

In the Matter Of:

LEONARD NORMAN COHEN vs. KELLEY A. LYNCH

HEARING

June 23, 2015

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES

3
4 DEPARTMENT 24 HON. ROBERT L. HESS, JUDGE

5 LEONARD NORMAN COHEN, ET AL,)
6)
7 Plaintiff(s),)
8) NO. BC338322
9)
KELLEY A. LYNCH, ET AL,)
10)
11 Defendant(s).)
12)
13)

14 Reporter's Transcript of Proceedings
15 Tuesday, June 23, 2015

16 Appearances:

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Lora J. Johnson, CSR No. 10119
Official Reporter Pro Tempore

1 CASE NAME: COHEN VS. LYNCH
2 CASE NUMBER: BC338322
3 LOS ANGELES, CALIFORNIA JUNE 24, 2015
4 DEPARTMENT 24 HON. ROBERT L. HESS, JUDGE
5 REPORTER: LORA J. JOHNSON, CSR #10119
6 APPEARANCES: (AS HERETOFORE MENTIONED.)
7 TIME: 9:38 A.M.
8

9 THE COURT: All right. Cohen vs. Lynch,
10 please.

11 MS. RICE: Good morning, Your Honor.
12 Michelle Rice on behalf of Plaintiff Leonard Cohen and
13 Leonard Cohen Investments.

14 MR. BERGMAN: Good morning, Your Honor.
15 Daniel A. Bergman, also appearing on behalf of
16 Plaintiff. Ms. Rice will be responding to the motion.

17 MS. LYNCH: Kelley Lynch.

18 THE COURT: All right. Have a seat, please.

19 Ms. Lynch, this is your motion for
20 terminating and other sanctions. The action was
21 originally filed many years ago in about 2005, and as
22 a -- among other things, a Complaint for Breach of
23 Fiduciary Duty against you. And a Default Judgment was
24 entered against you on May 15th, 2006, and that Default
25 Judgment has been subsisting since that time.

26 In August of 2013, you filed a Motion to
27 Vacate and/or Modify Default Judgment, and that was
28 eventually heard on January 17th, 2014. And in that

1 motion, you argued that the judgment is void and
2 dismissal was mandatory because there was no
3 jurisdiction over you because you had never been
4 properly served with summons and complaint.

5 And at the conclusion of that hearing, the
6 Motion to Vacate was denied with prejudice on a variety
7 of grounds, among other things, that it was
8 procedurally deficient because it did not -- it wasn't
9 properly served on the Plaintiffs, your own declaration
10 was unsigned, that you had not acted with diligence in
11 bringing the Motion to Vacate because you said you
12 found out about the action in April of 2010 but did not
13 seek to have this set aside until August of 2013.

14 You bore the burden of persuasion that the
15 Proof of Service was false, and you had not carried
16 that burden of proof because you had failed to produce
17 any evidence of that beyond an unsigned declaration by
18 yourself and a signed declaration by your son that said
19 only that you were home at all times during 2005. And
20 you did not demonstrate extrinsic fraud because you
21 conceded you were living in the home where the
22 request -- where the Notice of Request for Default was
23 sent, and that you were home when the process server
24 attempted to serve you on the six occasions before
25 serving -- before subserving the Jane Doe.

26 Now, when the Court made that order, at that
27 point you had a couple of options, and one of those was
28 to let it go, and the second one was to take an appeal.

1 MS. LYNCH: Well, I was arrested in a related
2 case and imprisoned.

3 THE COURT: Okay. But I -- you know, then
4 you had a -- you had the -- respectfully, the thing
5 that pops into mind is that's not my problem.

6 I don't know what happened. I have no -- no
7 notion what the arrest was all about or how -- when it
8 happened, when you were incarcerated or for how long or
9 any of those things. But you had the option to -- to
10 take an appeal from that order, and you did not do so.

11 And the -- I'm not sure that there's any
12 basis on which -- for me to act. This is not a proper
13 motion for reconsideration. A motion for
14 reconsideration under CCP 1008 has to be done very
15 promptly. It's about ten days. And you are supposed
16 to present facts or new law that could not have been
17 presented the first time around.

18 We are in 2015 on this. We are -- your
19 motion was filed on March 17th of this year. It is
20 approximately 14 months after the court made its --
21 made its prior order, and I -- and what you want me to
22 do is you want me to dismiss their complaint. And
23 that's -- that's not an appropriate remedy, and,
24 procedurally, your motion is fundamentally flawed.

25 If you had -- if you believed that the
26 Default Judgement had been entered against you in
27 error, it would have behooved you to act with a modicum
28 of promptness on this. It would have behooved you to

1 have -- get some legal representation to help you on
2 this. But you chose to -- you chose to wait. You
3 chose to do it in pro per.

4 MS. LYNCH: I chose to?

5 THE COURT: Yes, you chose to.

6 MS. LYNCH: Oh, I see.

7 THE COURT: And the -- and the showing you
8 made was deficient for quite a number of reasons, and I
9 don't see any reason for me to revisit this at this
10 time.

11 If you would like to address this, I'll hear
12 you briefly.

13 MS. LYNCH: Well, first of all, I think it's
14 important to state that I didn't just simply choose to
15 represent myself, and I was suffering tremendous
16 hardships over the situation. But beyond that -- and I
17 have addressed that in my papers -- this is not a
18 motion to reconsider, this is a motion addressing fraud
19 upon the Court which was used to obtain the Default
20 Judgment. I was not served. I was home. No one came
21 to my house.

22 THE COURT: We have adjudicated that already.

23 MS. LYNCH: But it was obtained through fraud
24 upon the Court. There's tremendous perjury, fraudulent
25 misrepresentations, and other things I've addressed.

26 THE COURT: Ma'am, if I remember correctly,
27 the Proof of Service on the underlying case was
28 filed -- was signed by the California Registered

1 Processor, and under Evidence Code Section 647, the
2 Affidavit of Service by a Registered Processor carries
3 a presumption of correctness that affects the burden of
4 producing evidence.

5 It is not conclusive, but it affects the
6 burden of producing evidence, and it requires you, as
7 the person who is -- who is challenging that service,
8 to persuade me that it is incorrect. It is -- there is
9 no doubt whatsoever that you were living at the
10 evidence where the service was attempting to be made.

11 MS. LYNCH: Well, I was living there, but the
12 service wasn't made.

13 THE COURT: Well, I don't know. Do I
14 assume --

15 MS. LYNCH: No, but I did provide
16 declarations.

17 THE COURT: Excuse me. Excuse me.

18 Do I assume that you never budged from the
19 interior of the residence throughout that entire
20 period? Not for a moment? Not for an hour? Not to go
21 to the store?

22 MS. LYNCH: You can assume that because
23 that's factual.

24 THE COURT: Well, I don't know.

25 MS. LYNCH: Well, I didn't have a car. I was
26 injured. I was miles up Mandeville Canyon Road. No, I
27 wasn't confined within the walls of my property; I did
28 go outside for a walk occasionally. But I did provide

1 declarations from individuals that stated that I did
2 not resemble the individual who was allegedly served.

3 THE COURT: The -- the process server's
4 declaration did not say that you were personally
5 served.

6 MS. LYNCH: Well, there was no other
7 co-occupant or female there, apart from Paulette.

8 THE COURT: The process server's declaration
9 says that a Jane Doe came to the door and then -- and
10 they subserved the Jane Doe after multiple attempts to
11 serve you, and thereafter it was mailed.

12 MS. LYNCH: Well, Plaintiffs are arguing that
13 it was me, first of all.

14 THE COURT: I don't know.

15 MS. LYNCH: But there was no co-occupant, and
16 no one has been identified, and I was home at all
17 times. My son, Rutger, lived with me, and his friend
18 Chad Knaack at that point was staying with us. On the
19 morning where I was allegedly served, Paulette Brandt
20 who is over here was with me. No one came to my house.
21 So it is conceivable that a process server lied or
22 simply didn't come there.

23 THE COURT: It is, but you have to -- it
24 affects the burden of producing evidence, and
25 unfortunately you had the opportunity to present that
26 in 2013, when you filed that motion in August 2013.

27 MS. LYNCH: Well, actually, I didn't realize
28 in 2013 that I would be confronting an inconceivable

1 amount of lies, fraud and perjured statements. I mean,
2 the latest issue is that my son's friend called a Scott
3 Edelman to tell him I wasn't served. They're saying
4 that means I was served. It's preposterous.

5 I have maintained for ten years that I was
6 not served, and it defies logic that Leonard Cohen, who
7 has two law firms representing him, wouldn't have me
8 properly served immediately if I alleged that.

9 And my declarants have stated that they know
10 I was home. Paulette Brandt is here; she's not lying.
11 My son Rutger was present. He was present when I asked
12 Chad to call and say I wasn't served. I've worked at
13 law firms. If somebody called and said I wasn't
14 served, I'd serve them.

15 THE COURT: Did you get the summons and
16 complaint in the mail?

17 MS. LYNCH: No, I did not.

18 THE COURT: Okay. I -- there's a whole
19 series of things that you would like me to believe, and
20 you --

21 MS. LYNCH: Well, are you saying all my
22 declarants are lying also?

23 THE COURT: Ma'am, you had a full and fair
24 opportunity to present all your arguments, all your
25 evidence, in 2013.

26 MS. LYNCH: I disagree.

27 THE COURT: I denied the motion with
28 prejudice and -- and you had a remedy after that

1 which --

2 MS. LYNCH: I still don't know if your order
3 was entered. I mean, I was in jail. I got out of
4 jail. Jeffrey Cohen had sent me an e-mail on
5 January 22nd saying I would like you to approve or
6 comment on this. When I got out of jail a number of
7 months later, I called him. He said he would serve me;
8 I never received anything. I don't even know if an
9 order was filed. It's not on L.A. Superior Court's
10 website. And he refused to serve me anything, which is
11 pretty fascinating.

12 THE COURT: Is there anything else you would
13 like to add?

14 MS. LYNCH: Yes. I'm addressing fraud upon
15 the Court. And I think that you, sir, should address
16 the fact that this judgment was obtained through fraud
17 and perjury, and it -- this is not a motion to
18 reconsider, this is a motion for fraud upon the Court.

19 THE COURT: Plaintiffs, do you wish to
20 address any issue here?

21 MS. RICE: Yes, Your Honor. With regard to
22 Ms. Lynch's claims that this -- you know, she has
23 demonstrated extrinsic fraud in her Motion for
24 Terminating Sanctions. It's our contention that her
25 claims are only intrinsic, and it does not provide
26 relief from the Default Judgement under the prevailing
27 California authority.

28 And Ms. Lynch, in her moving papers, actually

1 cites to cases that actually hold that she has to
2 demonstrate extrinsic fraud, and she has not
3 demonstrated any extrinsic fraud.

4 All of the claims that she is alleging
5 constitutes misconduct on the part of Plaintiffs would
6 be intrinsic. She alleges perjury. She alleges that
7 there was fraudulent misrepresentations in Plaintiffs'
8 complaint. She alleges that there was fraudulent
9 evidence that was produced to obtain the Default
10 Judgement.

11 You know, Ms. Lynch, like I said, relies on
12 Hazel-Atlas Glass in her reply papers, but that case
13 has not been -- it's a 1944 U.S. Supreme Court case.
14 It has not been followed in the State of California.
15 And Plaintiff cited in their opposition papers the case
16 of Smith vs. Great Lakes Airlines, which clearly
17 declines to follow Ms. Lynch's Hazel-Atlas Glass case
18 that she relies on very heavily in her reply papers.

19 THE COURT: Anything else you would like to
20 say, ma'am?

21 MS. LYNCH: Only I would like to ask
22 something about the sealing of the documents that I'm
23 unclear about.

24 THE COURT: Sealing of which documents?

25 MS. LYNCH: The documents you sealed at the
26 last hearing. Many of those are available publicly on
27 PACER or submitted as evidence in the Natural Wealth
28 vs. Leonard Cohen and Robert Kory matter in Colorado.

1 THE COURT: How would I know that?

2 MS. LYNCH: Well, I believe the Plaintiff
3 should have advised you, but I did raise it in my
4 documents.

5 And for instance, the CAK bond litigation
6 matter in the Southern District of New York, Leonard
7 Cohen's declaration there and other papers is available
8 through the Southern District of New York. And my own
9 e-mails refuting Leonard Cohen's lawyer, who did not
10 represent the corporate entities, would not have
11 attorney-client privilege. But furthermore, there is
12 a -- a letter from Leonard Cohen to Richard Westin and
13 Neal Greenberg wrapping them into attorney-client
14 privilege. And Hockman Rettig told me -- Steve Klon,
15 that they received a call from Richard Westin advising
16 them that I did not have attorney-client privilege,
17 which I did not.

18 And you know, we are talking about corporate
19 documents. So what I want to know is -- I have filed
20 this same evidence prior to filing this document in
21 March with the tax court in Washington, and I just
22 would like to know how your seal affects that matter.
23 The evidence is --

24 THE COURT: I don't know. I'm sorry. I see
25 some documents here that were -- are in envelopes.

26 MS. LYNCH: Well, you sealed documents --

27 THE COURT: And -- and --

28 Did I make a sealing order?

1 MS. RICE: You did, Your Honor. We had an
2 ex parte hearing on May 29th, 2015 --

3 THE COURT: Okay.

4 MS. RICE: -- where Plaintiffs alleged that
5 there was a majority of Ms. Lynch's declaration
6 exhibits that actually disclosed improperly in the
7 public record attorney-client privileged communications
8 with Mr. Cohen's former and current attorneys. And
9 Mr. Richard Westin is a co-defendant in the matter, and
10 Ms. Lynch has just acknowledged that.

11 THE COURT: What did I -- what did I seal?
12 Because, I'm sorry, I don't have a present recollection
13 of that.

14 MS. RICE: Sure. There was a declaration
15 that Ms. Lynch submitted in support of her Motion for
16 Terminating Sanctions that, in 32 of the paragraphs,
17 she actually disclosed quotes from attorney-client
18 privileged communications.

19 And then she also attached 90 exhibits to her
20 declaration, 28 of which actually contained disclosures
21 of attorney-client communications. They were actually
22 letters that said, very clearly marked, attorney-client
23 privileged communication, confidential. Ms. Lynch
24 disclosed those and filed those in the public record.

25 So there is an order that Your Honor granted
26 on May 29th sealing the record with regard to those
27 communications.

28 THE COURT: All right.

1 MS. LYNCH: But what I am saying is that some
2 of these documents are available, and I bought them
3 through PACER. So it's preposterous.

4 THE COURT: Well, I don't know. This -- some
5 of these documents are available and so vague that that
6 contains no content whatsoever. It's not a basis on
7 which I can make a decision.

8 MS. LYNCH: Well, I explained that the CAK
9 litigation matter before the Southern District of
10 New York -- there are two documents or three documents,
11 Leonard Cohen's declaration, which states that he
12 clearly was aware of these dealings, et cetera, and
13 understood his royalty income. You can walk in and buy
14 them at the Southern District of New York.

15 The Neal Greenberg documents were attached,
16 Natural Wealth. There are exhibits attached to his
17 lawsuit against Leonard Cohen and Robert Kory.

18 Those documents, I don't recall specifically
19 offhand, but it's -- oh, there are two IRS warning
20 letters that Neal Greenberg sent. These were attached
21 as evidence to a lawsuit, and there are other documents
22 that were as well.

23 My own e-mails refuting that Leonard Cohen LC
24 Investments had an office within my management offices
25 are sealed. My February 2002 e-mail to Leonard Cohen
26 and Robert Kory -- I mean, and Richard Westin
27 explaining that I did not handle IRS matters,
28 accounting or financial loan documents, and addressing

1 the \$1,000,000 and \$7,000,000 inadvertent 1099s. These
2 are not attorney-client privileged. That is my setting
3 forth my version of events. That's not attorney-client
4 privileged.

5 THE COURT: Well, there were certain specific
6 things. The clerk has handed me a copy of the order.

7 THE CLERK: There's a number that --
8 following this, that apparently lists what it is.

9 THE COURT: Yes.

10 MS. LYNCH: Also, some of the information is
11 with the accountants who do not have attorney-client
12 privilege. I did not have it. I was an independent
13 contractor. I was excluded from A-C privilege. These
14 are corporate records.

15 They also pertain to a tax fraud matter, and
16 there should be a crime fraud exception if the Court
17 determined that there was attorney-client privilege.

18 THE COURT: You know, this is a moving --
19 you're a moving target.

20 You know, every time you come in here,
21 there's something new, there's something different,
22 there's some new theory.

23 MS. LYNCH: There's nothing new.

24 THE COURT: And it's -- and it's, you know,
25 it's incredibly vague. You know, I listen to you here
26 and I -- and the things you say. You know, you gave me
27 four volumes of stuff here.

28 MS. LYNCH: Well, the lies are extensive.

1 That's not my fault. And the burden has been shifted
2 to me, I think, unfairly.

3 But what I'm saying is, I'd like to know the
4 extent of your seal, if you've made a determination --

5 THE COURT: The order is for specific pages.

6 MS. LYNCH: Right.

7 THE COURT: Specific pages and is what is
8 sealed.

9 MS. LYNCH: But I'm saying to you, sir, that
10 I've submitted this identical evidence to the tax court
11 in Washington before I filed my Motion for Terminating
12 Sanctions.

13 Does your seal affect that?

14 THE COURT: My sealing order --

15 MS. LYNCH: Yeah.

16 THE COURT: -- affects the public access to
17 the documents that were filed in this case. I have no
18 jurisdiction to make an order with respect to things
19 that are filed in the tax court.

20 MS. LYNCH: So do you -- did you make a
21 determination about whether or not these are
22 attorney-client privileged?

23 THE COURT: I sealed them --

24 MS. LYNCH: Right.

25 THE COURT: -- on a showing by the
26 Plaintiff --

27 MS. LYNCH: Yes.

28 THE COURT: -- that satisfied me that

1 particular specific things ought to be sealed from
2 public view.

3 MS. LYNCH: But was that based on a
4 determination of attorney-client privilege?

5 THE COURT: That was based on the criteria
6 set forth in California Rule of Court 2.551, I believe.

7 MS. LYNCH: Uh-huh. And how long does the
8 seal last?

9 THE COURT: Until it is lifted.

10 MS. LYNCH: So you just seal documents
11 without reviewing them with us to even know -- do you
12 know who Ken Cleveland is, for instance?

13 THE COURT: Ma'am, I'm not going to subject
14 myself to an interrogation by you.

15 MS. LYNCH: It's not an interrogation.

16 THE COURT: I beg your pardon.

17 MS. LYNCH: But there are --

18 THE COURT: I don't know what -- I don't know
19 how you would characterize it.

20 MS. LYNCH: Well, I mean --

21 THE COURT: But you're -- but you are
22 certainly purporting to interrogate me now.

23 MS. LYNCH: No, I'm asking you questions. I
24 mean, this is important. You've sealed my own
25 documents.

26 THE COURT: Ma'am, I made the determination.
27 If you wish to -- if you wish to take steps to have
28 that reversed --

1 MS. LYNCH: I do wish to take steps.

2 THE COURT: -- you're welcomed to do it.

3 MS. LYNCH: All right. I do wish to take
4 steps.

5 THE COURT: Okay. Well, that's up to you.

6 All right. The motion is denied. And your
7 claims that you were not served with summons and
8 complaint were raised and denied in January 2014. You
9 have not demonstrated to my satisfaction that there was
10 extrinsic fraud, and there is no basis for -- no basis
11 shown to --

12 MS. LYNCH: And what about the fraud and
13 perjury?

14 THE COURT: -- to set aside the Default
15 Judgement.

16 MS. LYNCH: And what about the fraud and
17 perjury raised?

18 THE COURT: You know, you have all these
19 allegations, ma'am. That's what they are.

20 MS. LYNCH: That is what they are, and you
21 have evidence.

22 THE COURT: Ma'am, the motion --

23 MS. LYNCH: I was not served, Your Honor.

24 THE COURT: The motion is --

25 MS. LYNCH: I was not served.

26 THE COURT: I know. That's -- do you like
27 opera, ma'am?

28 MS. LYNCH: Yes, I do, actually.

1 THE COURT: Okay. Do you like Wagnerian
2 opera?

3 MS. LYNCH: Somewhat.

4 THE COURT: Do you know what a leitmotif is?
5 L-E-I-T-M-O-T-I-F. Okay. That's your leitmotif: I
6 wasn't served.

7 MS. LYNCH: Because I wasn't.

8 THE COURT: Okay.

9 MS. LYNCH: So you are violating my rights to
10 due process. That's my opinion. I wasn't served.

11 THE COURT: Ma'am. Ma'am.

12 MS. LYNCH: Yeah.

13 THE COURT: I understand that anybody who
14 doesn't agree with you violates your rights to due
15 process.

16 MS. LYNCH: Do you understand that?

17 THE COURT: That's -- that -- you have made
18 it quite clear. So the motion is denied.

19 MS. LYNCH: Well, you don't know me, so it
20 would be hard to make that statement; wouldn't it?

21 THE COURT: Ma'am, how much -- how much
22 contact have you and I had?

23 MS. LYNCH: Not much. But you have never
24 seen me with anyone else, either.

25 THE COURT: Well, I know -- I know what you
26 have presented to me, and I know how you have come
27 across in the matters where you have been before me.
28 And unless you are presenting yourself in an entirely

1 different way in this setting than you normally do, I
2 think I have a sense of you.

3 MS. LYNCH: Well, you have a sense that I'm
4 upset. That's correct. Anyone would be.

5 THE COURT: And defense -- Plaintiff, submit
6 an order.

7 MS. RICE: Your Honor, we have submitted a
8 proposed order on May 26. Should --

9 THE COURT: Just a minute.

10 Do we have that, Jeff? Is that in the
11 package there?

12 (Pause in proceedings.)

13 THE COURT: Oh, here it is.

14 Have you seen their proposed order, ma'am?

15 MS. LYNCH: No.

16 THE COURT: It was served apparently with
17 their opposition. Did you see their opposition?

18 MS. LYNCH: Yes.

19 THE COURT: Okay.

20 All right. The order has been signed. Thank
21 you very much.

22 (The proceedings were
23 adjourned at 10:06 a.m.)

24 --o0o--

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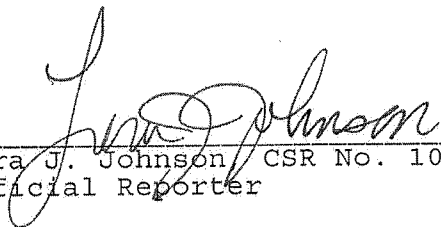
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 24	HON. ROBERT L. HESS, JUDGE
LEONARD NORMAN COHEN, ET AL,)
)
Plaintiff(s),) NO. BC338322
)
VS.) REPORTER'S
) CERTIFICATE
)
)
KELLEY A. LYNCH, ET AL,)
)
Defendant(s).)

I, Lora J. Johnson, Official Reporter
Pro Tempore of the Superior Court of the State of
California, for the County of Los Angeles, do hereby
certify that the foregoing pages, 1 through 19,
comprise a full, true and correct transcript of the
proceedings held in the above-entitled matter on
Tuesday, June 23, 2015.

Dated this 24th day of June, 2015.



Lora J. Johnson CSR No. 10119
Official Reporter

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