

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

MEGAN E ZAVIEH,

Petitioner,

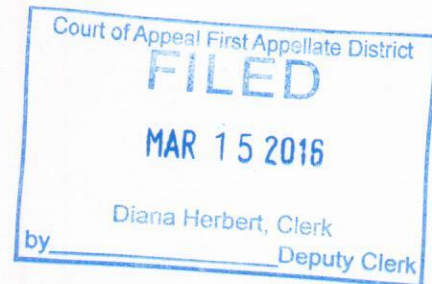
v.

ALAMEDA COUNTY SUPERIOR COURT,

Respondent;

RWW PROPERTIES, LLC,

Real Party in Interest.



A146809

Alameda County No. HG12615549

BY THE COURT:*

The requests for judicial notice filed by petitioner (on February 3, 2016) and real party in interest (on January 28, 2016) are granted.

The petition for writ of mandate is denied. Preliminarily, the record is insufficient to enable informed appellate review. (*Sherwood v. Superior Court* (1979) 24 Cal.3d 183, 186-187; *Sea Horse Ranch, Inc. v. Superior Court* (1994) 24 Cal.App.4th 446, 452-453; Cal. Rules of Court, rule 8.486(b)(1)(D).) The record does not include the reporter's transcript of the hearing on the expungement motion. Even after real party in interest raised this record defect in its opposition to the petition (Oppo., p. 28), petitioner declined to supplement the record, and instead argued the transcript has no "bearing" on the petition. (Reply, p. 16.) Additionally, it does not appear petitioner has met her burden of demonstrating an entitlement to writ relief under the standard articulated in *Amalgamated Bank v. Superior Court* (2007) 149 Cal.App.4th 1003, 1016-1017. While "[a] writ denial will ... allow the expungement order to go into effect, thereby removing the lis pendens

as a cloud on the real property ... that is a consequence in harmony with the Legislature's purpose in enacting the 1992 amendments." (*Id.* at p. 1020.)

On December 17, 2015, petitioner filed an "Emergency Application for Bond, Order to Show Cause, Sanctions & Other Appropriate Relief" to address real party in interest RWW Properties, LLC's premature recordation of the superior court's October 30, 2015 order expunging petitioner's lis pendens, in violation of the automatic stay provisions of Code of Civil Procedure section 405.35. On December 23, 2015, this court issued an order clarifying that the October 30, 2015 expungement order was without force or effect under Code of Civil Procedure section 405.35, and directing real party in interest to immediately record this court's December 23, 2015 order, and serve all parties and the current owners of record with such recording. The court also deferred further decision on petitioner's "Emergency Application for Bond, etc."

Having considered the parties' briefing concerning the "Emergency Application for Bond, etc.," the court hereby denies the remainder of that application. While not intended to comprise an exhaustive statement of reasons for denying all requests contained in the remainder of the application, the court wishes to share some of its reasoning. With respect to the sanctions request, petitioner has not persuasively presented statutory or rule authority permitting this court to award petitioner attorney fees as sanctions, under the circumstances presented. As for petitioner's request that this court hold real party in interest RWW Properties, LLC, and its former attorney Jonathan Herschel Bornstein, in contempt, petitioner did not present this court with a sufficient charging declaration upon which an order to show cause would properly issue.

While the court will not be taking further action regarding petitioner's "Emergency Application for Bond, etc.," we previously expressed our deep concern about the conduct of real party in interest and its former attorney (see Dec. 17, 2015 Order), and that concern persists. Actions taken by parties and counsel in violation of the provisions of Code of Civil Procedure section 405.35 are disruptive of the orderly process established by the Legislature for writ review of lis pendens expungement orders. By this order, real party in interest and its former counsel, Jonathan Herschel Bornstein, are directed to refrain from violating section 405.35 in the future. The court instructs real party in interest to personally serve a copy of this order on former counsel, and file proof of service of same in this court within five court days.

Date MAR 15 2016

Jones, P.J. P.J.

* Before Jones, P.J., Simons, J. and Needham, J.