

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION P

COURT OF APPEAL - SECOND DIST.

FILED

Apr 12, 2022

DANIEL P. POTTER, Clerk

apalencia-huerta Deputy Clerk

YVONNE JIANG,

B316520

Plaintiff and Appellant,

(Super. Ct. No. 21PSCV00100)
Los Angeles County

v.

HELEN XU,

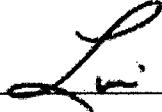
DISMISSAL ORDER

Defendant and Respondent.

THE COURT:

On October 18, 2021, declared vexatious plaintiff Yvonne Jiang filed in propria persona a notice of appeal from a judgment purportedly entered on August 18, 2021. As a declared vexatious litigant who is subject to the prefiling order requirements of Code of Civil Procedure section 391.7, subdivision (a), Jiang was required to obtain leave of this court before filing her notice of appeal in propria persona (Code Civ. Proc., § 391.7, subd. (a)), which she failed to do. On November 23, 2021, the clerk of this court sent notice to Jiang requesting her to demonstrate that her appeal has merit and was not taken for purposes of harassment or delay. (Code Civ. Proc., § 391.7, subds. (b)-(c).) To date, no response to the notice has been filed, and the time for responding has lapsed.

The October 18, 2021 notice of appeal forms the only record in this case. On that scant record, the court is unable to glean merit in the appeal and therefore declines to issue a prefiling order allowing the appeal to proceed. (Code Civ. Proc., § 391.7, subds. (b)-(c).) Consequently, the appeal initiated by the October 18, 2021 notice is dismissed. (Code Civ. Proc., § 391.7, subd. (c).)



Elwood Lui, Administrative Presiding Justice

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
Civil Division
East District, Pomona Courthouse South, Department J

21PSCV00100
YVONNE JIANG vs HELEN XU, et al.

August 18, 2021
10:00 AM

Judge: Honorable Gloria White-Brown
Judicial Assistant: Gerald Berni
Courtroom Assistant: Sylvia Martinez

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): YVONNE JIANG (Self Represented)
For Defendant(s): Eng-Lang Lin by Marjorie Minnetian (Telephonic)

NATURE OF PROCEEDINGS: Hearing on Special Motion to Strike under CCP Section 425.16 (Anti-SLAPP motion); Case Management Conference

The matter is called for hearing and is argued.

The court adopts the tentative ruling as the court's order as follows:

The Special Motion to Strike under CCP Section 425.16 (Anti-SLAPP motion) filed by Helen Xu, Maxwell E. Lin, Law Offices of Maxwell E. Lin (& Associate) on 05/10/2021 is Granted. The court awards attorney's fees and costs in Defendants' favor and against Plaintiff in the amount of \$4,200.88.

The Court's findings are reflected in the Court's Tentative Ruling, which is filed this date and incorporated into the court file.

On the Court's own motion, the Case Management Conference scheduled for 08/18/2021 is vacated.

Moving party is to give notice.

DEPARTMENT J LAW AND MOTION RULINGS

#9

The Court may change tentative rulings at any time. Therefore, counsel are advised to check this website periodically to determine whether any changes or updates have been made to the tentative ruling. Counsel may submit on the tentative rulings by calling the clerk in Department J at (909) 802-1105 prior to 8:30 a.m. the morning of the hearing. Submission on the tentative does not bind the court to adopt the tentative ruling at the hearing should the opposing party appear and convince the court of further modification during oral argument. The Tentative Ruling is not an invitation, nor an opportunity, to file any further documents relative to the hearing in question which are not authorized by statute or Rule of Court. No such filing will be considered by the Court in the absence of permission first obtained following ex-parte application therefor.

Case Number: 21PSCV00100 Hearing Date: August 18, 2021 Dept: J

HEARING DATE: Wednesday, August 18, 2021
NOTICE: OK[1]

RE: *Jiang v. Xu, et al.* (21PSCV00100)

**Defendants Helen Xu's and Maxwell E. Lin dba Law Offices of Maxwell E. Lin & Associates'
SPECIAL MOTION TO STRIKE COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE
SECTION 425.16**

Responding Party: Plaintiff, Yvonne Jiang[2]

Tentative Ruling

Defendants Helen Xu's and Maxwell E. Lin dba Law Offices of Maxwell E. Lin & Associates' Special Motion to Strike Complaint Pursuant to Code of Civil Procedure Section 425.16 is GRANTED. The court awards attorney's fees and costs in Defendants' favor and against Plaintiff in the amount of \$4,200.88.

Background

Plaintiff Yvonne Jiang ("Plaintiff") alleges as follows: Plaintiff and Defendant Helen Xu ("Xu") were involved in a failed real estate transaction. This transaction appears to have been the subject of a prior lawsuit (i.e., Case No. 17K05412) ("Underlying Lawsuit"), in which Xu was represented by Maxwell E. Lin ("Lin") and the Law Offices of Maxwell E. Lin (& Associate) ("Firm").

On February 8, 2021, Plaintiff filed a complaint, asserting causes of action against and Xu, Lin, Firm (collectively, "Defendants") and Does 1-50 for:

1. Fraud
2. Fraud

A Case Management Conference is set for August 18, 2021.

Legal Standard

“A special motion to strike under section 425.16—the so-called anti-SLAPP statute—allows a defendant to seek early dismissal of a lawsuit that qualifies as a SLAPP.” (*Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1035.) A SLAPP is “[a] cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States of California Constitution in connection with a public issue.” (Code Civ. Proc., § 425.16, subd. (b)(1).) Such an act includes “(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” (Code Civ. Proc., § 425.16, subd. (e).)

“When determining whether to grant an anti-SLAPP motion, the trial court engages in a two-step process. First the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. (§ 425.16, subd. (b)(1).) If the court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim.” (*Kronemyer v. Internet Movie Database Inc.* (2007) 150 Cal.App.4th 941, 946 [internal quotation marks and citation omitted].)

Discussion

Defendants move the court, per Code of Civil Procedure § 425.16, for an order striking the entirety of Plaintiff’s complaint, on the basis that the causes of action alleged against Defendants relate directly to statements made and documents filed in a previous action and counsel’s representation of Xu in said previous matter (*Jiang v. Xu, et al.*, Case No. 17k05412). Defendants also seek attorney’s fees and costs in the amount of \$4,200.88.

At the outset, the court notes that Plaintiff’s opposition was due on May 28, 2021 (i.e., based on the original June 11, 2021 hearing date). Plaintiff filed her opposition on June 7, 2021 and mail- served same on June 9, 2021. On June 11, 2021, the court, on its own motion, continued the hearing to June 28, 2021. The June 11, 2021 minute order provides, in relevant part, that “[m]oving Party has seven (7) days from today’s date to file a Reply, if any.” The court provided notice to Plaintiff (self-represented) and Defendants’ counsel. Defendants’ reply was filed on June 18, 2021.

On June 18, 2021, Plaintiff purported to file an “Amended Opposition,” without obtaining leave from the court to do so. The court will not consider the “Amended Opposition” and orders the document stricken.

Merits

Step One: Whether the Complaint Arises from Protected Activity

The anti-SLAPP statute is designed to protect “(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” (Code Civ. Proc., § 425.16, subd. (e).)

Plaintiff's complaint is comprised of two separate causes of action for Fraud. The first cause of action is asserted against Xu only, whereas the second cause of action is asserted against all Defendants. Plaintiff's complaint is far from a model of clarity; however, it relates to the representation by Defendants of Xu in Case No. 17K05412 and Xu's participation in same. Plaintiff, in fact, concedes that "[t]he action is arising from the previous case No. 17K05412 . . . [t]he current action is to redress Plaintiff's grievance that Defendant Xu and her counsel Defendant Maxwell E. Lin committed a crime for intentional forging document and make false statement and false declaration in Xu's demurrer to the previous complaint in defending Defendant Xu's wrong to Plaintiff." (Opposition, 2:12-18.)

The court determines that Defendants have made a threshold showing that the challenged causes of action arise from protected activity.

Step Two: Whether Plaintiff Has Established a Probability of Prevailing

Again, once a claim is shown to fall within the ambit of the anti-SLAPP law, the burden shifts to the plaintiff to establish a "probability" of prevailing on that claim.

In determining whether a plaintiff has established a probability of prevailing on the claim, the court will consider the pleadings and supporting and opposing affidavits. (Code Civ. Proc., § 425.16, subd. (b)(2). "In opposing an anti-SLAPP motion, the plaintiff cannot rely on the allegations of the complaint but *must produce evidence* that would be admissible at trial." (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212 [emphasis added].)

"In deciding the question of potential merit, the trial court considers the pleadings and evidentiary submissions of both the plaintiff and the defendant (§ 425.16, subd. (b)(2)); though the court does not *weigh* the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim." (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.)

"The essential allegations of an action for fraud are a misrepresentation, knowledge of its falsity, intent to defraud, justifiable reliance, and resulting damage." (*Roberts v. Ball, Hunt, Hart, Brown & Baerwitz* (1976) 57 Cal.App.3d 104, 109.)

Plaintiff's opposition is devoid of any evidence. Accordingly, the court determines that Plaintiff has failed to establish a probability of prevailing on the claim.

The motion is granted.

Attorney's Fees/Costs

"A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (Code Civ. Proc., § 425.16, subd. (b)(1).) "[I]n any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs..." (Code Civ. Proc., § 425.16, subd. (c)(1).)

"The language of the anti-SLAPP statute is mandatory; it requires a fee award to a defendant who brings a successful motion to strike." (*Cabral v. Martins* (2009) 177 Cal.App.4th 471, 490.)

Defendants seek an award of attorney's fees and costs in the amount of \$4,200.88 [calculated as follows: 7 hours at \$400.00/hour, plus costs of \$1,340.88 (i.e., \$446.96 (x) 3 [each defendant] for first filing fee, plus \$60.00 motion filing fee]. The court awards attorney's fees and costs as requested.

[1] The motion was filed on May 10, 2021 (served via mail and email on May 8, 2021) and originally set for hearing on June 11, 2021. On June 11, 2021, the court, on its own motion, continued the hearing date to June 28, 2021; notice was provided by the clerk. On June 23, 2021, a "Notice Re: Continuance of Hearing and Order" was filed, wherein the court, on its own motion, continued the hearing to August 18, 2021; notice was given to Plaintiff (self-represented) and to Defendants' counsel. In the interim, Department A set an Order to Show Cause Re: why case number 21PSCV00100 should not be dismissed (i.e., for Plaintiff's failure to obtain a prefiling order which permits the filing of any new litigation) for July 19, 2021. On July 19, 2021, an "Order to File New Litigation By Vexatious Litigant" was filed and the OSC was discharged.

[2] The opposition was due on May 28, 2021 (i.e., based on the original June 11, 2021 hearing date). Plaintiff filed her opposition on June 7, 2021 and mail- served same on June 9, 2021. On June 11, 2021, the court, on its own motion, continued the hearing to June 28, 2021. The June 11, 2021 minute order provides, in relevant part, that "[m]oving Party has seven (7) days from today's date to file a Reply, if any." The court provided notice to Plaintiff (self-represented) and Defendants' counsel.

SUPREME COURT
FILED

AUG 10 2022

Court of Appeal, Second Appellate District - No. B316520

Jorge Navarrete Clerk

S274734

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

YVONNE JIANG, Plaintiff and Appellant,

v.

HELEN XU, Defendant and Respondent.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

Appendix C

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DANIEL P. POTTER, CLERK

DIVISION p November 23, 2021

YVONNE JIANG,
Plaintiff and Appellant,
v.
HELEN XU,
Defendant and Respondent.
B316520
Los Angeles County Super. Ct. No. 21PSCV00100

NOTICE TO PARTIES

Pursuant to section 391.7, subdivision (c) of the Code of Civil Procedure, all proceedings are hereby stayed.

It has come to the attention of the Court that plaintiff has previously been found to be a vexatious litigant within the meaning of Code of Civil Procedure section 391.7, subdivision (a).

Within 10 days of the date of this notice plaintiff shall show in writing "that the litigation has merit and has not been taken for purposes of harassment or delay." (Code Civ. Proc., sec. 391.7, subd. (b)).

If plaintiff fails to respond to this notice in a timely manner, or if the response fails to demonstrate the merit of the action herein, the appeal shall be dismissed. (*Andrisani v. Hoodack* (1992) 9 Cal.App.4th 279, 281.)

Very truly yours,
DANIEL P. POTTER, CLERK

by: _____
Deputy Clerk

cc: All Counsel
Superior Court-Civil Appeals
File

Second Appellate District
300 South Spring Street
Los Angeles, CA 90013
(213) 830-7000
www.courts.ca.gov/2dea



I certify that this is a true and correct copy of the original on file in or issued from this office, consisting of pages.

SHERRI R. CARTER, Executive Officer / Clerk of the Superior Court of California, County of Los Angeles.

Date: 10/12/21 By: SAC Deputy

FILED
Superior Court Of California
County Of Los Angeles

OCT 12 2021

Sherri R. Carter, Executive Officer/Clerk
Deputy
Claudia Enquiles, Deputy

APPELLATE DIVISION OF THE SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

YVONNE JIANG,

Plaintiff and Appellant,

v.

HELEN XU,

Defendant and Respondent.

No. BV 034215
Spring Street Trial Court
No. 17K05412

OPINION

Plaintiff and appellant Yvonne Jiang timely appeals the trial court order finding her to be a vexatious litigant under Code of Civil Procedure section 391, subdivisions (b)(2) and (b)(3), and a person subject to a prefiling order under Code of Civil Procedure section 391.7.¹

Plaintiff's attack on the order lacks merit; accordingly, we affirm.

BACKGROUND²

Plaintiff filed in 2017 a complaint,³ following a failed real estate transaction, against a variety of individuals. Plaintiff alleged a first cause of action for breach of contract against Helen Xu (defendant) and a second and third cause of action for fraud against Wenmei Yu and

¹Further statutory references are to the Code of Civil Procedure.

²The pertinent procedural history of the litigation is set forth in the Discussion part of this opinion.

³The complaint and the majority of the motions and pleadings relied upon by the trial court for its finding that plaintiff was a vexatious litigant were not designated for inclusion in the record.

1 David Gao respectively. Over the course of the litigation, plaintiff filed various amendments to
2 the complaint and to the causes of action therein. The trial court sustained, without leave to
3 amend, defendant's demurrer to the complaint and eventually signed a judgment of dismissal as
4 to defendant. Subsequently, defendant prevailed on a motion for attorney fees against plaintiff.
5 Thereafter, plaintiff filed numerous pleadings and multiple appeals seeking to set aside the
6 dismissal of defendant from the case.

7 On July 16, 2020, the trial court set the matter for an order to show cause and a date for
8 plaintiff to file a response as to why plaintiff should not be declared a vexatious litigant and
9 subject to a prefiling order due to the continuing litigation concerning defendant. Plaintiff,
10 however, did not file a response or appear for the hearing on the matter. Following the hearing,
11 the trial court, in an extensive minute order, found plaintiff to be a vexatious litigant and subject
12 to a prefiling order because she repeatedly filed meritless pleadings and frivolous motions and
13 repeatedly sought to relitigate a final determination rendered against her. The court's specific
14 findings were that after the trial court sustained defendant's demurrer without leave to amend
15 on August 3, 2017, plaintiff filed four improperly amended pleadings "realleging the already
16 dismissed claims" and three unmeritorious motions that sought reconsideration, a motion to
17 vacate dismissal and an unsuccessful appeal.

18 The court identified the four improper pleadings as "(1) the "First Amendment to the
19 Third Cause of Action to the Complaint" on June 14, 2017; (2) the "Second Amendment to the
20 Complaint and Attachment of First Cause of Action" on June 23, 2017; (3) the "First Amended
21 Complaint on August 10, 2017 without leave to amend"; and (4) the "Second Amended
22 Complaint on October 23, 2018 without leave to amend."

23 In regard to the motions and the appeal that the trial court found to lack merit, the
24 following pertinent chronology can be gleaned from the court's order: August 20, 2018,⁴

25
26 ⁴The trial court's minute order incorrectly identifies the year as 2018. The appeal was filed on
27 August 26, 2019, and sought review of: the August 3, 2017 minute order sustaining the demurrer
28 without leave to amend; the October 19, 2018 judgment; the November 5, 2018 judgment; the
November 5, 2018 order of dismissal; the December 20, 2019 amended judgment; and the June 11,
2019 order after final judgment.

1 plaintiff filed an appeal from the order dismissing defendant from the complaint; October 28,
2 2019, the Appellate Division of the Superior Court of Los Angeles County dismissed plaintiff's
3 appeal as untimely, and thereafter denied plaintiff's request to "amend the appeal"; February 7,
4 2020, plaintiff filed a motion to vacate the order dismissing defendant from the complaint;
5 February 11, 2020, plaintiff filed a motion for leave to amend the motion for reconsideration;
6 February 13, 2020, the trial court denied plaintiff's motion for reconsideration; February 24,
7 2020, plaintiff filed a second motion for reconsideration; June 26, 2020, the trial court denied
8 plaintiff's motion for leave to amend the first motion for reconsideration; and July 16, 2020, the
9 trial court denied plaintiff's second motion for reconsideration.

10 The minute order was mailed to the parties and plaintiff timely filed a notice of appeal
11 from this order.⁵

12 DISCUSSION

13 Applicable Law

14 *Vexatious Litigant*

15 "The vexatious litigant statutes [citations] are designed to curb misuse of the court
16 system by those persistent and obsessive litigants who, repeatedly litigating the same issues
17 through groundless actions, waste the time and resources of the court system and other litigants.
18 [Citation.]" (*In re Marriage of Rifkin & Carty* (2015) 234 Cal.App.4th 1339, 1345.)

19 As pertinent to this appeal, a "vexatious litigant" is a person who "(2) [a]fter a litigation
20 has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in
21 propria persona, . . . the validity of the determination against the same defendant . . . as to
22 whom the litigation was finally determined, or . . . [¶] (3) [i]n any litigation while acting in
23 propria persona, repeatedly files unmeritorious motions, pleadings, or other papers . . ." (§
24 391, subd. (b)(2), (3).)

25 There is no specific number of motions or pleadings that must be filed for the litigant's
26 conduct to satisfy the "repeatedly" element of the statute. The word "repeatedly" for the
27

28 ⁵An order declaring a person to be a vexatious litigant is appealable. (§ 904.2, subd. (g); *Luckett
v. Panos* (2008) 161 Cal.App.4th 77, 85, 90; *In re Marriage of Deal* (2020) 45 Cal.App.5th 613, 619.)

1 purpose of the vexatious litigant statutes refers to a ““past pattern or practice on the part of the
2 litigant that carries the risk of repetition in the case at hand.’ [Citation.]” (*Goodrich v. Sierra*
3 *Vista Regional Medical Center* (2016) 246 Cal.App.4th 1260, 1267.) In regard to the
4 requirement that the litigation must be finally determined, this is defined to mean that “all
5 avenues for direct review have been exhausted. [Citation.]” (*Childs v. PaineWebber Inc.*
6 (1994) 29 Cal.App.4th 982, 992.) Lastly, the statutory scheme defines “litigation” to mean
7 “any civil action or proceeding, commenced, maintained or pending in any state or federal
8 court.” (§ 391, subd. (a).)

9 ““A court exercises its discretion in determining whether a person is a vexatious
10 litigant. [Citation.] We uphold the court’s ruling if it is supported by substantial evidence.
11 [Citations.] On appeal, we presume the order declaring a litigant vexatious is correct and imply
12 findings necessary to support the judgment.” [Citation.]”” (*In re Marriage of Riskin & Carty*,
13 *supra*, 234 Cal.App.4th at p. 1346.)

14 *Burden of the Appealing Party*

15 “It is the duty of an appellant to provide an adequate record to the court establishing
16 error. Failure to provide an adequate record on an issue requires that the issue be resolved
17 against appellant. [Citation.]” [Citation.] This principle stems from the well-established rule
18 of appellate review that a judgment or order is presumed correct and the appellant has the
19 burden of demonstrating prejudicial error. [Citations.] By failing to provide an adequate
20 record, [an] appellant cannot meet his burden to show error and we must resolve any challenge
21 to the order against him. [Citation.]” (*Hotels Nevada, LLC v. L.A. Pacific Center, Inc.* (2012)
22 203 Cal.App.4th 336, 348.) We cannot consider factual references in the parties’ briefs that are
23 not part of the appellate record. (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 102.)

24 Also, the appealing party “must affirmatively demonstrate error through reasoned
25 argument, citation to the appellate record, and discussion of legal authority. [Citations.]”
26 (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685.) “This requires more
27 than simply stating a bare assertion that the judgment, or part of it, is erroneous and leaving it to
28 the appellate court to figure out why; it is not the appellate court’s role to construct theories or

1 arguments that would undermine the judgment’ [Citation.]” (*Lee v. Kim* (2019) 41
2 Cal.App.5th 705, 721.) Simply stated, it is not our function to act as counsel on appeal for
3 plaintiff, and we decline to do so. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th
4 539, 545-546.) When a party presents an issue on appeal without citation to authority and a
5 developed argument, we may deem the issue forfeited. (*Keyes v. Bowen* (2010) 189
6 Cal.App.4th 647, 655-656.)

7 Analysis⁶

8 Plaintiff’s contentions on appeal are not a model of clarity. It appears plaintiff is seeking
9 relief on the following grounds: relitigation is permitted because the judgment of dismissal was
10 not final at the time defendant “reopened the causes” by filing a motion for attorney fees; the
11 appellate division’s acceptance of plaintiff’s August 26, 2019 notice of appeal from the order
12 granting defendant attorney fees necessarily meant the appeal had merit; section 472c provides
13 authorization to relitigate the dismissal of defendant; plaintiff does not fit the definition of a
14 vexatious litigant because all of the identified pleadings filed by plaintiff had merit; plaintiff’s
15 case was assigned to Judge Murillo to cover up the misconduct of Judge Takasugi; and Judge
16 Murillo was prejudiced against plaintiff and committed a variety of mistakes.

17 The premise underlying plaintiff’s first contention—the judgment of dismissal for
18 defendant was not final—is not supported by the record. The documents needed to determine
19 the finality date were not designated by plaintiff for inclusion in this appeal. The missing
20 documents would include the signed order of dismissal and the clerk’s certificate of mailing the
21 order to the parties. These are the documents that, for purposes of determining if a vexatious
22 litigant order is supported by substantial evidence, demonstrate whether all avenues for direct
23 review had been exhausted. (See *Childs v. PaineWebber, supra*, 29 Cal.App.4th at pp. 992-
24 993.) As stated, *ante*, judgments and orders are presumed correct, and this presumption applies
25

26 Plaintiff’s opening brief consists of a table of contents, introduction, statement of case,
27 argument, and conclusion. However, what appear to be contentions can be found in the introduction
28 and statement of the case. We address the contents found in the argument section of the brief. (See
Cal. Rules of Court, rule 8.883(a)(1)(A); *Provost v. Regents of University of California* (2011) 201
Cal.App.4th 1289, 1294.)

1 to an order finding a person to be a vexatious litigant. (*Tokerud v. Capitolbank Sacramento*
2 (1995) 38 Cal.App.4th 775, 780.) Further, “[t]he appellate division will presume that the
3 record in an appeal includes all matters material to deciding the issues raised.” (Cal. Rules of
4 Court, rule 8.830(b).)

5 Plaintiff cites no authority for her second contention that the acceptance of an appeal by
6 the reviewing court is a determination that the appeal has merit. Accordingly, we treat this
7 contention as forfeited. (*Keyes v. Bowen, supra*, 189 Cal.App.4th at pp. 655-656; *Provost v.*
8 *Regents of University of California, supra*, 201 Cal.App.4th at p. 1300.)⁷

9 Contrary to the assertions in plaintiff's brief, section 472c is not authorization for
10 plaintiff to repeatedly litigate in the trial court the order dismissing defendant from the
11 complaint. The clear and unambiguous language of the statute limits its application to orders
12 that are reopened on appeal when the trial court sustains a demurrer as to something other than
13 the entire complaint.⁸

14 Plaintiff's contention that she did not meet the definition of a vexatious litigant because
15 her pleadings had merit fails. First, in advancing the various arguments in her brief, plaintiff
16 fails to appreciate and distinguish the fact the trial court found her to be a vexatious litigant
17 under two separate and independent sections of the controlling statute. Subdivision (b)(2) of
18 section 391 focuses on the self-represented litigant who repeatedly or attempts to repeatedly
19 litigate a final determination against the litigant and in favor of a defendant. Subdivision (b)(3)
20 focuses on the self-represented litigant who repeatedly files unmeritorious motions, pleadings
21

22 ⁷Plaintiff specifically references the August 26, 2019 notice of appeal being assigned appellate
23 division case number BV 033207, and that the appeal was still pending. The opinion was filed on
24 March 22, 2021, approximately three weeks after plaintiff filed her opening brief. The opinion
25 affirmed the attorney fees order and found untimely plaintiff's appeal of, *inter alia*, the August 3, 2017
26 minute order sustaining Xu's demurrer without leave to amend, the October 19, 2019 judgment, the
November 5, 2018 judgment, and the November 5, 2018 order of dismissal. The record for the appeal
indicates that on November 5, 2018, the clerk mailed the parties a filed-endorsed copy of the judgment
of dismissal accompanied by a proof of service.

27 ⁸Section 472c, subdivision (c) provides: “As used in this section, ‘open on appeal’ means that a
28 party aggrieved by an order listed in subdivision (b) may claim the order as error in an appeal from the
final judgment in the action.”

1 or other papers. Even assuming the trial court's findings were deficient under one of the
2 subdivisions, plaintiff nevertheless would remain a vexatious litigant if the court's findings
3 under the second subdivision withstands scrutiny. (See Cal. Const., art. VI, § 13; see also
4 *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800.) Second, in regard to the court's
5 findings under subdivision (b)(3), plaintiff failed to include in the record all the pleadings and
6 motions and the orders determining them that are identified by the trial court in its findings.
7 (*Christie v. Kimball* (2012) 202 Cal.App.4th 1407, 1412.) Third, in regard to subdivision (b)(2)
8 and as previously stated, plaintiff has failed to overcome the presumption of correctness that the
9 order dismissing defendant was final at the time plaintiff commenced her efforts to relitigate the
10 matter. (See *In re Marriage of Rifkin & Carty, supra*, 234 Cal.App.4th at p. 1346.)

11 It is not the function of this court to act as counsel on appeal for plaintiff and to
12 determine whether she may be entitled to relief. (*Niko v. Foreman* (2006) 144 Cal.App.4th
13 344, 368.) Plaintiff is required to do more than complain of error and rely on matters that are
14 not in the record. (*Ibid.*)

15 Plaintiff's remaining contentions focus on her displeasure with the judicial officers who
16 presided over her case. We note that plaintiff does not direct this court to any place in the
17 record where she objected to the conduct of the judicial officers, where it supports her
18 contentions of misconduct and/or biases, or that she sought any of the remedies available to her
19 under the law. (*Arave v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (2018) 19 Cal.App.5th
20 525, 543-544.) In any event, our review of the limited record before us reveals no judicial
21 misconduct. Plaintiff had notice of the hearing to declare her a vexatious litigant and was
22 afforded an opportunity to be heard. (See *Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 224-226.)
23 Plaintiff did not file any pleadings and she did not appear for the hearing. More importantly,
24 she has failed to sustain on appeal her burden of demonstrating with an adequate record, a
25 cogent argument and citation to authority, that the trial court committed reversible error by
26 finding her to be a vexatious litigant.

27 ///

28 ///

DISPOSITION

The order finding plaintiff to be a vexatious litigant under section 391, subdivisions (b)(2) and (b)(3) is affirmed. Defendant to recover costs on appeal.⁹

P. McKay, P. J.

We concur:

Kumar, J.

~~Richardson, J.~~

⁹Defendant's motion for sanctions for a frivolous appeal is denied.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
Civil Division
Central District, Spring Street Courthouse, Department 26

17K05412

JIANG, YVONNE vs XU, HELEN

August 10, 2020
10:00 AM

Judge: Honorable Serena R. Murillo
Judicial Assistant: D. Keith
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): MAXWELL E. LIN Appearance by Marjorie Minnetian (Telephonic)

NATURE OF PROCEEDINGS: Order to Show Cause Re: why Yvonne Jiang should not be declared a vexatious litigant and be subject to a pre-filing order under Code of Civil Procedure section 391.7

The Court's tentative ruling is posted online for parties to review.

There are no appearances by counsel for plaintiff this date.

The matter is called for hearing.

Counsel for defendant submits to the Court's tentative ruling in open court via LA Court Connect.

The Court's tentative ruling is adopted as the final order of the Court as follows:

The Court finds Plaintiff Yvonne Jiang is a vexatious litigant and subject to a pre-filing order under Code of Civil Procedure section 391.7. Plaintiff is prohibited from the filing of any new litigation in the courts of this state, in propria persona, without first obtaining leave of the Presiding Judge or his or her designee in the court where the litigation is proposed.

ANALYSIS:

Plaintiff Yvonne Jiang ("Plaintiff") filed a Complaint for (1) breach of contract, (2) fraud, and (3) fraud against Defendants Helen Xu ("Xu" or "Defendant Xu"), Wenmei Yu and David Gao (collectively, "Defendants") on April 28, 2017. The first cause of action for breach of contract was alleged against Defendant Xu. The second cause of action for fraud was alleged against Defendant Yu. The third cause of action for fraud was alleged against Defendant Gao.

On June 14, 2017, Plaintiff filed a "First Amendment to the Third Cause of Action to the

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Complaint.” Instead of being a complete Amended Complaint, it was simply an amended version of the third cause of action.

On June 23, 2017, Plaintiff filed a “Second Amendment to Complaint and Attachment of First Cause of Action” that purported to amend the first cause of action. Instead of being a complete Amended Complaint, it was simply an amended version of the first cause of action.

Defendant Gao’s demurrer to the Complaint came for hearing on July 11, 2017, at which time the court sustained the demurrer to the first cause of action without leave to amend; and with 30 days’ leave to amend as to the second and third causes of action. Defendant Xu’s demurrer to the first cause of action of the Complaint came for hearing on August 3, 2017, at which time the Court sustained it without leave to amend.

On August 10, 2017, Plaintiff filed a First Amended Complaint that purported to name “Coldwell Banker George Realty,” Robert Clark, and Austin Wong as new defendants. The First Amended Complaint removed the first cause of action and alleged a second cause of action for fraud and deceit against Defendants Wong, Xu, and Gao. It also alleged a third cause of action for constructive fraud against Defendants Clark and Coldwell Banker George Realty.

On August 15, 2017, Defendant Gao’s demurrer to the “First Amendment to the Third Cause of Action” came for hearing before the court, at which time it was sustained with 30 days leave to amend.

On September 14, 2017, Plaintiff filed a “Second Amendment to the Third Cause of Action.” On December 21, 2017, the court sustained Defendant Gao’s demurrer to the Second Amendment to the Third Cause of Action and ordered Plaintiff to file a properly amended Complaint within 30 days.

From January 2018 to October 2018, there was no activity in this case by any party. On October 23, 2018, Plaintiff filed a Second Amended Complaint. The Second Amended Complaint alleges a single cause of action titled “Second Cause of Action for Fraud and Deceit” and is brought against Defendants Xu, Yu, and Gao. Coldwell Banker George Realty, Robert Clark, and Austin Wong are not named as defendants. On November 5, 2018, the Court reaffirmed the August 3, 2017 order sustaining Defendant Xu’s demurrer without leave to amend and ordered Defendant Xu dismissed from the action with prejudice.

In recognition that the Second Amended Complaint was filed long after the term for leave granted, Plaintiff filed a motion for leave to amend the First Amended Complaint on November

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6. 2018.

On February 7, 2019, the court denied Defendant Gao's motion to strike the Second Amended Complaint and deemed that pleading filed as of October 23, 2018. The court also clarified the record by dismissing Xu from the First and Second Amended Complaints.

On June 5, 2019, following a non-trial, the trial court entered judgment in favor of Defendant Gao.

On July 11, 2019, the Court granted Defendant Xu's motion for attorney's fees.

On June 20, 2019, Plaintiff filed a Motion for Reconsideration of Order Granting Dismissal of Xu and Judgment for Helen Xu. Plaintiff also filed an appeal of the final judgment of dismissal on August 26, 2018.

On October 28, 2019, the Appellate Division dismissed the appeal of the judgment as untimely. On December 13, 2019, the Appellate Division denied Plaintiff's request to amend the appeal.

Thereafter, the Court denied the Motion for Reconsideration on February 13, 2020.

On February 7, 2020, Plaintiff filed a Motion to Vacate Defendant Xu's Dismissal. On February 11, 2020, Plaintiff filed a Motion for Leave to Amend the Motion for Reconsideration. On February 24, 2020, Plaintiff filed a second Motion for Reconsideration.

On June 26, 2020, the Court denied the Motion to Amend the Motion for Reconsideration. On July 16, 2020, the Court denied the second Motion for Reconsideration. At the same hearing, the Court set an Order to Show Cause regarding why Plaintiff Yvonne Jiang should not be declared a vexatious litigant and be subject to a pre-filing order for August 10, 2020. The Court further ordered that any response to the Order to Show Cause be filed and served at least nine (9) court days before the hearing date.

To date, no response to the Order to Show Cause has been filed.

Order to Show Cause Why Plaintiff Should Not Be Deemed a Vexatious Litigant

"The vexatious litigant statutes ([Code of Civil Procedure] §§ 391–391.7) are designed to curb misuse of the court system by those persistent and obsessive litigants who, repeatedly litigating the same issues through groundless actions, waste the time and resources of the court system and

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other litigants." (Shalant v. Girardi (2011) 51 Cal.4th 1164, 1169.) Code of Civil Procedure section 391, subdivision (b) defines a vexatious litigant as a person who does any of the following:

(2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(Code Civ. Proc., § 391, subd. (b).)

Plaintiff meets the definition under both subdivisions (b)(2) and (b)(3). Plaintiff has repeatedly filed unmeritorious pleadings and motions that are frivolous. In the course of this action, initiated on April 26, 2017, Plaintiff filed four amended pleadings that were improper including (1) the "First Amendment to the Third Cause of Action to the Complaint" on June 14, 2017; (2) the Second Amendment to Complaint and Attachment of First Cause of Action" on June 23, 2017; (3) the First Amended Complaint on August 10, 2017 without leave to amend; and (4) the Second Amended Complaint on October 23, 2018 without leave to amend. The improper pleadings included reiterating claims against Defendant Xu despite dismissal of those claims with prejudice on August 3, 2017. Plaintiff also filed three unmeritorious motions seeking reconsideration after entry of judgment, which were denied on that basis. Plaintiff's repeated filing of unmeritorious pleadings and motions qualifies as vexatious under subdivision (b)(3) of section 391.

Additionally, the above pleadings and motions demonstrate that Plaintiff has repeatedly sought to relitigate the validity of the determination of the final determinations made against her. On August 3, 2017, the Court sustained Defendant Xu's demurrer to the Complaint. Plaintiff filed four pleadings realleging the already dismissed claims and made five additional attempts to overturn the judgment. Namely, three motions for reconsideration, a motion to vacate the

**Additional material
from this filing is
available in the
Clerk's Office.**