Executed on March 4, 2019, at Newport Beach, California.

William Bissell

Digitally signed by William Bissell
DN: cn=William Bissell, o, ou,
email=wbissell@wgb-law.com, c=US
Date: 2019.03.04 09:50:53 -08'00'

William Bissell

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Attorney for Gary Humphreys
Karen Humphreys

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

THE SPARTAN ASSOCIATES, INC.)
)
Plaintiff,)
)
vs.)
)
GARY HUMPHREYS, an individual;)
KAREN HUMPHREYS, an individual)
and DOES 1 through 25 Inclusive)
)
Defendants.)
)
And Related Cross-Action)

Case No.30-2015-
00805807

**DECLARATION IN
OPPOSITION TO MOTION TO
VACATE JUDGEMENT**

Unlimited Civil-
[Amount Exceeds
\$25,000.00]

Date: March 15, 2019
Time: 9:30 a.m.
Dept: C-16

Action Filed: August 21,
2015

Judgment Entered: April
20, 2017

Judgment Affirmed on
Appeal: Oct. 21,2018

Cal. Supreme Court
Review Denied: Jan. 30,
2019

1 I William Bissell declare as follows:
2

3 1. I am over the age of eighteen and have personal knowledge of the matters set forth in this
4 declaration and could competently testify to the same.
5

6 2. On March 27, 2017 trial in this matter commenced in Department C-20 of the Orange
7 County Superior Court before the Honorable David Chaffee, the parties having waived jury. The
8 trial was on the complaint of the plaintiff, The Spartan Associates, Inc. (Spartan) against the
9 Gary and Karen Humphreys and on the cross-complaint of the Humphreys against Mr. Bereki
10 and Spartan. Mr. Bereki participated in the trial representing himself, examining and cross-
11 examining witnesses, presenting documentary evidence and giving testimony on his own behalf.
12

13 3. At the conclusion of the presentation of evidence consisting of both the testimony of
14 witnesses and the introduction of documentary evidence, and after argument of counsel, the
15 Trial Court ruled in favor of the Humphreys on the first cause of action of their cross complaint
16 for disgorgement and on the complaint of Spartan and judgement was entered accordingly on
17 April 20, 2017. Judgment in this matter and the entry thereof is reflected in the court's file of
18 this matter and Judicial Notice thereof the is requested under Evidence Code Section 452 (d).
19

20 4. On June 13, 2017 Mr. Bereki filed his notice of appeal from the judgment of the court with
21 the California Court of Appeal, Fourth District, Division Three. The notice of appeal is
22 contained in the court's file of this matter and Judicial Notice thereof the is requested under
23 Evidence Code Section 452 (d)
24

25 5. On October 16, 2018, after the submission of briefs in which Mr. Bereki's claims as
26 they relate to the trial courts jurisdiction over the action and Mr. Bereki's due process
27

1 arguments were raised and addressed, oral argument was held before a panel comprised
2 of the Honorable Justices O'Leary, Aronson and Goethals. Following submission of the
3 matter, the Appellate Court, with the concurrence of all three justices, affirmed the
4 judgment of the trial court awarding Respondent's their costs on appeal. Attached as
5 Exhibits "A" and "B" respectively are those portions of Mr. Bereki's Opening and Reply
6 briefs filed with the Court of Appeal in which he raises the issues of jurisdiction and
7 denial of due process. The opinion of the Court of Appeal is attached to the moving
8 papers as exhibit A.

9
10 6. On about December 10, 2018, Mr. Bereki filed with the California Supreme Court a
11 petition for review of the Appellate Court's decision once again raising his claims of lack
12 of jurisdiction as grounds for granting the petition. Attached as Exhibit "C" are those
13 portions of Mr. Bereki's Petition for Review filed with the California Supreme Court in
14 which he again raises the issues of jurisdiction and denial of due process.

15 7. On January 30, 2019 the California Supreme Court denied the petition for review.
16 Attached as Exhibit "D" is notice of California Supreme Court's denial of Mr. Bereki's
17 petition.

18
19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct. Executed on February 25, 2019 at Newport Beach,
21 California.

22 

23 William Bissell
24 Attorney for Gary Humphreys
25 and Karen Humphreys
26
27

EXHIBIT A

Appeal No. G055076

In the California Court of Appeal
Fourth Appellate District, Division Three

Adam Bereki
Defendant Below and Appellant

v

Karen and Gary Humphreys
Plaintiffs Below and Respondents

Appeal from the Superior Court County of Orange
Case No. 30-2015-00805807
Hon. David Chaffee

APPELLANT/PETITIONER'S OPENING BRIEF

Adam Bereki
In Propria Persona
818 Spirit
Costa Mesa, California
949.241.6693
abereki@gmail.com

Received by Fourth District Court of Appeal, Division Three

7031 IS UNCONSTITUTIONAL AS APPLIED

Business & Professions Code §7031(b) is unconstitutional as applied by the court to Adam Bereki because it:

- 1) violates the Constitutional provisions of punitive damage awards;
- 2) does not meet the requirements of justiciability (See Section);
- 3) violates due process;
- 4) is void for vagueness as to the term compensation in "return all compensation paid".
- 5) Is purely punitive and requires Rights guaranteed to a criminal defendant

California authorizes four penalties for "engaging in the business of, or acting in the capacity of, a "contractor" without a license – a criminal penalty, a civil penalty, a shield penalty and a sword penalty:

- 1) The first offense criminal penalty can be a misdemeanor conviction with a fine up to \$5,000, plus restitution for any actual economic loss. The fine is payable to the government, the economic loss to the customer.
- 2) The civil penalty is a citation by the Registrar of Contractors, an administrative hearing, and a penalty up to \$5,000, except for certain named violations. The civil penalty is payable to the government.
- 3) The shield penalty bars the unlicensed contractor from using the courts to collect money owed for work performed. This penalty vindicates the judicial system by preventing use of the court to enforce unlicensed work performed in violation of law.

4) The sword penalty is disgorgement. It allows the customer to recover all compensation paid to the unlicensed contractor. Disgorgement, like compensatory damages, is payable to a private party, not the government.

Disgorgement is a form of damages assessed against the unlicensed contractor and paid to its customer for the violation of the license law.

Disgorgement is a monetary award to a private party, not the government.

Punitive damages are defined as being independent from, and not in any way compensation for, any actual damages suffered. Regardless of whether disgorgement is a legal or equitable remedy, and regardless of what it is labeled, disgorgement is clearly a penalty, unrelated to actual damages as it has been applied by the courts in the form of punitive damages paid to a private party.

California courts have repeatedly held disgorgement to be lawful – on its face – despite the potential harshness or draconian nature of the remedy. However, even though the Legislature allows juries to assess punitive damages under a statute that is clearly constitutional on its face (Civil Code § 3294), the courts routinely determine whether punitive damages assessed by a jury in a particular case exceed constitutional bounds. The same must be true for disgorgement.

7031 VIOLATES THE PROVISIONS OF PUNITIVE DAMAGE AWARDS

The U.S. Supreme Court has established a three part test for evaluating the validity of punitive damages in civil cases. See State Farm Mutual Auto Insurance Co. v Campbell, 538 US 408 (2003):

- 1) the reprehensibility of the conduct being punished;
- 2) the reasonableness of the relationship between the harm and the award; and

3) the difference between the award and the civil penalties authorized in comparable cases.

Under this test, use of the disgorgement sword to hypothetically take anything more than nominal damages from Adam and give them to Respondents fails every element of the test for the following reasons:

REASONABLENESS

First, the relationship between the "harm" and disgorgement of \$848,000 is grossly disproportionate. At "trial", Respondents presented no evidence of any damages proximately cause by Adam's alleged failure to be licensed.

Compensatory damages are intended to redress the concrete loss the 'victim' has suffered by reason of the 'perpetrators' wrongful conduct. By contrast, punitive damages serve a broader function; they are aimed at deterrence and retribution. Id 416

California and federal courts have constrained awards of punitive damages to a reasonable relationship to the actual damages suffered.

In the instant case, disgorgement of anything would be an infinite multiple of the non-existent damages.

COMPARABLE CASE AWARDS

Second, the difference between the \$848k disgorgement award and both the criminal and civil penalties authorized in comparable cases is astronomic. As previously noted, the maximum criminal penalty is \$5,000 plus restitution of actual economic loss.

Again, Respondents presented no witnesses or evidence at "trial" of any actual loss whatsoever.

The maximum civil penalty that could be assessed by the CSLB is also \$5,000. Thus, a "disgorgement" of \$848k would be 169 TIMES the comparable criminal or civil penalty.

The judgment in this case is more than three times the financial penalty for treason, – the highest crime of our country– which is \$250,000. Furthermore, it forces Adam into elements of financial ruin and bankruptcy.

Punitive damages in excess of \$5000 therefore do not pass Constitutional muster.

REPREHENSIBLE

Third, the conduct is not reprehensible. Not only was there no evidence of any damages whatsoever, had there been, they would have been purely economic. No one was hurt or injured. There was no evidence of fraud, oppression, or malice.

No evidence was presented the compensation by Spartan or Adam had not been returned.

Respondents interacted exclusively with Adam Bereki who had the work experience and passed the competency exam to qualify for Spartan's contractors license. It is unknown how Respondents could therefore be deprived of the CSLL protections.

Prior to hiring Adam Bereki or Spartan, Respondent Gary Humphreys was intimately aware of Adam's competency by the previous projects he had done at Respondents business and for other family members (RT 93–10).

Furthermore, as mentioned, Mr. Humphreys is a nationally recognized expert in project management and government contractor who teaches project management around the world including to the construction industry. He is not a member of the public who needs protection from incompetence and dishonesty from those who provide building and construction services. In fact he has decades more training and experience than Adam Bereki who doesn't even possess a college degree.

While Mr. Humphreys claims he does not have specific experience in building construction itself, the project management principles he teaches most definitely are fundamental to every project. The preface of his near eight hundred page book on project management states: "Please do not conclude that a sample does not apply to those of you in the construction, software, or other industries." (CT 400-401, RT 97)

See Jet Source Charter, Inc. v Doherty, 148 Cal. App. 4th 1, (2007)

A de novo standard of review should be applied to the court's ruling.

7031 VIOLATES DUE PROCESS

See Pacific Mutual Life v Haslip, 499 US 1 and Honda Motor Co. Ltd v Oberg, 512 US 415

A de novo standard of review should be applied to the court's ruling.

THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO RENDER ANY JUDGMENT DUE TO FRAUD, DUE PROCESS VIOLATIONS, AND RESPONDENTS FAILURE TO PROVE THE FACTUAL SUFFICIENCY OF THEIR CLAIM

A court of California does not have jurisdiction to render a judgment that violates the California Constitution or the Constitution of the United States.

County of Ventura v. Tillett, 133 Cal. App. 3d 105

While a court has jurisdiction to hear and decide cases, it does not have jurisdiction adjudicate a case upon the commission of a crime such as fraud or violations of due process such as those evidenced above that occurred in this case.

A court only has subject matter jurisdiction to adjudicate a claim upon substantial proof of the factual sufficiency of each element of that claim by competent sworn testimony regarding authenticated evidence.

In the case of a violation of statute, jurisdiction *only* extends once the factual sufficiency of each element of the offense has been met.

In this way, subject matter jurisdiction is a two sided coin.

One side of the subject matter jurisdiction coin involves the common law, statutory authority, or contract upon which there was a duty to do or not do something and the court's empowerment to deal with that subject matter as authorized by Constitution or Statute.

The first prong of the jurisdiction analysis is to determine which state courts have subject matter jurisdiction. The court in which the action is filed must be competent

under California law to render a judgment; i.e., the state constitution or statutes must empower it to adjudicate the type of lawsuit involved and to render a judgment for the amount in controversy. [See Marriage of Jensen (2003) 114 CA4th 587, 593, 7 CR3d 701, 705 (citing text)]

"The principle of 'subject matter jurisdiction' relates to the inherent authority of the court involved to deal with the case or matter before it." [Varian Med. Systems, Inc. v. Delfino (2005) 35 C4th 180, 196, 25 CR3d 298, 311]

The other side of the coin (or second prong) rests on the factual sufficiency of the claim. Without the factual sufficiency of the claim there would be no proven violation of law for the court to render judgment/verdict. The court would not have jurisdiction over the subject matter because a law has not been proven to have been violated – there is no proof of a claim for it to adjudicate. At that point the court has a non-discretionary duty to dismiss the case for want of subject matter jurisdiction. See FRCP 12(b)(6)

The factual sufficiency of the claim must establish there was a known duty the breach of which was the causation of damages, as attested to by at least one competent fact witness, testifying under oath and subject to cross examination regarding authenticated evidence.

See also Buis v State, 1990 OK CR 28.

Respondents:

1) failed to offer any competent sworn testimony Adam Bereki was a person to whom §7028 and §7031 applied.

2) failed to offer any competent sworn testimony as to what work Adam Bereki did on their project that was required to be licensed and the amount he was compensated for

that work required to be licensed as differentiated from work done NOT required to be licensed or the work done by Spartan.

3) failed to controvert Spartans testimony and evidence of obtaining the permits, doing the work, and receiving \$758,000 in compensation.

4) committed fraud on the court by making false or misleading statements to gain a civil advantage.

5) failed to prove they had paid personally \$495,000 that was paid by Humphreys & Associates, Inc. and therefore had no standing to collect on its damages.

6) Failed to respond to multiple challenges to jurisdiction violating due process

7) Failed to state a justiciable cause of action and subjected Adam to an unknown jurisdiction of law foreign to our Constitutions.

The trial court did not have cognizance of a case pursuant to §7028 or §7031 B&P against Adam Bereki because these causes of action do not meet the requirements for a justiciable controversy as evidenced.

The proper parties were NOT present because there were none who could be pursuant to the first requirement. See Reynolds v Stockton, 140 US 254, 268 (1891)

See also Saffer v Jp Morgan Chase, 225 CA4th 1239, 1246 (2104); Parrott v Mooring Townhomes Ass'n Inc., 112 CA 4th 876; Chromy v Lawrance, 233 CA3d 1521, 1527.

A de novo standard of review should be applied to the court's ruling.

EXHIBIT B

Appeal No. G055075

In the California Court of Appeal
Fourth Appellate District, Division Three

Adam Bereki
Defendant below and Appellant

v

Karen and Gary Humphreys
Plaintiffs below and Respondents

Appeal from the Superior Court County of Orange
Case No. 30-2015-00805807
Hon. David Chaffee

APPELLANTS REPLY BRIEF

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VII. THE TRIAL COURT DID **NOT** POSSESS THE REQUISITE SUBJECT MATTER JURISDICTION TO RENDER JUDGMENT IN THIS MATTER

At RRB (Page 25) Respondents represent the trial court had the requisite subject matter jurisdiction to render judgment in this matter and cite Richardson v Superior Court of Los Angeles County 138 Cal. App. 389, 391:

The Superior Court is a court having jurisdiction in all civil actions and proceedings, with stated exception, and it is a court of *general* jurisdiction."

Courts of general, limited, or inferior jurisdiction have no inherent judicial power.

Courts of general, limited, or inferior jurisdiction get their jurisdiction from one source and one source only: SUFFICIENT PLEADINGS WHICH EMPOWER THE COURT TO ACT THROUGH COMPETENT SWORN TESTIMONY REGARDING AUTHENTICATED EVIDENCE.

Without pleadings sufficient to empower the court to act, that court cannot have judicial capacity.

What this means is that no court can declare it has the legal power to hear or decide cases, i.e. jurisdiction. Jurisdiction must be proved and on the record. Without sufficient pleadings, without jurisdiction, no court can issue a judgment that isn't void *ab initio*.

Even parties appearing before the United States Supreme Court must present pleadings establishing the subject matter jurisdiction of the Court, empowering it to act.

One of the clearest authorities of these jurisdictional requirements is found in the case of *Buis v State*, supra:

"We recognize the district court, in our unified court system, is a court of *general* jurisdiction and is constitutionally endowed with "unlimited original jurisdiction of all justiciable matters, except as otherwise provided in this Article,"... However, this "unlimited original jurisdiction of all justiciable matters" **can only be exercised** by the district court through the filing of pleadings which are sufficient to invoke the power of the court to act. The requirement for a verified information to confer subject matter jurisdiction on the court and empower the court to act has been applied to both courts of record and not of record. ...[V]erification of the information is more than merely a "guaranty of good faith" of the prosecution. It, in fact, is required to vest the district court with subject matter jurisdiction, which in turn empowers the court to act. Only by the filing of an information which complies with this mandatory statutory requirement can the district court obtain subject matter jurisdiction in the first instance which then empowers the court to adjudicate the matters presented to it. (underlined emphasis added)

See also AOB regarding the two-sided nature of Subject Matter Jurisdiction, Page 64; and Thompson v Louisville, supra.

Additionally, failing to submit competent sworn testimony and evidence for each element of the offense deprives the court of subject matter jurisdiction to adjudicate Respondents claim in their favor.

"We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be **treason** to the Constitution." Cohens v Virigina, supra.

County of Ventura v Tillett, supra:

"In a contested proceeding, no court may render judgement without conforming to the Constitutional guarantees which afford due process of law."

"A judgement is void on its face if the court which rendered the judgement lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which it had no power to grant."

Elliott v. Lessee of Piersol, 26 U.S. 328 (1828):

Where a court has jurisdiction, it has a right to decide any question which occurs in the cause, and whether its decision be correct or otherwise, its judgments, until reversed, are regarded as binding in every other court. But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a remedy sought in opposition to them, even prior to a reversal. They constitute no justification, and all persons concerned in executing such judgments or sentences are considered in law as trespassers.

EXHIBIT C

Case No. S _____

IN THE

SUPREME COURT OF CALIFORNIA

Adam Bereki, *Petitioner,*

vs.

Karen and Gary Humphreys, *Respondents,*

After Appeal to the Court of Appeal

Fourth Appellate District, Division Three

Court of Appeal Case No. G055075

Orange County Superior Court Case No. 30-2015-00805807

PETITION FOR REVIEW

Adam Bereki

In Propria Persona

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STATEMENT OF FACTS AND LEGAL DISCUSSION

- a. **Were the trial and appellate courts deprived of jurisdiction to render and affirm judgment that violates the due process requirements of punitive damage awards?**

The instant case involves an \$848,000 penalty of disgorgement against Petitioner for allegedly contracting without a license in the remodel of Respondents vacation home (Business and Professions Code, "BPC", or "the code", §7031(b)). The trial and appellate courts denied Petitioner the due process protections of grossly excessive punitive damage awards.

In *Kokesh v SEC*, (2017) 518 US ____ the US supreme court held SEC disgorgement in reference to 28 USC §2462 (a five year statute of limitations on the imposition of penalties) had all the hallmarks of a penalty and was therefore punitive in nature.

Based on the supreme court's historical jurisprudence as reaffirmed in *Kokesh*, the judgment in the instant case is also a penalty and therefore subject to the due process provisions of punitive damage awards.

The appeal court however affirmed the trial court's judgment and claimed disgorgement was "an equitable remedy" and therefore not a penalty/punishment (Op. p8).

In *Lewis & Queen v. N. M. Ball Sons* (Cal. 1957), 48 Cal. 2d 141, 308 this court held: courts may not resort to equitable considerations, such as unjust enrichment, in defiance of §7031.

If equitable considerations including set-off or unjust enrichment are denied, it can't possibly be an equitable action or remedy. Equity is defined as the quality of being fair and impartial. Without these considerations, the concept of equity of destroyed. This is one of the reasons why in *Kokesh* the US supreme court concluded disgorgement was punishment.

In legal terms disgorgement is defined as the giving up or return of "ill gotten gains" or "profits". California courts have interpreted "all compensation paid" as used in §7031(b) to mean not only the disgorgement of "profits" or "ill gotten gains", but all payments made whatsoever, including reimbursement for material costs, irrespective of any injury or damage, and *without* equitable considerations.

Punitive damages on the other hand are defined as being independent from, and not in any way compensation for, any actual damages suffered.

In *Kokesh* the court examined it's historical jurisprudence on the nature of penal actions citing *Huntington v. Attrill*, (1892) 146 U. S. 657:

The definition of "penalty" as a "punishment, whether corporal or pecuniary, imposed and enforced by the State, for a crime or offen[s]e against its laws," gives rise to two principles. First, whether a sanction represents a penalty turns in part on "whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual." *Id.*, at 668. Second, a pecuniary sanction operates as a penalty if it is sought "for the purpose of punishment, and to deter others from offending in like manner" rather than to compensate victims. *Ibid.*

Application of these principles readily demonstrates disgorgement pursuant to §7031(b) constitutes a penalty.

First, §7031(b) is a matter of public policy effecting commerce and is therefore a wrong to the public even though the penalty is paid to an individual party and not the government. It is a consequence for violating public laws and not in the private non-commercial setting, especially considering all of the payments made were by commercial paper/negotiable instruments (*Bank of Columbia v Okely* (1819), 17 US 235, 243; *Cohens v Virginia*, (1821) 19 US 264, 403; *Constitution for the United States* [1787-1791] "Constitution", Article 1, §9)

Second, the jurisprudence of this state has repeatedly reaffirmed §7031's deterrence nature (Op. Pp. 7-8). Sanctions imposed for the purpose of deterring infractions of public laws are inherently punitive because "deterrence [is] not [a] legitimate nonpunitive governmental objectiv[e]." (*Bell v Wolfish*, 441 US 520, 539)

Third, it is not compensatory. §7031(b) requires no evidence of any injury or damage and none were evidenced in this case.

Nor is it a remedial sanction that restores the status quo. Equitable considerations were denied and no evidence was admitted to differentiate profits or gains from costs or benefits conferred or exchanged.

The project was done at cost for the family of close friends. There were no gains or profits. Materials and labor were provided commensurate to the agreement in direct exchange for the compensation received without markups. In this sense all compensation had already been returned throughout the remodel project without evidence of any injury or damage thereby making the award entirely punitive.

Kokesh continues:

“As demonstrated here...disgorgement may be ordered without consideration of a defendant’s expenses that reduced the amount of illegal profit. In such cases, disgorgement does not simply restore the status quo; it leaves the defendant worse off and is therefore punitive.”

Although disgorgement may serve compensatory goals in some cases, “sanctions frequently serve more than one purpose” (*Austin v United States*, 509 US 602, 610). Because they “go beyond compensation, are intended to punish, and label defendants wrong- doers” as a consequence of violating public laws, (citation), disgorgement orders represent a penalty...”

The US Supreme Court has established a three part test for evaluating the validity of punitive damages in civil cases (*State Farm Mut. Automobile Ins. Co. v. Campbell* (2003) 538 U.S. 408)¹:

- 1) the reprehensibility of the conduct being punished;
- 2) the reasonableness of the relationship between the harm and the award;and
- 3) the difference between the award and the civil penalties authorized in comparable cases.

Under this test, use of the disgorgement sword to hypothetically take anything more than nominal damages from Petitioner and give them to Respondents fails every element of the test for the following reasons:

¹ *BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559, 568)

REASONABLENESS

First, the relationship between the “harm” and disgorgement of \$848,000 is grossly disproportionate. At “trial”, Respondents presented no evidence of any damages proximately cause by Petitioner’s *alleged* failure to be licensed.

Compensatory damages are intended to redress the concrete loss the ‘victim’ has suffered by reason of the ‘perpetrators’ wrongful conduct. By contrast, punitive damages serve a broader function; they are aimed at deterrence and retribution. *Id* 416

California and federal courts have constrained awards of punitive damages to a reasonable relationship to the actual damages suffered.

In the instant case, disgorgement of anything would be an infinite multiple of the non-existent damages.

COMPARABLE CASE AWARDS

Second, the difference between the \$848k disgorgement award and both the criminal and civil penalties authorized in comparable cases is astronomic. The maximum criminal penalty is \$5,000 plus restitution of actual economic loss. The maximum civil penalty that could be assessed by the Contractors State License Board, “CSLB”, is also \$5,000. Thus, a “disgorgement” of \$848k would be 169 TIMES the comparable criminal or civil penalty.

The judgment in this case is more than three times the financial penalty for treason, – the highest crime of our country– which is \$250,000. Furthermore, it forces Peititioner into elements of financial ruin and bankruptcy.

Punitive damages in excess of \$5000 therefore do not pass Constitutional muster.

REPREHENSIBLE

Third, the conduct is not reprehensible. Not only was there no evidence of any damages whatsoever, had there been, they would have been purely economic. No one was hurt or injured. There was no evidence of fraud, oppression, or malice.

No evidence was presented the compensation had not been returned in the form of materials and labor services provided.

Respondents interacted exclusively with Petitioner who had the work experience and passed the competency exam to qualify for numerous contractors licenses.

Prior to hiring Petitioner or his company, Respondent Gary Humphreys was intimately aware of Petitioner's competency by the previous projects he had done at Respondents business and for other family members (RT 93–10).

* * *

A judgment is void if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process (*Klugh v United States, 620 F. Supp. 892*)

“A court of this state does not have jurisdiction to render a judgment that violates the California Constitution or the Constitution of the United States...” (*County of Ventura v Tillett (1982) 133 Cal. App. 3d 105*).

EXHIBIT D

SUPREME COURT
FILED

Court of Appeal, Fourth Appellate District, Division Three - No. G055075 JAN 30 2019

S252954

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA

Deputy

En Banc

GARY HUMPHREYS et al., Cross-complainants and Respondents,

v.

ADAM BEREKI, Cross-defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

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PROOF OF SERVICE

I am employed in the County of Orange, State of California.

I am over the age of 18 and not a party to the within
action; my business address is 14 Corporate Plaza Drive
Suite 120, Newport Beach, CA 92660.

I am readily familiar with this business's practice for
collecting and processing correspondence for mailing. On the
same day that correspondence is placed for collection and
mailing, it is deposited in the ordinary course of business with
the United States Postal Service, in a sealed envelope with
postage fully prepaid. On March 4, 2019, I served the within:

Declaration in Opposition to Motion to Vacate Judgment

by placing the envelope for collection and mailing, following
the above practices addressed to:

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

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

Executed on March 4, 2019, at Newport Beach, California.

**William
Bissell**

Digitally signed by William Bissell
DN: cn=William Bissell, o, ou,
email=wbissell@wgb-law.com,
c=US
Date: 2019.03.04 09:54:26 -08'00'

William Bissell