

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 02/18/2022

TIME: 01:13:00 PM

DEPT: C-72

JUDICIAL OFFICER PRESIDING: Timothy Taylor

CLERK: Ryan A Willis

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2020-00024682-CU-MC-CTL** CASE INIT.DATE: 07/16/2020

CASE TITLE: **Zahau vs San Diego County Sheriffs Department [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

APPEARANCES

Ruling on Demurrer to Answer; OSC re Sanctions

Zahau v. County of San Diego, Case No. 2020-24682

Feb. 25, 2022, 1:30 p.m., Dept. 72 (off calendar)

1. Overview and Procedural Posture.

More than a decade ago, the body of a young woman named Rebecca Zahau was discovered early one morning, naked and bound, beneath the second floor balcony of a large house on Ocean Boulevard in Coronado. The sad event followed close on the heels of another tragedy in the same home. Because the Coronado Police Department does not have a homicide squad, the SDSO was called in. An investigation ensued. The SDSO did not recommend the case for prosecution, and no person has faced criminal charges in connection with Ms. Zahau's death.

A civil wrongful death case, litigated in Dept. 69, yielded a jury verdict that Adam Shacknai was liable for the death of Ms. Zahau. Following the 2018 verdict, the SDSO stated that it would reopen its investigation. In 2019, the SDSO re-asserted its view that Ms. Zahau committed suicide.

In the present case, the surviving family of Ms. Zahau seeks a writ of mandate compelling the SDSO to turn over its investigatory files under the California Public Records Act (CPRA). The petition was filed in July of 2020. At the due-course CMC, the court set the case for a merits hearing on October 15, 2021. ROA 16-17. The case has attracted media attention. ROA 27-30, 51-54.

The County sought to render a merits hearing unnecessary with its demurrer to the petition. ROA 18-23. In lieu of opposition, petitioners filed the operative First Amended Petition (FAP). ROA 24, 31. The County demurred again. ROA 33-38. It argued the records petitioners seek are exempt from disclosure as a matter of law, and that the Sheriff did not waive the exemption by disclosing some records. Petitioners filed opposition. ROA 43-44. The County filed reply. ROA 45-46. The court reviewed the

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papers, and published a tentative ruling on Wednesday, November 10, 2021. ROA 47. The court heard argument on Friday, November 12, following which the court took the demurrer under submission. Later that same afternoon, the court overruled the demurrer in a detailed order. ROA 49. In its order overruling the demurrer, the court directed counsel to address several specific questions in their merits briefing.

The County thereafter answered. ROA 56-57. On December 1, 2021, petitioners scheduled a hearing for today on a demurrer to the County's answer. ROA 58. However, the County filed an amended answer just eight days later. ROA 59-60. To date, no moving papers have been filed for the demurrer, and petitioners' counsel failed to call and advise the calendar clerk that the hearing would not go forward.

The merits hearing is set for July 2022. ROA 69.

2. Applicable Standards.

An answer should contain whatever denials or affirmative defenses are necessary to controvert the material allegations in the complaint. Code Civ. Proc. § 431.30.

There are three grounds for demurrer to an answer: (1) failure to state facts sufficient to constitute a defense; (2) uncertainty; and (3) failure to state whether contract alleged in the answer is written or oral. Code Civ. Proc. § 430.20. The latter ground is inapplicable here. Courts must liberally construe the pleading with a view to substantial justice between the parties. Code Civ. Proc. § 452; *Kotlar v. Hartford Fire Ins. Co.* (2000) 83 Cal.App.4th 1116, 1120.

Generally speaking, demurrers to answers are viewed by Superior Court judges as dilatory and largely unnecessary. Any issues raised by demurrers to answers can typically be dealt with in discovery and later dispositive motions.

3. Discussion and Ruling.

The hearing on petitioners' demurrer to the County's answer is ordered off calendar. No moving papers were ever received. Counsel should have called the calendar clerk so the court could have accommodated other litigants on this law and motion calendar. See San Diego Superior Court Local Rule 2.1.20 ("The moving party shall promptly call the independent calendar clerk if a matter will not be heard on the scheduled date....Failure to call the court shall be deemed a violation of the Local Rules, and may give rise to an OSC re Sanctions under Code of Civil Procedure, section 177.5.").

Ordinarily, the court would direct counsel for petitioners to comply with all applicable Local Rules regarding the filing and calendaring of motions, and not set an OSC re sanctions as doing so would just create more work for the staff of the Court. But here, the court observes there are law and motion matters set on the court's calendar for March 25 (by both sides) and April 22 – yet there are no moving papers on file as to any of them. ROA 61, 64-66.

Accordingly, the court sets an OSC re sanctions under section 177.5, in an amount not to exceed \$1,500, payable to the court, for petitioners' counsel's disobedience of Local Rule 2.1.20. The OSC is set for March 25, 2022 at 1:30 p.m.

The OSC - Sanctions is scheduled for 03/25/2022 at 01:30PM before Judge Timothy Taylor.

IT IS SO ORDERED.



Judge Timothy Taylor

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7072	
PLAINTIFF(S)/PETITIONER(S)/APPELLANT(S): Pari Zahau et.al.	
DEFENDANT(S)/RESPONDENT(S): County of San Diego et.al.	
Short Title: Zahau vs San Diego County Sheriffs Department [IMAGED]	
NOTICE OF HEARING	CASE NUMBER: 37-2020-00024682-CU-MC-CTL

Notice is given that the above-entitled case has been set for the reason listed below and at the location shown above. All inquiries regarding this notice should be referred to the court listed above.

<u>TYPE OF HEARING</u>	<u>DATE</u>	<u>TIME</u>	<u>DEPT</u>	<u>JUDGE</u>
OSC - Sanctions	03/25/2022	01:30 pm	C-72	Timothy Taylor

Effective Wednesday, June 16, 2021, the San Diego Superior Court will allow appearances for most hearings either in-person or virtually. Parties that elect to attend their hearing virtually should visit the Court's website at www.sdcourt.ca.gov for information and directions on making a virtual appearance.

If appearing virtually, you are strongly encouraged to visit the Court's website 24-hours prior to your scheduled hearing to prepare for your hearing.

OSC re sanctions under section 177.5, in an amount not to exceed \$1,500, payable to the court, for petitioners' counsel's disobedience of Local Rule 2.1.20.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO


Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Zahau vs San Diego County Sheriffs Department [IMAGED]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2020-00024682-CU-MC-CTL

I certify that I am not a party to this cause. I certify that a true copy of NOTICE OF HEARING was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The certification occurred at San Diego, California on 02/18/2022. The mailing occurred at Gardena, California on 02/22/2022.

Clerk of the Court, by:  R. Willis _____, Deputy

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CLERK'S CERTIFICATE OF SERVICE BY MAIL