

**Marc Chesson, et al. v. Knight & Day Investments, Inc., et al.**

**18CV43298**

**MOTION TO STRIKE ANSWER TO CROSS-COMPLAINT**

Defendant Paul M. Zagaris Inc. dba PMZ Real Estate and Cross-Defendant Martina Owens (collectively PMZ) move, pursuant to Code of Civil Procedure section 476, for an order striking the answer filed by Knight & Day Investments, Inc. (KDI) to the Cross-Complaint on the grounds that KDI's corporate status has been suspended by the California Secretary of State.

PMZ's two requests for judicial notice are GRANTED. Based on the evidence submitted, the Court finds that KDI is a suspended corporation. KDI appears to concede the point by failing to file an opposition to the motion. A suspended corporation may not prosecute or defend an action in a California court. (See *Ransome-Crummey Co. v. Super. Ct.* (1922) 188 Cal. 393, 396-97.)

Based on the foregoing, the motion is GRANTED. The clerk shall provide notice of this ruling to the parties forthwith. PMZ is to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

## **MOTION TO FILE FIRST AMENDED CROSS-COMPLAINT**

Cross-Complainant and Cross-Defendant Paul M. Zagaris Inc. dba PMZ Real Estate and Cross-Defendant Martina Owens (collectively PMZ) move, pursuant to Code of Civil Procedure section 473 and California Rule of Court 3.1324, for an order granting PMZ leave to file a First Amended Cross-Complaint (FACC).

Based on the matters set forth in the moving papers and evidence submitted in support of the motion, the Court finds that permitting PMZ to file the FACC would further the interests of justice in this matter. No party opposes the motion.

Based on the foregoing, the Court exercises its discretion pursuant to CCP section 473 (a)(1), and the motion for leave to file the FACC is GRANTED. However, for file maintenance purposes, the Court does not permit pleadings appearing as attachments to other documents to be deemed filed. For this reason, the Court grants PMZ ten days' leave to file the FACC in the same form as it appears in Exhibit A to the Declaration of Lindsey A. Morgan in support of the motion. PMZ's request to deem the FACC served is therefore DENIED.

The clerk shall provide notice of this ruling to the parties forthwith. PMZ to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

## **MOTION TO CONTINUE TRIAL DATE**

The parties are directed to appear at the hearing on the matter.

Defendant Paul M. Zagaris Inc. dba PMZ Real Estate and Cross-Defendant Martina Owens (collectively PMZ) move, pursuant to California Rules of Court, rule 3.1332, for an order vacating and continuing the dates set for trial and trial confirmation conference in the matter, along with all related dates and deadlines.

One basis for the motion is the potential addition of new parties through a proposed First Amended Cross-Complaint (FACC) which PMZ has, through a separate motion, requested leave to file. The Court having granted said motion finds that the addition of new parties through the FACC constitutes good cause for continuing the trial. (See Rules of Court, rule 3.1332 (c)(5).) However, before making a final decision, the Court would like to hear from the parties regarding whether they have been able to preserve Mr. Eckert's trial testimony through an evidentiary deposition as indicated in the Court's September 3, 2021 Minute Order. The parties should also be prepared to discuss and/or set new trial and related dates at the hearing.

The clerk shall provide notice of this ruling to the parties forthwith. No formal order pursuant to Rule of Court 3.1312 is required.