

Case No. S277211

**IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA**

CITY OF LOS ANGELES,
Plaintiff and Appellant,

v.

PRICEWATERHOUSECOOPERS, LLC,
Defendant and Respondent.

After a Decision of the Court of Appeal of the State of California,
Second Appellate District, Division Five, Case No. B310118
On Appeal From the Superior Court for Los Angeles County
Case No. BC574690 • The Honorable Elihu M. Berle, Presiding

**CITY OF LOS ANGELES' ANSWER TO *AMICI CURIAE* BRIEF OF SOUTHWESTERN
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Pursuant to Rule 8.520(f)(7) of the California Rules of Court, Plaintiff and Appellant the City of Los Angeles (the “City”) respectfully files and serves this Answer to the Amici Curiae Brief (the “Amici Brief”) filed in support of Defendant and Respondent PricewaterhouseCoopers, LLP (“PwC”).

INTRODUCTION

The Amici Brief is of little assistance to this Court. The issue presented for review is whether the court’s authority to impose monetary sanctions for misuse of the discovery process is limited to circumstances expressly delineated in a method-specific provision of the Civil Discovery Act, or whether courts have independent authority to impose monetary sanctions for such discovery misconduct, including under Code of Civil Procedure sections 2023.010 and 2023.030.¹ The Amici Brief raises two arguments in response to this issue, neither of which holds water.

First, the Amici Brief contends that the Court of Appeal’s interpretation of Sections 2023.010 and 2023.030 is “unusual” and “contrary to the plain meaning” of the statute. (Amici Br., at p. 14.) To reach this incorrect conclusion, however, Amici only consider the language in Section 2023.030, subd. (a), which concerns monetary discovery sanctions. They neither address nor acknowledge the language in Section 2023.030 that precedes and limits the language in Section 2023.030, subd. (a). Nor do they account for the legislative history or other sources that confirm

¹ All further statutory references are to the Code of Civil Procedure unless otherwise specified.

the Court of Appeal's decision. This incomplete and unreliable reading of the Civil Discovery Act contravenes the Legislature's intent, as well as well-established California law.

Second, Amici incorrectly claim the Court of Appeal's decision creates a separation of powers issue by undermining the judiciary's inherent authority to control the proceedings before it. (Amici Br., at p. 20.) Neither the Civil Discovery Act nor the Court of Appeal's decision creates any such constitutional crisis. The Legislature has authority to regulate civil proceedings, and it has properly exercised that authority to limit the award of monetary sanctions for misconduct to circumstances where there is "statutory authority or an agreement of the parties." (*Olmstead v. Arthur J. Gallagher & Co.* (2004) 32 Cal.4th 804, 809 [quoting *Bauguess v. Paine* (1978) 22 Cal.3d 626, 634-39].) Through the Civil Discovery Act, the Legislature has limited monetary discovery sanctions to those circumstances expressly delineated in a method-specific provision of the Civil Discovery Act. (Code Civ. Proc., § 2023.030.) Tellingly, the Amici Brief fails to account for well-settled California law that has recognized these limitations.

The fact remains that the Court of Appeal's decision was not some kind of major, unprecedented shift in California law. The Court of Appeal correctly interpreted and applied the Civil Discovery Act, consistent with the intent of the Legislature, for the reasons detailed in the City's Answer Brief on the Merits. A trial court's authority to impose monetary sanctions for misuse of

the discovery process is limited to the circumstances expressly delineated in the Civil Discovery Act’s method-specific provisions.

ARGUMENT

Amici curiae briefs are intended to “assist the court by broadening its perspective on the issues raised by the parties” and providing “a wide variety of information and points of view that may bear on important legal questions.” (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1177 [internal quotations omitted].) Neither of the two arguments raised in the Amici Brief provides such assistance to this Court.

I. The Plain Meaning Of The Civil Discovery Act Confirms That A Court’s Authority To Impose Monetary Discovery Sanctions Is Limited To Circumstances Delineated In The Civil Discovery Act’s Method-Specific Provisions

Amici contend that the Court of Appeal’s interpretation of the Civil Discovery Act was “unusual” and “contrary to the plain meaning of sections 2023.030 and 2023.010.” (Amici Br., at p. 14.) Not so.

Amici acknowledge that “statutory interpretation” begins with the text and requires giving it a “plain and commonsense meaning . . . in the context of the statutory framework as a whole.” (*Id.* at pp. 14-15 [quoting *Coalition of Concerned Cmty’s., Inc. v. City of Los Angeles* (2014) 34 Cal.4th 733, 737].) “The plain meaning controls if there is no ambiguity in the statutory language.” (*Id.* at p. 15 [quoting *People v. Cornett* (2012) 53 Cal.4th 1261, 1265].)

But the Amici Brief fails to give such “plain and commonsense meaning” to the statute based on the “statutory

framework as a whole.” Amici’s criticisms of the Court of Appeal’s decision are based on an incomplete quotation and reading of Section 2023.030, subd. (a). The Amici Brief fails to quote, address, or even acknowledge the language that precedes and limits Section 2023.030, subd. (a): “*To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court . . . may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process . . .*” (Code Civ. Proc., § 2023.030 [emphasis added].) In other words, Amici fail to give Section 2023.030, subd. (a), its “plain and commonsense meaning” in the context of Section 2023.030, as well as the rest of the Civil Discovery Act, “as a whole.” (See *Coalition of Concerned Cmty’s., Inc., supra*, 34 Cal.4th at p. 737.)

Sections 2023.010 and 2023.030 are not part of any method-specific chapter. Section 2023.010 merely lists types of discovery misuse. (See Code Civ. Proc., § 2023.010; see also 2 Hogan & Weber, Cal. Civil Discovery (2 ed. 2005) Sanctions, § 15.1 [“statutory preamble or policy statement identifying generally the classes of undesirable conduct”].) And nothing in Section 2023.010 authorizes, mandates, or empowers courts with any authority to impose sanctions, including monetary sanctions, for discovery misuse. (See Code Civ. Proc., § 2023.010.)

Based on its plain language, Section 2023.030 does not authorize any sanctions, including monetary sanctions. Rather, the sanctions language in the Civil Discovery Act’s method-specific provisions authorize the sanctions described in

Section 2023.030. (See Code Civ. Proc., § 2023.030.) The statutory scheme provides trial courts “clear guidance” for what to do when confronted with discovery misconduct. (See *Amici Br.*, at p. 9.)

To read Sections 2023.010 and 2023.030 as authorizing monetary discovery sanctions on their own would make superfluous Section 2023.030’s language requiring authorization by another section. (*Cal. Mfrs. Ass’n v. Pub. Utilities Comm’n* (1979) 24 Cal.3d 836, 844 [“Interpretive constructions which render some words surplusage . . . are to be avoided.”].) It would also make superfluous the sanctions provisions of those chapters governing the specific discovery methods.

The legislative history and purpose of the Civil Discovery Act further bolster the Court of Appeal’s decision. The Reporter’s Notes and other extrinsic evidence confirm that Sections 2023.010 and 2023.030 are illustrative and definitional and do not independently authorize trial courts to impose monetary discovery sanctions. (E.g., Reporter’s Note to Section 2023, subs. (a), (b); 2 Hogan & Weber, *supra*, §§ 15.1, 15.2; Levine, O’Connor’s Cal. Practice (2023 ed.) Civil Pretrial, ch. 9-A § 5.)²

² “Code of Civil Procedure former section 2023 was repealed effective July 1, 2005, and reenacted without substantive changes as sections 2023.010, 2023.020, 2023.030, and 2023.040.” (*Muller v. Fresno Cmty. Hosp. & Med. Ctr.* (2009) 172 Cal.App.4th 877, 905 fn. 23.) Former Section 2023, subdivision (a) is now Section 2023.010; and former Section 2023, subdivision (b) is now Section 2023.030.

The Amici Brief seeks an interpretation that is inconsistent with the statute’s plain language and would circumvent the Legislature’s decision to make the “statutes governing each discovery method authorize particular types of sanctions in particular circumstance.” (*New Albertsons, Inc. v. Super. Ct.* (2008) 168 Cal.App.4th 1403, 1423; see also *Moofly Prods., LLC v. Favila* (2020) 46 Cal.App.5th 1, 10-11.) The Court of Appeal’s decision correctly deferred to the Legislature’s intent and is consistent with California law.

II. The Court Of Appeal’s Decision Does Not Give Rise To Any Separation Of Powers Issues

There also is no merit to Amici’s alarmist contention that the Court of Appeal’s decision raises a “separation of powers issue” that unconstitutionally undermines courts’ inherent powers. (Amici Br., at p. 14.) The Court of Appeal did not, as Amici claim, unconstitutionally restrict “the trial court’s ability to perform its core constitutional functions in administering justice and controlling the proceedings before it.” (*Id.* at p. 20.) Nor did it “undermin[e] the judiciary’s ability to carry out its core constitutional responsibilities.” (*Id.* at p. 17.)

The Amici Brief provides a lengthy discourse of constitutional principles and courts’ inherent powers, as well as an account of the history of English Chancery practice. (*Id.* at pp. 17-27.) It does not, however, acknowledge well-settled California law that has already addressed this question and outlined the bounds of courts’ powers to impose monetary discovery sanctions.

Here, the constitutional principle of separation of powers is not in question. But “California decisions long have recognized that, in reality, the separation of powers doctrine does not mean that the three departments of our government are not in many respects mutually dependent.” (*Super. Ct. v. Cnty. of Mendocino* (1996) 13 Cal.4th 45, 52 [internal quotations omitted].) “Of necessity the judicial department as well as the executive must in most matters yield to the power of statutory enactments. The power of the legislature to regulate criminal and civil proceedings and appeals is undisputed.” (*Brydonjack v. State Bar of Cal.* (1929) 208 Cal.439, 442-43 [internal citation omitted].)

“It does not follow, however, that the Legislature necessarily violates the separation of powers doctrine whenever it legislates with regard to such an inherent judicial power or function.” (*Cnty. of Mendocino, supra*, 13 Cal.4th at p. 57.) “[T]he Legislature generally may adopt reasonable regulations affecting a court’s inherent powers or functions, so long as the legislation does not ‘defeat’ or ‘materially impair’ a court’s exercise of its constitutional power or the fulfillment of its constitutional function.” (*Id.* at pp. 58-59.)

There also is no dispute that trial courts have inherent powers, which include the “inherent powers to supervise judicial proceedings.” (*Olmstead, supra*, 32 Cal.4th at p. 809.) But California law has long recognized that this inherent power does not extend to authority to impose monetary sanctions. To the contrary, California courts have emphasized the necessity of the Legislature to create safeguards and guidelines with respect to

trial courts' authority to impose such sanctions. "[A]ny power of the trial court to impose such sanctions should be created by the legislative branch of government with appropriate safeguards and guidelines developed following a thorough in-depth investigation." (*Young v. Redman* (1976) 55 Cal.App.3d 827, 839; see also *Trans-Action Com. Invs., Ltd. v. Jelinek* (1997) 60 Cal.App.4th 352, 367 ["sanctions statutes clearly reflect the Legislature's intent to impose 'procedural safeguards' on judicial sanctioning authority"].) "[T]o declare that the trial court has inherent power to impose [monetary] sanctions," "absent legislative action," would constitute "a giant step in expanding the power of the court with sweeping ramifications." (*Young, supra*, 55 Cal.App.3d at p. 839.)

Accordingly, this Court has held that "trial courts may not award attorney fees as a sanction for misconduct unless they do so pursuant to statutory authority or an agreement of the parties." (*Olmstead, supra*, 32 Cal.4th at p. 809 [quoting *Bauguess, supra*, 22 Cal.3d at pp. 634-39]; see also *Yarnell & Assocs. v. Super. Ct.* (1980) 106 Cal.App.3d 918, 923 ["The theory of *Bauguess* is that it would be unnecessary and unwise to permit trial courts to use fee awards as sanctions where not authorized by statute."].)

There is no merit to Amici Brief's assertion that trial courts' inherent powers to "control, supervise, and administer the proceedings before them" include monetary sanctions for "egregious misconduct." (Amici Br., at pp. 21-25.) Trial courts' inherent authority to control their proceedings is not unlimited

and it does not include the power to impose monetary sanctions to punish misconduct. (E.g., *Sagonowsky v. Kekoa* (2016) 6 Cal.App.5th 1142, 1153 fn. 9 [“A trial court has inherent authority to punish for contempt and control its own proceedings, but a court does not have inherent power to impose monetary sanctions payable to an opposing party or counsel.”]; *Fabricant v. Super. Ct.* (1980) 104 Cal.App.3d 905, 910 [“[T]he court’s inherent power to control its proceedings does not authorize fee awards to participants in litigation where there is a general legislative policy denying such awards and no statutory or recognized equitable exception is applicable.”]; *Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 764 fn. 19 [“[A trial court’s] inherent authority to sanction for egregious misconduct does not include the power to award attorney fees to punish that misconduct.”]; *Welgoss v. End* (1967) 252 Cal.App.2d 982, 992 [“The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks but the court may not impose sanctions which are designed not to accomplish the objects of the discovery but to impose punishment.”].)

This is for good reason. “Absent such safeguards, serious due process problems would result were trial courts to use their inherent power” to use fee awards to punish misconduct. (*Bauguess, supra*, 22 Cal.3d at 638.) “Such power in the trial court, unfettered and unbridled, without appropriate safeguards and guidelines, could cancel out any benefits derived to the judicial process by generating a proliferation of appeals.” (*Id.* at

p. 639 [quoting *Young, supra*, 55 Cal.App.3d at pp. 838-39].) This would undermine the “clear guidance to trial courts” that the Amici Brief calls for. (Amici Br., at p. 9.)

Even more, it is obvious on its face that the Court of Appeal’s decision does not frustrate a trial court’s ability to “control judicial proceedings and protect litigants” from discovery abuse. (*Id.* at p. 10.) The Court of Appeal’s decision here does not constitute a “free pass.” Rather, the Court of Appeal remanded the case so that PwC could seek monetary sanctions in the trial court under the correct statutory provisions. There, the parties will have an opportunity to brief the issues as identified by the Court of Appeal, and the trial court will have an opportunity to make the necessary factual findings, to ensure compliance with the Civil Discovery Act.

The way forward is not, as Amici urges, to disregard the Legislature’s intent and authority by abandoning the statutory safeguards and disregarding the plain language of the Civil Discovery Act. (E.g., *Equilon Enters. v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 59 [“This court has no power to rewrite the statute so as to make it conform to a presumed intention which is not expressed.”] [internal quotations omitted].) Rather, this Court should uphold the Legislature’s intent that a trial court’s authority to impose monetary sanctions for misuse of the discovery process is limited to the circumstances expressly delineated in the Civil Discovery Act’s method-specific provisions.

CONCLUSION

Accordingly, this Court should affirm the Court of Appeal's decision and remand to the trial court to enter a new and different order on the issue of monetary sanctions based on the method-specific provisions of the Civil Discovery Act authorizing the imposition of sanctions for discovery misconduct.

DATED: October 18, 2023

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.504(d)(1) of the California Rules of Court, the enclosed Answer to Amici Curiae Brief is produced using 13-point or greater Roman type, including footnotes, and contains 2,490 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: October 18, 2023

ANNAGUEY MCCANN LLP

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