

Court of Appeal of the State of California
Fourth Appellate District, Division One

STORIX, INC.,

Plaintiff and Respondent

v.

ANTHONY JOHNSON,

Defendant, Appellant.

ANTHONY JOHNSON,

Cross-Claimant, Appellant

v.

DAVID HUFFMAN, RICHARD
TURNER, MANUEL
ALTAMIRANO, DAVID
KINNEY, and DAVID
SMILJKOVICH,

*Cross-Defendants,
Respondents.*

ANTHONY JOHNSON,

Plaintiff, Respondent

v.

DAVID HUFFMAN, RICHARD
TURNER, MANUEL
ALTAMIRANO, and DAVID
KINNEY

Defendants, Respondents

Court of Appeals Case No. **D075308**

Superior Court case no.

37-2015-00028262-CU-BT-CTL

Consolidated under lead case no.

37-2015-00034545-CU-BT-CTL.

On appeal from Judgments and Orders
of San Diego Superior Court
Judge Kevin A. Enright

Court of Appeals Case No. **D077096**

Superior Court Case No.

37-2019-00002457-CU-BT-CTL

On Appeal from Orders of San Diego
Superior Court Judge
Katherine A. Bacal

**REPLY TO RESPONDENTS' OPPOSITION TO
APPLICATION FOR CONSOLIDATION OF APPEALS**

Anthony Johnson

In Pro Per

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Appellant Anthony Johnson (“Johnson”) respectfully submits this reply to the opposition filed on July 22, 202, by Defendants/Respondents’ David Huffman, Richard Turner, Manuel Altamirano, and David Kinney (collectively, "Respondents") to consolidate the above-captioned appeals.

I. DISCUSSION

Respondents assert that “the two appeals are not interdependent and involve different parties and issues on appeal.” (Response at p. 2.) Nothing could be further from the truth.

A. The Appeals Need Not Involve the Same Parties

The purpose of consolidation is to expedite the resolution of separate appeals, which may be accomplished by (1) placing them on the calendar together, (2) making use of briefs and arguments interchangeably, or (3) deciding the other cases on the authority of the first. (9 Witkin, California Procedure (5th ed. 2008) Appeal, §788.) The Court is not required to issue a single opinion on consolidated appeals, so the parties need not be the same.

B. The Appeals Involve the Same Parties

Although the parties need not be the same, Johnson provide facts in the Application showing that they are:

“Respondents are the collective 52% majority shareholders of Storix, who are also the board majority and occupy all officer positions. Respondents have exclusive control of Storix, and they use its funds and attorneys to sue Johnson and defend themselves against all counter claims. (Id. ¶¶ 3-10, 17, 22.)”

(Application at p. 1.) The above facts are highly relevant to the issues in this Application, both appeals, and all underlying actions. Here, Respondents directed their personal attorneys to oppose consolidation, directed that Storix pay them to do so, and then unnecessarily directed Storix’s counsel and funds to joining their opposition.

Throughout all the underlying litigation, Respondents argued they can’t be held accountable for any claims against them because they were acting as agents of Storix Inc. (“Storix”). Here they take the opposite position by asserting that they and Storix are

separate and distinct. Respondents fueled all the underlying litigation by switching between these positions and cannot be allowed to likewise complicate and delay the appeals in the same manner.

C. The Issues are Interrelated and Interdependent

First, the malicious prosecution claim in D077096 was brought against Respondents because they directed Storix’s attorneys to file the lawsuit in D075308. Respondents have never argued the lawsuit was not malicious, only that they can’t be held liable because Johnson cannot allege favorable termination. Reversal of the \$3,739.14 claim against Johnson will establish favorable termination of the “entire lawsuit” thereby requiring reversal of the attorney fees awarded against Johnson on the basis that he would not have prevailed on his malicious prosecution action had he not voluntarily dismissed it.

Second, Respondents make no reference to Johnson’s facts and arguments that both appeals involve the *same issues* underlying costs awarded to the *same parties*:

“Johnson asked Judge Bacal to stay her decision in the Cost Order until the appeal of the Email Judgment since it involved the same question of whether it was proper to award costs to Respondents who incurred no costs (and what it means to “incur” costs). (See Johnson Decl. ¶ 26.) She would not stay her decision, so both appeals ask the Court to resolve the same issue.”

II. CONCLUSION

The appeals in Case Nos. D075308 and D077096 should be consolidated. Johnson also requests that the Court consider Respondents’ opposition when deciding the appeals since it further demonstrates the exact issue raised on appeals that fueled all the underlying litigation for five years.

Dated: July 22, 2020

Respectfully submitted by:

/s/Anthony Johnson
In Pro Per

PROOF OF SERVICE

I, Anthony Johnson, declare that I am over the age of 18 and self-represented in the two foregoing actions to be consolidated. I am familiar with the business practice for electronic filing and service through the TrueFiling system, pursuant to which practice I served the foregoing:

REPLY TO RESPONDENTS' OPPOSITION TO APPLICATION FOR CONSOLIDATION OF APPEALS

by electronic filing and sending to the e-mail addresses of counsel listed below:

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I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on July 22, 2020 at Las Vegas, Nevada.

/s/ Anthony Johnson