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Attorney for Defendants  
Mischelynn Scarlatelli, Armie Troy Isom, Shirley  
Isom, and "Armie Troy Isom and Shirley Isom,  
trustees Armie Troy Isom and Shirley Isom Family  
Trust u/d/t dated December 28, 2004" *erroneously  
sued as* "Isom Armie T. & Shirley Trust, a  
California Trust"

**CONFORMED COPY  
ORIGINAL FILED**  
Superior Court of California  
County of Los Angeles

**OCT - 1 2013**

Sherril R Carter Executive Officer/Clerk  
By G Berni, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES – POMONA COURTHOUSE

MARK SCARLATELLI, an individual, for  
himself and on behalf of GAMUT  
CONSTRUCTION COMPANY, INC, a  
California Corporation,

Plaintiff,

vs.

GAMUT CONSTRUCTION COMPANY,  
INC, a California Corporation;  
MISCHELYNN SCARLATELLI; an  
individual; ARMIE TROY ISOM, an  
individual; SHIRLEY ISOM, an  
individual; ISOM ARMIE T. & SHIRLEY  
TRUST, a California Trust; and DOES 1 to  
25 inclusive,

Defendants.

Case No. KC066075  
Judge: Honorable Dan Thomas Oki

**~~PROPOSED~~ ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SANCTIONS AGAINST PLAINTIFF  
MARK SCARLATELLI AND HIS  
ATTORNEYS DARREL C. MENTHE,  
ADAM I. MILLER AND MILLER MILLER  
MENTHE, LLP PURSUANT TO CODE OF  
CIVIL PROCEDURE SECTION 128.7**

Hearing:  
Date: October 1, 2013  
Time: 8:30 a.m.  
Dept.: J

Action Filed: June 6, 2013  
Trial Date: None set

1 **[PROPOSED] ORDER**

2 On October 1, 2013, the Court heard oral argument on the motion of Defendants  
3 Mischelynn Scarlatelli, Armie Troy Isom, Shirley Isom, and "Armie Troy Isom and Shirley Isom,  
4 trustees Armie Troy Isom and Shirley Isom Family Trust u/d/t dated December 28, 2004"  
5 *erroneously sued as* "Isom Armie T. & Shirley Trust, a California Trust" (collectively,  
6 "Defendants") for sanctions against Plaintiff Mark Scarlatelli ("Plaintiff") and his attorneys  
7 Darrel C. Menthe, Adam I. Miller and Miller Miller Menthe, LLP pursuant to Code of Civil  
8 Procedure section 128.7. Jerry R. Dagrella of Dagrella Law Firm, PLC appeared as attorney for  
9 Defendants. Adam I. Miller of Miller Miller Menthe, LLP appeared as attorney for Plaintiff.

10 **Having considered all the papers submitted, and heard oral argument, the Court**  
11 **rules as follows:**

12 This action was filed on June <sup>6</sup>13, 2013 by Plaintiff Mark Scarlatelli, individually and on  
13 behalf of Gamut Construction Company, Inc., and against Defendants Gamut Construction  
14 Company, Inc., Mischelynn Scarlatelli, Armie Troy Isom, Shirley Isom, and the Isoms as trustees  
15 of a family trust. In his Complaint, Plaintiff alleges that Gamut built a home in La Verne on  
16 property owned by either the Isoms or the trust, and after construction was complete title to the  
17 property was to be transferred to Bella Palazzo, LLC, an entity in which Defendant Troy Isom  
18 and Plaintiff each have a 50% interest. On 11/15/11, Plaintiff requested that the Property be  
19 transferred to Bella Pallazo, LLC, but the Isoms refused, and also refused to pay Gamut  
20 Construction Company, Inc. for the construction. The Complaint, filed 6/6/13, asserts causes of  
21 action for:

- 22 1. Quantum Meruit  
23 2. Conversion  
24 3. Trespass to Chattels  
25 4. Breach of Fiduciary Duty

26 Defendants Mischelynn Scarlatelli, Armie Troy Isom, Shirley Isom, and Armie Troy Isom  
27 and Shirley Isom, Trustte of the Armie Troy Isom and Shirley Isom Trust u/d/t Dated December  
28 28, 2004 move to strike the Complaint herein, dismiss the action, and impose reasonable attorney

1 fees and costs in the amount of \$9,120.00 against Plaintiff and his attorneys pursuant to CCP §  
2 128.7 on the ground that the Complaint is without factual or legal merit and was filed primarily  
3 for an improper purpose to harass Defendants.

4 On 12/4/09, Defendant Mischelynn Scarlatelli filed for divorce against Plaintiff Mark  
5 Scarletti, which remains pending. On 9/18/12 and 10/3/12, Plaintiff filed 2 civil suits against  
6 Mischelynn's parents, the Isoms. Case No. KC063680 was assigned to Department J and  
7 KC064781 was assigned to Department H. After Defendants filed motions for sanctions pursuant  
8 to CCP § 128.7, counsel for Plaintiff dismissed those lawsuits on May 7, 2013 and May 22, 2013  
9 respectively. The court takes judicial notice of its files in those actions.

10 Then, only a few weeks later, on 6/6/13, Attorney Menthe filed three more lawsuits on  
11 behalf of Plaintiff, including this action, raising the same claims and allegations as the previous  
12 lawsuits that he dismissed. Counsel for Defendants contends that Attorney Menthe is well aware  
13 of the fact that the family law court has exclusive jurisdiction over these claims.

14 Counsel for Defendants contends that all of the causes of action relate to claims for  
15 damages and return of construction equipment belonging to Gamut Construction, Inc., not Mark  
16 Scarlatelli individually, that this derivative action was filed in violation of Corp. Code 800(c), and  
17 that the claims against the Isoms individually are without merit because they are not the owners  
18 of the property.

19 Defendants also contend that the quantum meruit claim is barred by the two-year statute  
20 of limitations because construction was completed in 2010 and this action was filed on June 6,  
21 2013; that quantum meruit also fails because discovery in the prior actions demonstrated that the  
22 services were performed for Bella Pallazo, LLC rather than the Isoms or the trust; and that the  
23 conversion and trespass causes of action fail because the equipment has been on the property for  
24 more than three years prior to filing suit. Further, Mischelynn Scarlatelli is a 50% shareholder of  
25 Gamut Construction, Inc. and has as much right as Plaintiff to manage the assets of the  
26 corporation pending an order of the family law court.

27 In opposition, Plaintiff contends that the defects in the prior cases had to do with corporate  
28 authority. The cases were brought directly in the name of the corporate entities, but Defendants

1 argued that Plaintiff lacked authority to bring the action in the name of the corporation. Therefore,  
2 Plaintiff decided to re-file the complaints as derivative actions, which a shareholder can do. The  
3 sanctions motion should not to be employed as a pleading challenge, nor is every attorney  
4 warranting that his or her pleading is 100% demurrer-proof when signing it.

5 Plaintiff argues that sanctions are not warranted, and that the issue is whether the civil  
6 action is in reality the family law action reframed as a civil action. Here, the causes of action  
7 against Mischelynn are not of the type that the family court has jurisdiction. They do not relate to  
8 a division of marital assets, but are derivative actions filed on behalf of the company that  
9 Mischelynn owns with Plaintiff.

10 In reply, counsel for Defendant contends that Plaintiff has conducted discovery in the  
11 family law action on the very same issues he now contends are not subject to family court  
12 jurisdiction. Gamut Construction, Inc. is a 100% community property business that is already the  
13 subject of litigation in the family court, which has exclusive jurisdiction over the division of  
14 community property. Troy and Shirley Isom are not proper parties to this action, and have  
15 provided declarations disclaiming their individual ownership of the real property, as well as  
16 copies of the deed.

17 SAFE HARBOR:

18 A motion for sanctions under CCP 128.7 cannot be filed until 21 days after it has been  
19 served. During this time, the party being served has the opportunity to correct the violation, and if  
20 it does so, the sanctions motion cannot be filed or pursued. (CCP 128.7(c)(1).)

21 The motion was served on 6/27/13, and filed more than 21 days thereafter on 7/19/13.  
22 Accordingly, Defendants provided the requisite safe harbor.

23 MERITS:

24 By presenting to the court, whether by signing, filing, submitting, or later advocating, a  
25 pleading, petition, written notice of motion, or other similar paper, an attorney is certifying that to  
26 the best of the person's knowledge, information, and belief, formed after an inquiry reasonable  
27 under the circumstances that THE PLEADING IS NOT BEING PRESENTED PRIMARILY  
28 FOR AN IMPROPER PURPOSE, SUCH AS TO HARASS OR TO CAUSE UNNECESSARY

1 DELAY OR NEEDLESS INCREASE IN THE COST OF LITIGATION, and that the claims,  
2 defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous  
3 argument for the extension, modification, or reversal of existing law or the establishment of new  
4 law. (CCP 128.7(b)(1)-(2).) The attorney or party presenting a pleading or other paper to the court  
5 certifies that, to the best of that person's knowledge and belief "formed after an inquiry reasonable  
6 under the circumstances," the allegations and other factual contentions have evidentiary support  
7 or, "if specifically so identified, are likely to have evidentiary support after a reasonable  
8 opportunity for further investigation or discovery." (CCP 128.7(b)(3).)

9 On 12/4/09, Defendant Mischelynn Scarlatelli filed for divorce against Plaintiff Mark  
10 Scarletti.

11 Plaintiff Mark Scarletti has now filed five separate lawsuits against Mischelynn, her  
12 parents, and her parent's trust, alleging claims on behalf of Gamut Construction Company, Inc.

13 MOTION OF DEFENDANT MISCHELYNN SCARLATELLI:

14 "Where a proceeding has been assigned for hearing and determination to one department  
15 of the superior court by the presiding judge and the proceeding has not been finally disposed of, it  
16 is beyond the jurisdictional authority of another department of the same court to interfere with the  
17 exercise of the power of the department to which the proceeding has been so assigned. If such  
18 were not the law, conflicting adjudications of the same subject-matter by different departments of  
19 the one court would bring about an anomalous situation and doubtless lead to much confusion....

20 "One department of the superior court cannot enjoin, restrain, or otherwise interfere with  
21 the judicial act of another department of the superior court. Even between superior courts of  
22 different counties, having coequal jurisdiction over a matter, the first court of equal dignity to  
23 assume and exercise jurisdiction over a matter acquires exclusive jurisdiction. A judgment  
24 rendered in one department of the superior court is binding on that matter upon all other  
25 departments until such time as the judgment is overturned...

26 "Either spouse in a marital dissolution action may join third parties claiming an interest in  
27 alleged community property. Moreover, given that a divorce action divides community property  
28 and establishes support obligations, third parties claiming an interest in alleged community

1 property have the right to intervene in the action if the spouses do not join them. Strong policy  
2 reasons underlie this rule....

3 "There are sound reasons in policy why the court in a divorce action should be permitted  
4 to adjudicate the rights of third parties in property alleged by one or both of the spouses to be  
5 community property. One of the duties of the court sitting as a court of equity in a divorce  
6 proceeding is to make an equitable distribution or award of community property and to provide  
7 for the wife's support. The court can scarcely make a fair distribution community property  
8 without determining what property is community. If property alleged by one of the spouses to be  
9 community is in fact in whole or in part claimed by third persons, the court should determine as  
10 between the spouses whether the property is community, or owned by third persons. If a third  
11 party cannot be made a party and his rights adjudicated, it may be held in a separate action  
12 brought by or against such claimant that he is the owner of the property, with the result that a  
13 division of all community property made between the spouses in the divorce action, based on a  
14 determination that certain property was owned by them, will be rendered inequitable as between  
15 them." (*Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1449-1451.)

16 "Family law cases should not be allowed to spill over into civil law. ALMOST ALL  
17 EVENTS OCCURRING IN FAMILY LAW LITIGATION CAN BE REFRAMED AS CIVIL  
18 LAW ACTIONS, AND IT IS INCUMBENT ON COURTS TO EXAMINE THE SUBSTANCE  
19 OF CLAIMS, NOT JUST THEIR NOMINAL HEADINGS....

20 Under the rule of exclusive concurrent jurisdiction, when two superior courts have  
21 concurrent jurisdiction over the subject matter and parties, the first to assume jurisdiction has  
22 exclusive and continuing jurisdiction; the rule does not require absolute identity of parties, causes  
23 of action or remedies sought; if the first court has the power to bring before it all the necessary  
24 parties, application of the rule is not precluded merely because the parties in the second action are  
25 not identical." (*Burkle v. Burkle* (2006) 144 Cal. App. 4th 387.)

26 Gamut Construction, Inc. is community property owned by both Defendant and Plaintiff.  
27 This asset is a subject matter that the pending dissolution of marriage proceeding has exclusive  
28 jurisdiction over as the dissolution action was filed first. Plaintiff contends that *Burkle v. Burkle*

1 does not apply because the causes of action against Mischelynn do not relate to the split of marital  
2 assets, but are derivative actions filed on behalf of the company that Mischelynn owns with  
3 Plaintiff. However, as Burkle points out: “the rule does not require absolute identity of parties,  
4 causes of action or remedies sought; if the first court has the power to bring before it all the  
5 necessary parties, application of the rule is not precluded merely because the parties in the second  
6 action are not identical.” (*Burkle v. Burkle* (2006) 144 Cal. App. 4th 387.)

7 Here, like in *Burkle*, the parties have already conducted discovery in the dissolution action  
8 on the subject matter in the within civil lawsuit. The claims relate to community property jointly  
9 owned by Plaintiff and Defendant Mischelynn, and even though they may involve third parties,  
10 may be decided by the family law court. In addition, Plaintiff has apparently attempted to split his  
11 claims into three more separate lawsuits, needlessly increasing the cost of litigation. Accordingly,  
12 the court finds that Plaintiff brought this action against his former spouse for the improper  
13 purpose of harassing, or to cause unnecessary delay or needless increase in the cost of litigation.

14 MOTION OF ARMIE TROY ISOM AND SHIRLEY ISOM INDIVIDUALLY:

15 Plaintiff contends that individual Defendants Troy and Shirley are proper parties because  
16 they are “closely intertwined with the operation of the property.” (Opposition, 7:24-25.)  
17 However, on 6/27/13, the Isoms provided declarations disclaiming their individual ownership of  
18 the real property, along with the property deed. After being so notified, Plaintiff and his counsel  
19 had a duty to perform a reasonable inquiry under the circumstances that their factual contentions  
20 have evidentiary support. Plaintiff provides no evidence or argument aside from pure speculation  
21 that the Isoms are liable in their individual capacities. The court finds that Plaintiff brought the  
22 action against his former in-laws in their individual capacities for the improper purpose to harass,  
23 or to cause unnecessary delay or needless increase in the cost of litigation.

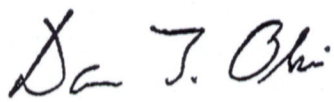
24 MOTION OF ARMIE TROY ISOM AND SHIRLEY ISOM AS TRUSTEES:

25 It was disclosed in discovery that the construction services performed by Gamut were  
26 performed for Bella Palazzo, LLC. (Dagrella Decl., Pars. 2-3.) Plaintiff provides no explanation  
27 in his Opposition that the claims against the trust are proper, or why the trust cannot be joined in  
28 the family law proceeding.

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The motion is granted and the Complaint herein is ordered stricken and dismissed with prejudice to allow the claims to be adjudicated in the family law proceeding. Plaintiff and his attorneys Adam I. Miller, Darrel C. Menthe, and Miller Miller Menthe LLP are sanctioned \$9,120.00 pursuant to CCP § 128.7, payable to counsel for Defendants within 30 days.

Dated: OCT 1 2013



HONORABLE DAN THOMAS OKI