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FILED
LOS ANGELES SUPERIOR COURT

JAN 22 2013

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

John Clark, Executive Officer/Clerk
By Cher Mason Deputy
CHER MASON

RICHARD M. WIDOM,
Plaintiff,

v.

STOCKWELL, HARRIS, WIDOM,
WOOLVERTON & MUEHL, a California
corporation, GEORGE WOOLVERTON,
an individual, STEVEN HARRIS, an
individual, EDWARD MUEHL, an
individual, and DOES 1-10,
Defendants.

STOCKWELL, HARRIS, WIDOM,
WOOLVERTON & MUEHL, a California
corporation,
Cross-Complainant,

vs.

RICHARD M. WIDOM, an individual; LAW
OFFICES OF RICHARD M. WIDOM, LLP, a
California limited liability partnership and
DOES 1-10, inclusive,
Cross-Defendants.

Case No.: BC415845

COMPLAINT FILED: June 15, 2009
MOTION FILED: December 27, 2012

**ORDER DENYING PLAINTIFF'S
MOTION TO PERMIT DISCOVERY OF
DEFENDANTS' FINANCIAL CONDITION
PURSUANT TO CAL CIV CODE §§ 3294
AND 3295(C) AFTER REMAND FROM
COURT OF APPEAL**

DEPARTMENT 36

HEARING DATE: January 22, 2013
TRIAL DATE: June 4, 2013

MOVING PARTY: Plaintiff Richard M.
Widom and

RESPONDING PARTY: Defendants Stockwell,
Harris, Widom, Woolverton & Muehl, George
Woolverton, Steven Harris, and Edward Muehl

Plaintiff Richard M. Widom's Motion to Propound Discovery Relating to the Financial
Condition of Defendants Stockwell, Harris, Woolverton & Muehl ("Stockwell"), Steven Harris
("Harris") and George Woolverton ("Woolverton") following the Court of Appeal's April 26,
2011 Order on Remand (the "Opinion") is denied

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I. INTRODUCTON

Plaintiff is a former shareholder of a worker's compensation law firm, defendant Stockwell, Harris, Woolverton & Muehl. (Second Amended Complaint ("SAC"), ¶ 1.) Plaintiff was married to an attorney at the law firm, Lisa Kerner, until March 1, 2009 when they separated following a physical altercation between them on that date. (SAC, ¶30.) Shortly after the incident, Kerner obtained a temporary restraining order against Plaintiff. (*Id.*)

After scheduled hearings over a period of nine months, the Court denied a permanent injunction to her. (McCloskey Decl., Transcript of Proceedings of January 26, 2010, Exh. F.) In his Order, however, Judge Meisinger expressed serious misgivings about Plaintiff's account of the incident, particularly Plaintiff's claim that he had acted in self-defense. (McCloskey Decl., Exh. F, p. 3:15-4:18.) Judge Meisinger also distrusted Widom's sworn testimony that he had not observed bruising to Kerner after the incident. (McCloskey Decl., Exh. F, p. 5:9-14.)

Plaintiff claims that Defendants voiced their support of him until April 2009 when Ms. Kerner threatened to sue Stockwell for workplace violence, which allegedly prompted Defendants to fire Plaintiff without conducting a proper investigation due to the possibility that Ms. Kerner's lawsuit could impact their own assets.

Plaintiff filed this lawsuit against defendants on June 15, 2009, seeking involuntary dissolution of Stockwell, the defendant law corporation, and asserting claims for breach of fiduciary duty, breach of contract, reformation of contract, defamation, and interference with prospective economic advantage, among other claims. (See generally, SAC.) Though framed in 15 causes of action, the Second Amended Complaint asserts only two factual bases for Plaintiff's claims: 1) wrongful termination by the Stockwell firm; and 2) defamatory statements made by

1 the firm after that termination. The tort claims at issue here — defamation and intentional
2 interference with prospective economic advantage — are based entirely upon alleged defamatory
3 statements made by the defendants after the termination. Other than statements allegedly made
4 by defendant George Woolverton to his ex-wife, the only allegedly defamatory statement at issue
5 is the statement that Plaintiff beat his wife, Lisa Kerner, on March 1, 2009.

6 On April 26, 2011, the Court of Appeal issued a Remand and ruled that a declaration of
7 “factual innocence” procured by Plaintiff in his criminal proceedings is inadmissible as evidence.
8 The Court of Appeal also ruled inadmissible evidence of the defendants’ communication with
9 their investigators and with law enforcement agencies in connection with the criminal
10 investigation of Plaintiff.

11 12 13 **II. LEGAL STANDARDS**

14 Under California Civil Code § 3295, a plaintiff is barred from conducting discovery into
15 a defendant’s financial condition without first obtaining a court order. (Cal. Civ. Code §
16 3295(c).) “Under that section, the plaintiffs right to pretrial discovery of the defendant’s financial
17 status is severely limited.” (*Rawnsley v. Superior Court* (1986) 183 Cal.App.3d 86, 91.)

18 Section 3295 provides that a court may issue an order allowing discovery of a
19 defendant’s financial condition only if “the plaintiff has established that there is a substantial
20 probability that [he] will prevail on [his claim for punitive damages].” (Cal. Civ. Code §
21 3295©.). As used in the statute, “[s]ubstantial probability” is defined as “very likely” or “a strong
22 likelihood[.]” (*Jabro v. Superior Court* (2002) 95 Cal.App.4th 754, 758.) This imposes a heavy
23 burden on the plaintiff, requiring more than a mere prima facie showing that he will prevail on a
24 claim for punitive damages. (See *Id.* at 757-758; see also Haning, Flahavan & Kelly, *Cal.*
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1 *Practice Guide: Personal Injury* (The Rutter Group 2010) ¶ 6:160.) Indeed, the Senate
2 Committee on the Judiciary noted that... "in order for the plaintiff to discover evidence of a
3 defendant's wealth or profits made through wrongful conduct, he would first be required to
4 prove his case, with the burden of beyond a reasonable doubt, in a sort of 'mini-trial' before the
5 judge." (*Jabro*, 95 Cal.App.4th at 758 (quoting Sen. Corn. on Judiciary, Analysis of Sen. Bill
6 No. 1989 (1979-1980 Rg. Sess.), as amended Apr. 28, 1980).)

7 Punitive damages are authorized only where the plaintiff can prove, by clear and
8 convincing evidence, that the defendant is guilty of oppression, fraud or malice. (Cal. Civ.
9 Code § 3294(a).) The pertinent terms are defined by statute: "malice" means "conduct which is
10 intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried
11 on by the defendant with a willful and conscious disregard of the rights or safety of others;
12 "oppression" means "despicable conduct that subjects a person to cruel and unjust hardship in
13 conscious disregard of that person's rights." (Cal. Civ. Code § 3294(c)(1)&(2).)

14 To satisfy the "clear and convincing" standard, the evidence must not merely be
15 consistent with the theory of malice, oppression or fraud. Rather, the plaintiff must produce
16 evidence that is inconsistent with any other explanation: "[S]ome evidence would be required
17 that is inconsistent with the hypothesis that the tortious conduct was the result of a mistake of
18 law or fact, honest error of judgment, over-zealousness, merely negligence or other such
19 noniniquitous human failing." (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269,
20 1287-88 n. 14 (internal quotation omitted).) A preponderance of the evidence requires only
21 "probability," whereas clear and convincing proof requires "high probability." (*See In re Angelia*
22 *P.* (1981) 28 Cal.3d 908, 919; *Mock v. Michigan Millers Mut. Ins. Co.* (1992) 4 Cal.App.4th 306,
23 332.)
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1 Pretrial discovery into a defendant's financial condition is warranted only if the
2 plaintiff has proven by clear and convincing evidence that there is a "substantial probability" he
3 will prevail in showing that the defendants engaged in tortious conduct with "oppression, fraud
4 or malice."

6 III. DISCUSSION.

7 The court denies Plaintiff's Motion for Pretrial Discovery of Defendants' Financial Net
8 Worth.

9 To establish a substantial probability of prevailing on their claim for punitive damages,
10 Plaintiff must prove by clear and convincing evidence that the Defendants made defamatory
11 statements with malice. In this case, malice means that they told others that Plaintiff had beaten
12 Lisa Kemer with knowledge that the statement was false.

13 The current evidentiary record does not show that Plaintiff can prove with clear and
14 convincing evidence that there is substantial probability that Defendants acted with malice in
15 defaming Plaintiff or interfering with his business prospects. The evidentiary record is too full of
16 directly contradicting evidence, requiring the weighing of witness credibility and the presentation
17 of further facts, to show that there is a substantial probability that Defendants acted maliciously,
18 that they did not have any good reason to tell clients and other members of the workers
19 compensation community that Plaintiff beat his wife, that Plaintiff engaged in violent and
20 abusive acts against other women, etc.

21 Defendants present sufficiently compelling and conflicting evidence to show that they
22 had a good faith believe that Plaintiff did beat his wife and abuse other women. There are photos
23 taken at the hospital of Ms. Kerner's bruised face, arms, and legs, as well as her sworn testimony
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1 that Plaintiff beat her. (McCloskey Decl., Exh. D, Transcript of deposition of Richard Widom,
2 Vol. 1, February 22, 2010, p. 50:9-25.) Kerner told the emergency room physician who treated
3 her that Plaintiff had inflicted the injuries and "alluded to previous injuries" caused by him.
4 (McCloskey Decl., Exh. E, Transcript of Proceedings, January 28, 29, 2010, p. 153:8-22.) Upon
5 learning that domestic violence was involved, the physician called the police. (McCloskey Decl.,
6 Exh. E, p. 162:2-164:11.) The physician's notes confirm that Kerner sustained injuries consistent
7 with her statement. (McCloskey Decl., Exh. E, p. 153:3-160:1.) Further, the email exchange
8 between Plaintiff and Kerner after the altercation shows that Plaintiff did not deny that he made
9 Kerner feel unsafe. Plaintiff has never denied that his wife sustained multiple physical injuries
10 during the altercation; he denies only that he punched her in the mouth and threw her into a
11 chair. In addition, the evidence directly related to the altercation with Kerner, described above,
12 did not exist in a vacuum. Rather, the evidence suggests that Defendants became aware of earlier
13 aggressive physical conduct by Plaintiff against females while he occupied a position of power
14 in the firm. For example, in 1996, Richard Widom committed a criminal sexual assault upon a
15 female employee of Stockwell, Dianne Little. (McCloskey Decl., Exh. H, Transcript of
16 Deposition of Dianne Little, p. 64:17-68:6.) After she was terminated, Little contacted Harris
17 and claimed that she had been fired because she refused to sleep with Plaintiff. Harris and
18 Woolverton responded by settling that claim. Also, the Defendants learned that Plaintiff had
19 sexually harassed Stockwell's office manager, Donna Glassman and severely abused Ted
20 Hirschberger, a senior Stockwell attorney afflicted with Parkinson's Disease. (McCloskey Decl.,
21 Exhs. J and K.) Defendants also have evidence suggesting of Plaintiff's assault upon Teresa
22 Reese, a female representative of a governmental agency with which Plaintiff had business
23 dealings. Based upon that incident, Reese submitted a complaint to the Workers Compensation
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1 Board against him. (McCloskey Decl., Exh. M, Transcript of Deposition of Teresa Reese.) There
2 is also evidence suggesting that Plaintiff sexually harassed and/or assaulted two Stockwell
3 employees (Sarah Jaffe and Rhoda Knight) and one employee of a Stockwell client (Mary
4 Cunningham of EIG). (McCloskey Decl., Exh. N.)

5 Defendants also submit sufficiently compelling and conflicting evidence to show that
6 they attempted to limit the proliferation of negative statements about Plaintiff. Defendants only
7 told firm employees, two clients and the ex-wife of one of the Defendants that Plaintiff beat his
8 wife. In every such instance, the recipient already knew that Kerner accused Plaintiff of beating
9 her. Moreover, the evidence can reasonably be construed by a trier-of-fact that when Defendants
10 stated that fact to third parties, they did so, not to inform them of that fact of the beating, but to
11 explain why Plaintiff had been terminated. The employees were entitled to know why one of the
12 managing partners of the firm had been terminated, particularly when there were security guards
13 at the firm to protect them from Plaintiff. Even so, at first the Defendants did not provide details
14 to them, disclosing information only after Plaintiff told Stockwell's attorneys that he had to leave
15 the firm because Defendants Harris and Woolverton were stealing money from the firm. The
16 Defendants also had good reason to inform clients of the firm, who had a vested interest in
17 knowing why the firm had terminated the attorney who had been handling their work. Yet here
18 again, they initially informed two clients only that Plaintiff had been terminated for good cause
19 upon the advice of counsel, ultimately providing more detailed information to a small number of
20 clients closely related to Plaintiff. Moreover, Plaintiff has failed to produce evidence that any
21 statement made by any defendant resulted in a single dollar of damage.

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23 Further, Defendants sufficiently attack the strength of Plaintiff's evidence. For instance,
24 Plaintiff refers to Stockwell's firing of Widom's secretary and his two sons. (Motion, p. 6.)
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1 Those firings, however, are not the subject of a claim in any lawsuit, let alone a claim by plaintiff
2 in this one. In addition, the Motion also refers to purported statements by defendant Woolverton
3 that investigators "observed Mr. Widom in the company of prostitutes" and that Woolverton had
4 "found a video tape of Mr. Widom engaging in sexual relations with CIGA representative Tern
5 Harrison. (Motion, p. 10.) It also refers to Woolverton's purported statement that "Widom had
6 also committed sodomy, theft, and had given Ms. Kerner a sexually transmitted disease." The
7 source of the claim that Woolverton made any of these statements is a single person — Katherine
8 Higgins, defendant Woolverton's ex-wife. No one else has testified that Woolverton made the
9 statements, and no one else claims to have heard them. (Id.) As for Woolverton, he flatly denies
10 that he made them. (McCloskey Deci., Exh. P, pp. 156:25-157:5, 157:18-20.) Moreover, there is
11 no evidence that such a statement caused Plaintiff any damages. statement made by Woolverton
12 to his ex-wife. The Motion also asserts that defendant Woolverton offered \$20,000 to a witness
13 in return for her destroying documents and changing her testimony. Here again, the witness was
14 his ex-wife. She is the sole source of this allegation. (Motion, p. 10.) As before, Woolverton
15 denies that he did any such thing. (McCloskey Decl., Exh. P, pp. 50:15-51:12.) Further, Widom
16 fails to explain how any such alleged litigation conduct might result in an award of punitive
17 damages for defamation or interference.

19 In his attempt to undermine the basis for the Defendants' good faith belief in the fact of
20 the beating, Plaintiff emphasizes that he was able to escape a finding of spousal abuse in family
21 law proceedings and in a criminal prosecution. The results in those earlier proceedings, however,
22 cannot be directly transferred to grant this Motion because the standard of proofs are different.
23 The family law matter was a bench trial, conducted over a period of nine months, in which only a
24 fraction of the evidence amassed for the trial of this case was presented. The jury at the trial in
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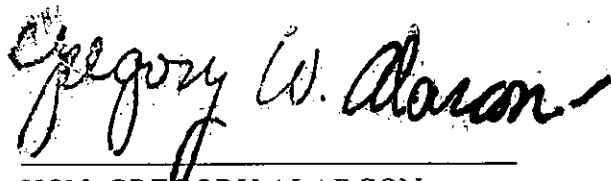
1 the criminal prosecution also saw only a fraction of the instant evidence and decided the case
2 under the criminal liability standard of "beyond a reasonable doubt," rendering the result not
3 directly parallel to this civil matter. Moreover, the earlier grant of this Motion was reversed by
4 the Court of Appeal because the trial court relied almost exclusively upon inadmissible evidence
5 in reaching its decision. In defiance of the appellate decision declaring the evidence
6 inadmissible, Plaintiff refers to that same evidence no less than three times in this renewed
7 Motion.

8 In light of the foregoing, the court finds that the evidentiary record is insufficient to
9 support pretrial discovery into Defendants' net worth.
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11 IV. CONCLUSION

12 Plaintiff Richard M. Widom's Motion to Propound Discovery Relating to the Financial
13 Condition of Defendants Stockwell, Harris, Woolverton & Muehl ("Stockwell"), Steven Harris
14 ("Harris") and George Woolverton("Woolverton") following the Court of Appeal's April 26,
15 2011 Order on Remand (the "Opinion") is DENIED.
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18 DATED: January 22, 2013

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21 HON. GREGORY ALARCON
22 JUDGE OF THE SUPERIOR COURT
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