

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA

MINUTE ORDER

DATE: 09/22/2020

TIME: 08:20:00 AM

DEPT: 20

JUDICIAL OFFICER PRESIDING: Matthew P. Guasco

CLERK: Penny Wooff

REPORTER/ERM: None

CASE NO: **56-2019-00526921-CU-BC-VTA**

CASE TITLE: **San Alicia HOA vs. Mason**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Motion - Other (CLM) for Order Imposing Terminating Sanction against Defendant Wallace Erick Mason

MOVING PARTY: SAN ALICIA HOMEOWNERS ASSOCIATION

CAUSAL DOCUMENT/DATE FILED: Motion - Other for Order Imposing Terminating Sanction Against Defendant Wallace Erick Mason; Memo of Points and Authorities' Declaration of Christina Vanarelli, 08/24/2020

APPEARANCES

Christina Vanarelli, counsel, present for Plaintiff(s) telephonically.

MICHAEL E. BARMASSE, counsel, not present for Defendant(s).

At 8:59 a.m., court convenes in this matter with all parties present as previously indicated.

Appearances are as noted above. There is no appearance by Defendant.

Counsel have received and read the court's written tentative ruling.

Plaintiff submits on the tentative ruling.

The Court finds/orders:

The Court's tentative is adopted as the Court's ruling.

The following is the Court's tentative decision concerning the motion of plaintiff, San Alicia Homeowner's Association ("HOA"), for terminating sanctions against defendant, Wallace Erick Mason ("Mason"):

The Court GRANTS the motion for terminating sanctions against Mason for the following reasons:

(1) Terminating sanctions are a last resort when all other means of compelling lawful discovery have failed. (*Motown Record Corp. v. Superior Court* (1984) 155 Cal.App.3d 482, 489.) The purpose of discovery sanctions is to gain compliance, not to punish. (*Ibid.*) The Court should employ only those sanctions necessary to ensure discovery from the less to the more severe as each situation dictates. (*R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496.) At some point, however, a court may impose harsher sanctions to prevent a party from gaining any benefit or advantage from willfully failing to comply with the party's duties or the court's orders concerning discovery. (*Collisson & Kaplan v. Hartunian* (1994) 21 Cal.App.4th 1611, 1619.)

(2) Termination of the plaintiff's action or the defendant's defense, however, is appropriate where the

record before the Court demonstrates that terminating sanctions are the only way to avoid irreparable prejudice to the aggrieved party and to avoid the offending party benefitting from his or her misconduct. (Code of Civ. Proc., § 2030.030, subd. (d); *Liberty Mutual Fire Ins. Co. v. LcL Administrators, Inc.* (2008) 163 Cal.App.4th 1093, 1106; *Collision & Kaplan v. Hartunian, supra*, 21 Cal.App.4th at p. 1619.)

(3) On February 10th and 20th, 2020, this Court issued its orders compelling Mason to respond to HOA's discovery by a date certain. Mason has not responded. Neither he nor his counsel of record has appeared at any of the several recent hearing in this action. HOA's counsel represents to the Court that neither Mason nor his counsel of record have responded to repeated inquiries necessary to move this case along.

(4) Accordingly, the Court finds that Mason effectively has abandoned his defense in this action.

(5) Further, the Court finds that there is no sanction short of terminating Mason's ability to defend the action by striking his answer which can remedy the discovery violations at issue. Monetary sanctions have not worked. Issue, evidence, and instructional sanctions are ineffective in the absence of discovery responses from Mason.

(6) The Court, therefore, finds it has no alternative to prevent the prejudice certain to befall HOA arising from Mason's nonresponsiveness other than to terminate the action and strike Mason's Answer.

(7) The Court GRANTS HOA's motion for terminating sanctions.

(8) The Court enters its ORDER striking Mason's Answer.

(9) The Court sets the matter for an OSC re entry of default against Mason for October 22, 2020, at 8:20 a.m. No appearance is necessary if the default has been entered and a default judgment packet has been submitted to the Clerk by no later than two court days before the hearing.

Counsel for plaintiffs shall serve and file a notice of ruling and proposed order consistent with the above and in conformity with the Code of Civil Procedure and the Rules of Court. A copy of this tentative decision (if adopted by the Court as its final ruling) may be attached to and incorporated by reference in any such proposed order in lieu of copying same verbatim in the body of the document.

Court's Order to Show Cause (CCM) re entry of default against Mason is scheduled for 10/22/2020 at 08:20 AM in Department 20.

Court Trial (LC) scheduled on 10/06/2020 is vacated.