

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

Chapter 7 Bankruptcy Estate of ) B165843  
HOWARD BURTON WOLF. )  
\_\_\_\_\_) (Super. Ct. No. BC 184552)  
HOWARD BURTON WOLF, ) Los Angeles County  
 )  
Plaintiff and Appellant, )  
 )  
v. )  
 )  
MARTHA ROBI, )  
 )  
Defendant and Appellant. )  
\_\_\_\_\_)  
Chapter 7 Bankruptcy Estate of )  
HOWARD BURTON WOLF. )  
\_\_\_\_\_)  
TIMOTHY J. YOO, Trustee, and )  
HOWARD BURTON WOLF, )  
 )  
Plaintiffs and Appellants, )  
 )  
v. )  
 )  
MARTHA ROBI, )  
 )  
Defendant and Appellant. )  
\_\_\_\_\_)

**CROSS-RESPONDENTS' BRIEF AND APPELLANTS' REPLY BRIEF**

Appeal from Los Angeles Superior Court

Hon. Ronald M. Sohigian

TERRAN T. STEINHART  
Attorney at Law  
4311 Wilshire Boulevard  
Suite 415  
Los Angeles, California 90010-3713  
(323) 933-8263  
Fax (323) 933-2391  
Bar No. 036196  
Attorney for Plaintiffs and Appellants

TABLE OF CONTENTS

	PAGE
INTRODUCTION . . . . .	1
CROSS-RESPONDENTS' BRIEF . . . . .	3
I.    THE TRIAL COURT PROPERLY RULED THAT WOLF PERFECTED HIS APPEAL FROM THE LABOR COMMISSIONER DETERMINATION THAT WOLF'S MANAGEMENT CONTRACTS WERE VOID FOR VIOLATION OF THE TALENT AGENCY'S ACT BY FILING SEPARATE NOTICES OF APPEAL IN CASE 1, IN THE ARBITRATION PROCEEDING EMANATING FROM CASE 1, AND IN CASE 2, RATHER THAN FILING ONE NOTICE OF APPEAL AS A NEW, INDEPENDENT, PLENARY PROCEEDING; HOWEVER, THE TRIAL COURT ERRED IN RULING THAT WOLF IS NOT ENTITLED TO HAVE A TRIAL DE NOVO OF THE VOIDNESS ISSUE WITH REGARD TO THE 1983 MANAGEMENT CONTRACT IN THE ARBITRATION PROCEEDING PURSUANT TO THE PARTIES' AGREEMENT TO SUBMIT WOLF'S BREACH OF CONTRACT CLAIM AS TO THE 1983 AGREEMENT FOR RESOLUTION BY BINDING ARBITRATION. . . . .	3
A.    Robi's Contention That All of Wolf's Management Contracts Were Void For Violation of The Act Constitutes an Affirmative Defense to be Determined in The Arbitration Emanating From Case 1 As To The 1983 Contract, And in Case 2 As To The 1985 Contract. . . . .	3
B.    There is No Authority That Supports Robi's Contention That Where There is a Civil Action Pending Between The Parties That Has Been Stayed Pending Determination of an Act-Based Defense by The Labor Commissioner, a Notice of Appeal From the Labor Commissioner Determination Must be Filed as a New, Separate, Plenary Proceeding, Rather Than in The Pending Civil Action. . . . .	17
APPELLANT'S REPLY BRIEF . . . . .	22
II.    ROBI'S ARGUMENT, THAT SHE DID NOT WAIVE HER ACT-BASED DEFENSE FOR VOIDNESS OF THE 1985 MANAGEMENT CONTRACT ON THE GROUND OF ILLEGALITY BY HER FAILURE TO SPECIALLY PLEAD IT IN CASE 2 AS AN AFFIRMATIVE DEFENSE, IS UNPERSUASIVE. . . . .	22
III.   ROBI'S CONTENTION THAT THE DOCTRINE OF SEVERANCE IS NOT APPLICABLE TO CONTRACTS THAT ARE SUBJECT TO REGULATION UNDER THE TALENT AGENCY'S ACT IS NOT SUPPORTED BY ANY AUTHORITY. . . . .	26

IV. ROBI HAS ONLY TANGENTIALLY ADDRESSED THE STATUTORY INTERPRETATION "PROCURING CAUSE" ARGUMENT MADE BY APPELLANTS, UNPERSUASIVELY RELYING ON THE CONTENTION THE RECORD CONTAINS SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT'S STATEMENT OF DECISION IN WHICH IT FOUND WOLF PROCURED EMPLOYMENT FOR PAUL ROBI. . . . .	27
CONCLUSION . . . . .	31
ATTORNEY'S CERTIFICATE OF COMPLIANCE WITH CRC 14(c) . . . . .	32

TABLE OF AUTHORITIES

	PAGE
<u>CASES</u>	
Bank of Alameda County v. McColgan (1945) 69 C.A.2d 464, 159 P.2d 31	20
Birbrower, Montalbano, Condon & Frank v. Superior Court (1998) 17 C.4th 119, 949 P.2d 1	26, 27
Bradley v. Superior Court (1957) 48 C.2d 509, 519, 310 P.2d 634	16
Buchwald v. Katz (1972) 8 C.3d 493, 505 503 P.2d 1376, 1381	25
California Concrete Co., Inv. v. Beverly Hills Savings & Loan Association (1989) 215 C.A.3d 216, 261 C.R. 484	23
Carrau v. Marvin Lumber And Cedar Co. (2001) 93 C.A.4th 281, 289, 112 C.R.2d 869	30
Corona v. Amherst Partners (2003) 107 C.A.4th 701, 132 C.R.2d 250	13-15
Finley v. Saturn of Roseville (2004) 117 C.A.4th 1253, 12 C.R.3d 561	15
Greenfield v. Superior Court (2003) 106 C.A.4th 743, 131 C.R.2d 179	10-12
Park v. Deftones (1999) 71 C.A.4th 1465, 1469 84 C.R.2d 616	8
Sales Dimension v. Superior Court (1979) 90 C.A.3d 757, 153 C.R. 690	12, 17-20, 25
Styne v. Stevens 26 C.4th 42, 109 C.R.2d 14 7, 9, 12, 17, 19, 26	
Tidal Oil Co. v. Flanagan (1924) 263 U.S. 444, 451, 44 S. Ct. 197	16
<u>STATUTES</u>	
Cal. Rules of Court, Rule 1614(a) (8)	15
Cal. Rules of Court, Rule 1615(a)	15
California Constitution, Article I, § 9	16

CCP 430.80(a)	23
Civil Code 3528	20
Code of Civil Procedure 1280	14
CRC 804	19
Labor Code 1700.44(a)	7, 9, 20, 21
Labor Code 1700.44(c)	7-9, 11, 13
Labor Code 1700.45	21
Labor Commission Code [sic], 1700.5	12
United States Constitution, Article I, § 10	16

SECONDARY SOURCES

California Practice Guide: Civil Appeals and Writs, §§ 8:32, 8:35 (The Rutter Group 2003)	2
---	---

## **INTRODUCTION**

There is a saying amongst appellant attorneys that many learned in moot court competition in their first year of law school: If the facts are on your side, pound on the facts; if the law is on your side, pound on the law; and if neither is on your side, pound on the table.

Five issues have been presented for determination on this appeal:

1. In Appellants' Opening Brief ("AOB"), the four issues discussed under Arguments I through IV.

2. In Opening and Responding Brief of Respondent and Cross-Appellant, Martha Robi ("Robi's Brief"), the one issue discussed under Argument V.

Of the five issues presented, issues I, II and III in AOB, and issue V in Robi's Brief are pure questions of law not involving the resolution of disputed fact issues. Only issue IV in AOB requires a review of the trial court's determination of disputed fact issues.

Robi argues that the standard of review on this appeal is the substantial evidence standard: "whether the record as a whole, demonstrates substantial evidence in support of the appealed judgment." Robi's Brief, p. 22. Respectfully, this contention is only partially correct, and therefore is misleading. Issue IV in AOB involves the resolution of disputed fact issues, but also involves statutory interpretation of the issue of "procuring cause." Therefore, it is a mixed question of fact and law, which implicates both the substantial evidence and de novo standards of

review. However, the standard of review as to the remaining issues, which involve pure questions of law not involving the resolution of disputed fact issues, is solely the de novo standard. California Practice Guide: Civil Appeals and Writs, §§ 8:32, 8:35 (The Rutter Group 2003).

Robi's contention that the sole standard of review on this appeal is the substantial evidence standard, demonstrates her strategy of pounding on the facts, which includes a detailed factual exposition from page 29 to page 53 of Robi's Brief.

Respectfully, Robi's treatment of the four pure questions of law essentially amounts to pounding on the table, based substantially on authority that is not on point, which often is mischaracterized by Robi.

The instant Brief is organized as follows:

1. Cross-Respondent's Brief: responding to the sole issue of Robi's cross-appeal under heading V of Robi's Brief; and concomitantly replying to Robi's response to Argument II of AOB, which is inextricably connected to the sole issue of Robi's cross-appeal.<sup>1</sup>

2. Appellant's Reply Brief: replying to Robi's response to Argument I, III, and IV of AOB.

/ /

/ /

/ /

---

<sup>1</sup> Robi properly recognized the interconnection between these two issues, in that she responded to Appellants' Argument II as a sub-point under her heading V. See Robi's Brief, p. 63. Also, please note that the page numbering in the Table of Contents of Robi's Brief is not reliable.

## CROSS-RESPONDENTS' BRIEF

II. THE TRIAL COURT PROPERLY RULED THAT WOLF PERFECTED HIS APPEAL FROM THE LABOR COMMISSIONER DETERMINATION THAT WOLF'S MANAGEMENT CONTRACTS WERE VOID FOR VIOLATION OF THE TALENT AGENCY'S ACT BY FILING SEPARATE NOTICES OF APPEAL IN CASE 1, IN THE ARBITRATION PROCEEDING EMANATING FROM CASE 1, AND IN CASE 2, RATHER THAN FILING ONE NOTICE OF APPEAL AS A NEW, INDEPENDENT, PLENARY PROCEEDING; HOWEVER, THE TRIAL COURT ERRED IN RULING THAT WOLF IS NOT ENTITLED TO HAVE A TRIAL DE NOVO OF THE VOIDNESS ISSUE WITH REGARD TO THE 1983 MANAGEMENT CONTRACT IN THE ARBITRATION PROCEEDING PURSUANT TO THE PARTIES' AGREEMENT TO SUBMIT WOLF'S BREACH OF CONTRACT CLAIM AS TO THE 1983 AGREEMENT FOR RESOLUTION BY BINDING ARBITRATION.

A. Robi's Contention That All of Wolf's Management Contracts Were Void For Violation of The Act Constitutes an Affirmative Defense to be Determined in The Arbitration Emanating From Case 1 As To The 1983 Contract, And in Case 2 As To The 1985 Contract.

In order to put this issue in perspective, a brief summary of the procedural history of the two sister cases is helpful.<sup>2</sup> Case 1 involves a lawsuit by Wolf against Robi filed on February 14, 1996, in which Wolf alleged that Robi (as successor in interest of her late husband, "Paul") breached a 1983 management agreement between Wolf and Paul by failing to pay Wolf a 10% management fee on the collected proceeds of a judgment obtained by Paul in a federal lawsuit against his previous personal manager, Buck Ram.

---

<sup>2</sup> This summary is taken from the Statement of the Case. AOB, p. 1, et seq.

Case 2 involves a lawsuit filed on January 20, 1998, by Wolf against Robi, in which he alleged that Robi breached a 1985 management agreement between Wolf and Paul by failing to pay to Wolf a 10% management fee on the proceeds of the sale of record product (cassettes, CDs, etc.) that was manufactured from recordings made by Paul pursuant to a recording agreement between Paul and Jango Records negotiated by Wolf during the term of the 1985 management agreement.

In Case 1, on May 21, 1997, the court dismissed the case per the stipulation of the parties to submit the case to resolution by binding arbitration; however, the court retained jurisdiction for the purposes of enforcing the arbitration and arbitration award. The court's Minute Order of 05/21/97 in this regard states, amongst other things:

"Pursuant to the STIPULATION AND ORDER RE SUBMISSION TO BINDING ARBITRATION, trial is placed off calendar.

"The case is ordered dismissed per binding arbitration. The court retains jurisdiction for the purposes of enforcing the arbitration and arbitration award." AA 243.

Pursuant to the aforesaid stipulation and order, on August 7, 2000, arbitration was commenced by Wolf against Robi at JAMS/Endispute, the arbitration being conducted on five days during August and September 2000. On September 22, 2000, the arbitrator, Judge Stevens Stone (Ret.), stayed the arbitration pending certain of Wolf's bankruptcy matters and a decision by the California Labor Commissioner on Robi's petition to the Commissioner.

In Case 2, on September 11, 2000, Robi moved for an order

staying proceedings as a result of Wolf's bankruptcy proceeding<sup>3</sup> and the pending hearing before the Labor Commissioner. On September 25, 2000, the day set for trial in Case 2, the court stayed the trial pending the decision of the Labor Commissioner.

On March 21, 2002, the Labor Commissioner made a Determination of Controversy, ruling that the 1983, 1984 and 1985 written management contracts, and the subsequent oral contract were unlawful and void ab initio, and that Wolf had no enforceable rights under those contracts. The following day, Wolf filed three separate appeals from the Labor Commissioner's Determination: one in Case 1; one in the JAMS/Endispute arbitration action flowing from Case 1; and one in Case 2. AA 267, 270, 273.

Thereafter, Robi filed a motion to dismiss Wolf's appeal of the Labor Commissioner award, contending that Wolf's failure to file his notice of appeal as a new, separate, plenary action in the Superior Court, rather than filing appeals in the aforesaid three already existing actions, failed to perfect Wolf's appeal. In opposition, Wolf contended:

Since the issue determined by the Labor Commissioner, i.e., whether the subject management contracts were void as being in violation of the Talent Agency's Act ("Act") constituted an affirmative defense in Case 1 as to the 1983

---

<sup>3</sup> Upon Wolf's reopening of his 1986 bankruptcy proceeding, the bankruptcy court ruled that Trustee Yoo was the real party in interest on Wolf's contract claims in Case 1 and Case 2; and per leave of court in Case 2, on June 1, 2001, a Second Amended Complaint was filed naming Yoo as plaintiff. In the bankruptcy court's Memorandum of Decision (AA 7, et seq.), the court found that there was no evidence that Wolf knowingly and intentionally concealed from the bankruptcy court his contingent contract claims under his management contracts with Paul. AA 77:12-78:24.

contract, and in Case 2 as to the 1985 contract, the issue should be determined as affirmative defenses in those respective actions. Moreover, because the parties had stipulated to resolve Case 1 by binding arbitration, and had already concluded five days of arbitration hearing in the JAMS/Endispute action, the Labor Code issue with respect to the 1983 contract was legally required to be decided in the JAMS/Endispute action. However, since Labor Code 1700.44 required the appeal from the Commissioner's determination to be taken to the Superior Court, in an abundance of caution, Wolf filed a notice of appeal in both Case 1 and the JAMS/Endispute action. Since the court in Case 1 had retained jurisdiction for the purpose of enforcing the arbitration and arbitration award (AA 243), to the extent that the statute required Wolf to file his notice of appeal in the Superior Court in Case 1, the court in that action could thereupon exercise its retained jurisdiction to order a trial de novo of the affirmative defense to be conducted in the stayed arbitration proceeding.

On November 8, 2002, the court in Case 2 denied Robi's motion to dismiss Wolf's appeal from the Labor Commissioner determination, and ruled that a trial de novo of the determination would be tried prior to the trial of the remainder of the issues in Case 2. Wolf objected in part to this ruling on the ground that the Labor Code issue with regard to the 1983 contract should properly be litigated in the JAMS/Endispute action pursuant to the stipulation of the parties to resolve the issues in Case 1 by binding arbitration.

The above procedural history demonstrates that Robi's contention that Wolf failed to perfect his appeal from the Labor Commissioner's determination by not filing a notice of appeal as a separate, independent proceeding in the Superior Court, and Wolf's counter-contention that he purposely filed three separate notices of appeal so that the act-based affirmative defense relating to the 1983 contract would be resolved in the arbitration proceeding, are inextricably interwoven issues.

Robi's contention that the 1983, 1984, and 1985 management agreements, and the subsequent oral management agreement, are void for violation of the Act are simply Act-based affirmative defenses. This was made abundantly clear in Styne v. Stevens 26 C.4th 42, 109 C.R.2d 14, which involved application of Labor Code 1700.44, subsections (a) and (c). Section 1700.44(a) provides in relevant part: "In cases of controversy arising under this chapter [Talent Agencies Act], the parties involved shall refer the matter in dispute to the Labor Commissioner, who shall hear and determine the same, subject to an appeal within 10 days after determination, to the superior court where the same shall be heard de novo."

Section 1700.44(c) provides: "No action or proceeding shall be brought pursuant to this chapter with respect to any violation which is alleged to have occurred more than one year prior to commencement of the action or proceeding."

In Styne, the personal manager for an entertainer brought suit against the entertainer, asserting claims for breach of contract, amongst others. After entry of judgment on the jury's verdict for the personal manager, the trial court granted the entertainer's

motion for new trial on the basis that it had prejudicially erred by failing to instruct the jury under the Talent Agencies Act. The personal manager appealed. The Court of Appeal reversed the new trial order and reinstated the verdict, holding that the entertainer's defense under the Act was barred because she had failed to invoke the Act and refer the matter to the Labor Commissioner within one year after she had been served with the manager's complaint.<sup>4</sup> The Supreme Court granted review, superseding the decision of the Court of Appeal, and holding that: (a) the Act's one-year limitations period for actions or proceedings under the Act did not affect the times within which an artist could take actions necessary to assert the defense that the management contract was void for violation of the Act ("Act-based defense") because the statute of limitations only bars contentions upon which a claim for relief is based, but not when those contentions are used to interpose a defense; and (b) the Labor Commissioner had exclusive jurisdiction over an artist's Act-based defense, such that if an artist asserted a colorable Act-based defense in a civil action between a manager and artist, the appropriate course is simply to stay the Superior Court case while the artist files a petition to determine controversy before the Commissioner who has exclusive jurisdiction to determine the issue

---

<sup>4</sup> At the time of that decision, the prevailing authority on the one-year statute of limitations under Labor Code 1700.44(c) was Park v. Deftones (1999) 71 C.A.4th 1465, 1469, 84 C.R.2d 616, which held that the one-year statute of limitations begins to run on the date that a personal manager brings an action to collect commissions claimed due him under a management agreement, in that the commencement of such an action itself constitutes a violation of the Act.

pursuant to Labor Code 1700.44(a), subject to an appeal to the Superior Court for a trial de novo.

In both Case 1 and Case 2, Robi utilized the procedure authorized by Styne. That is, she asserted a colorable Act-based defense in the arbitration emanating from Case 1, and in the court proceeding involved in Case 2, by making a motion to stay each of those proceedings pending determination of her petition to the Labor Commissioner in which she alleged that Wolf's management contracts in each of those cases was void for violation of the Act. She obtained stay orders pursuant to those motions. At that juncture, there were only two ways in which Robi could have utilized her contention that Wolf's management contracts were void for violation of the Act: (1) as an affirmative claim to seek disgorgement from Wolf of commissions theretofore paid to him under those contracts; and/or (2) as a defense to Wolf's claims in Case 1 and Case 2 that Robi had breached the respective management contracts involved in each case by failing to pay him commissions earned. Robi could not proceed with her affirmative disgorgement claim because it was barred by the Labor Code 1700.44(c) one-year statute of limitations. Therefore, Robi's assertion of the voidness contention could be made only as an Act-based defense in each of the actions.

Pursuant to the procedure authorized by Styne, when Robi first brought the Act-based defense to the attention of the arbitrator in Case 1 and the court in Case 2, those proceedings were ordered stayed pending determination of said defense by the Labor Commissioner. It logically follows that after the Commissioner's

determination, the proceedings in each of the actions would resume, and the issue of whether Wolf's contracts were void for violation of the Act would be tried as an affirmative defenses in the arbitration proceeding as to the 1983 contract, and in Case 2 as to the 1985 contract. See Greenfield v. Superior Court (2003) 106 C.A.4th 743, 131 C.R.2d 179. In Greenfield, that manner of proceeding was actually implemented, which is testimony to its inherent logicity. In that case an actor brought an action against a certified public accountant that was acting as the actor's agent and manager for certain projects and transactions, alleging causes of action including fraud, breach of fiduciary duty, negligent misrepresentation, and breach of oral contract. In his complaint, the actor alleged that the manager had engaged in procuring employment for the actor without a license in violation of the Act, and that the contract between the parties was therefore void and the actor was entitled to full restitution of all monies previously paid to the manager for his services. The actor also interposed the voidness issue as an affirmative defense to the manager's cross-complaint. The actor filed his court action within one year from the time of his last payment to the manager. However, he did not file his petition to determine controversy before the Labor Commissioner until more than a year after that date. The trial court determined that the actor's civil action would be stayed while the matter was heard by the Commissioner. Although the Commissioner determined that the manager had violated the Act, he denied the actor relief on the ground that he had failed to establish that any of the commissions were paid during

the one-year statute of limitations prescribed by Labor Code 1700.44(c), and consequently he was not entitled to disgorgement of the commissions. Greenfield then states: "After the matter was resumed in the superior court, Greenfield [manager] made a motion for summary adjudication . . . ." (Emphasis added). Upon denial of his motion, the manager filed a petition for writ of mandate with the Court of Appeal which reversed the denial of the motion for summary adjudication on the ground that the one-year statute of limitations is tolled only by filing a petition with the Commissioner, not by filing a complaint in court, and hence, the actor's claim was barred by the one-year statute of limitations of Labor Code 1700.44(c).

The point of relevance in Greenfield is the above-quoted statement in the decision, reflecting that after determination by the Commissioner, the matter, which had been stayed pending determination by the Commissioner, was resumed in the Superior Court action. Appellants do not rely on Greenfield as direct authority for the proposition that a notice of appeal from a Commissioner's determination of an Act-based defense may properly be filed in a pending civil action which was stayed pending determination by the Commissioner. However, that the parties and the court employed that procedure in Greenfield lends support to its propriety.

In support of her contention that Wolf failed to perfect his appeal, Robi argues that there is no basis for his "bizarre" assertion that an appeal for a trial de novo of a Labor Commissioner decision must be tried as "an affirmative defense in

a pre-existing LASC action. Sales Dimension v. Superior Court (1979) 90 C.A.3d 757, 153 C.R. 690 and Styne v. Stevens, supra, are to the contrary." Robi's Brief, p. 59.

First, the court in Greenfield, applied this procedure, so Robi is in effect accusing the Superior Court of acting in a bizarre manner.

Second, Robi's contention that Wolf's management agreements were void for violation of the Act was in fact separately tried in Case 2 as an affirmative defense with the acknowledgment of both the trial court and Robi's attorney, Hyman. At the beginning of the trial of this issue, in his opening statement, Hyman stated: "We're going to proceed with the Labor Commissioner matters." The Court replied: "The thing that you're going to raise as an affirmative defense." (Emphasis added). RT 9:24-27. Hyman then proceeded: "Your Honor, as to the affirmative defense violation of Labor Commission Code [sic], 1700.5 of the Labor Commission [sic] provides that no person shall engage in or carry on the occupation of a talent agency without first procuring a license from the Labor Commissioner." (Emphasis added). RT 10:9-13. Thereafter, during the course of the opening statements, the Court stated:

"What I intend to do is try the affirmative defense and the appeal from determination of controversy by the Labor Commissioner and request for trial de novo dated March 22, 2002. . . . I regard myself as having the power to act to the full extent provided for in the Notice of Appeal . . . . I'm going to decide every issue raised in the appeal." (Emphasis added). RT 56:23-27, 57:23-24, 58:20-21.

Third, the trial court's Statement of Decision (AA 645-01, et seq.) was drafted by Robi's attorney and signed by the court after making certain editorial corrections. The Statement of Decision instructively states with respect to the instant issue:

"The limitations of action provision at Section 1700.44(c) does not bar ROBI from asserting illegality of contracts in defense of respondent's superior court action for breach of contract." (Emphasis supplied). AA 645-27:15-18.

"ROBI's Affirmative Defense, therefore, that the contracts at issue are void ab initio as a matter of law has not been waived or abandoned, and is not unavailable to ROBI because of any failure to timely plead it." (Emphasis added). AA 645-36:19-22.

During the opening statement by Robi's attorney, and in the court's Statement of Decision, both Robi and the court acknowledged that Robi's contention that the management agreements were void for violation of the Act was tried as an affirmative defense in the special trial de novo on Wolf's appeal from the Commissioner's determination.

In addition to the above analysis are the well-established rules of law which honor the agreement of parties to resolve a dispute by binding arbitration, and declare that the courts have no jurisdiction to decide questions which are reasonably encompassed within the issues submitted to arbitration by the parties. Corona v. Amherst Partners (2003) 107 C.A.4th 701, 132 C.R.2d 250, held that where a party to a real estate purchase contract is required by contract to submit a dispute to binding arbitration, and

prevails in the arbitration but does not request that the arbitrator decide his entitlement to attorney's fees even though that issue is part of the submission, the trial court on the party's petition for confirmation of the arbitration award does not have jurisdiction to determine the issue and make an award of fees incurred in the arbitration. In so holding, Corona instructively observed at 704-707:

"Code of Civil Procedure section 1280 et seq. sets forth a comprehensive statutory scheme governing private arbitration in this state. . . . The scheme represents a 'strong public policy in favor of arbitration as a speedy, relatively inexpensive means of dispute resolution' and consequently, courts will indulge every intendment to give effect to such proceedings. . . . Where parties have agreed to submit their dispute to private arbitration, the scope of the arbitration and the powers of the arbitrator are defined in accordance with the agreement . . . . However, this does not mean that the parties to a private arbitration must specify every detail, characteristic, and consequence of the proceeding they contemplate. . . . Rather, the statutory scheme sets forth the basic parameters of such proceedings unless the parties specifically agree otherwise; such parameters include judicial review of the arbitration award. . . . By choosing private arbitration, the parties 'evinced [their] intent to bypass the judicial system and thus avoid potential delays at the trial and appellate levels.' . . . Judicial interference with the arbitrator's decision would thus defeat the very advantages

the arbitral parties sought to achieve. . . . Accordingly, the parties, simply by agreement to arbitrate, are deemed to have accepted limited judicial review by implication, particularly where their agreement specified that the award would be `final' and `binding' upon them. . . . The trial court correctly concluded from the record before it that, because the parties' stipulation did not limit the issues to be resolved through arbitration, the issue of Corona's entitlement to attorney's fees and costs, as requested in his complaint, was subject to determination in the arbitration proceedings. . . . See also Cal. Rules of Court, Rules 1614(a)(8), 1615(a) [absent agreement to the contrary, arbitrator must `determine all issues properly raised by the pleadings, including a determination of any damages and an award of costs, if appropriate.']"

Accord: Finley v. Saturn of Roseville (2004) 117 C.A.4th 1253, 12 C.R.3d 561 (courts lack jurisdiction to rule on matters contained within the scope of an arbitration agreement once a civil action has been stayed and the matter has been ordered to arbitration, until the arbitration has been concluded per the arbitration agreement).

It is significant to note again that the diversion of Robi's Act-based defense to the Commissioner in the arbitration proceeding came after the five-day evidentiary portion of the arbitration proceeding was concluded. Obviously, the proceeding was costly to Wolf in time and money. The fact that the Labor Code required the late-raised Act-based defense to be considered first by the

Commissioner, does not constitute a legal reason for the court below to have impaired the obligation of the parties' binding arbitration agreement. Pursuant to Labor Code 1700.44(a) a party aggrieved by the Commissioner's determination is entitled to a trial de novo, which means that the appealing party is entitled to a complete new trial that is in no way a review of the prior proceeding. Buchwald v. Katz (1972) 8 C.3d 493, 505, 503 P.2d 1376, 1381; Sales Dimensions v. Superior Court (1979) 90 C.A.3d 757, 153 C.R. 690 ("Review is accorded not to the decision of the commissioner, but to the underlying facts on which depend the merits of the dispute.").

Furthermore, the court's order in Case 2 refusing to refer the determination of the voidness issue with respect to the 1983 contract to arbitration, constituted an unconstitutional impairment of the obligation of the parties' arbitration agreement. Both the California and the United States Constitutions contain provisions prohibiting the government from passing any law "impairing the obligation of contracts." United States Constitution, Article I, § 10; California Constitution, Article I, § 9. Although the federal contract clause has been interpreted to be "directed only against impairment by legislation and not by judgment of courts" (Tidal Oil Co. v. Flanagan (1924) 263 U.S. 444, 451, 44 S. Ct. 197), the state contract clause has been construed to apply also to judicial action. Bradley v. Superior Court (1957) 48 C.2d 509, 519, 310 P.2d 634.

In the arbitration proceeding, after all the evidence had come in, Robi obtained a stay of that proceeding by diverting her newly-

raised Act-based defense to the Commissioner for initial determination.<sup>5</sup> The court below in Case 2 erroneously assisted Robi in evading her contractual commitment to decide Case 1 by binding arbitration, which included, of course, determining any defenses to Wolf's claim that Robi had breached the 1983 management agreement. The order of the court in Case 2, refusing to allow the defense to the 1983 contract to be determined by stipulated binding arbitration, was a clear impairment of the binding arbitration agreement of the parties. As such, it was unconstitutional.

**B. There is No Authority That Supports Robi's Contention That Where There is a Civil Action Pending Between The Parties That Has Been Stayed Pending Determination of an Act-Based Defense by The Labor Commissioner, a Notice of Appeal From the Labor Commissioner Determination Must be Filed as a New, Separate, Plenary Proceeding, Rather Than in The Pending Civil Action.**

Robi contends that Sales Dimensions, supra, and Styne, supra, constitute authority in support of the proposition that the only way to properly appeal from a Labor Commissioner determination under the Act is by instituting a new, independent, plenary proceeding. Respectfully, neither of those cases constitute such authority.

It is well-established that an opinion does not constitute authority for a point not raised, considered, or resolved therein. Styne v. Stevens, supra at 57. Neither Sales Dimensions nor Styne

---

<sup>5</sup> It is reasonably inferable that at that juncture in the arbitration proceeding, Robi felt that things were not going particularly well for her. If she had felt that she were winning, chances are she would have allowed the matter to proceed to a decision by the arbitrator.

raised, considered, nor resolved the subject issue. In Sales Dimensions, a former employer brought a civil action against a former employee for misappropriation of business records and unfair competition. Thereafter, the former employee filed a complaint with the Labor Commissioner against the former employer claiming \$4,500 in unpaid commissions allegedly accrued during the period of his employment. The Commissioner rendered a decision awarding \$423. The former employer appealed to the Superior Court. The Superior Court denied the former employer's right to conduct discovery against the former employee, and also denied the former employer's motion to consolidate its appeal from the Commissioner's determination with respect to unpaid commissions with its civil action, on the ground that the two actions involved the same issues. The former employer sought a writ directing the trial court to vacate its order denying discovery and its order denying the motion for consolidation. The Court of Appeal granted the writ on the ground that the trial court failed to properly exercise its discretion on the two issues, and remanded the case to the trial court with instructions as to the proper exercise of its discretion.

Sales Dimensions simply did not involve a situation such as that in the instant case, in which an artist raised a colorable Act-based defense in a breach of contract action commenced by a manager, requiring the civil action to be stayed while the administrative remedy before the Commissioner was exhausted. Sales Dimensions did not involve the Act, nor did it involve a stay of the civil action while a colorable defense under the Act was

submitted to the Commissioner for initial determination. Therefore, when the former employer appealed from the Commissioner's determination in Sales Dimensions, there was no stayed civil action wherein the issue appealed had been raised. Obviously, the former employer had no choice but to institute its appeal as a separate, plenary proceeding.

Styne v. Stevens, supra, lends absolutely no support to Robi's contention. That contention was neither raised, considered, nor resolved in Styne. The verbiage quoted from Styne at page 59 of Robi's Brief does not even vaguely allude to the issue in question. Styne is completely distinguishable from the instant case. It resolved the issue that if a colorable Act-based defense is raised in a pending civil action, the civil action should be stayed while the Act-based defense is first determined by the Commissioner. It did not consider any question as to the procedural mechanism to be employed on an appeal from a determination by the Commissioner.

By her argument, Robi has exalted form over substance. If Wolf had filed his notice of appeal as a separate, plenary proceeding, he would have been required to file a Notice of Related Cases between that proceeding and Case 1 and Case 2, pursuant to CRC 804. If only Case 2 had been pending at the time, he could thereafter have made a motion to consolidate the appeal proceeding with Case 2; and it probably would have been an abuse of discretion for the trial court to have denied that motion. However, because the arbitration emanating from Case 1 as well as Case 2 were both then pending, but stayed, it would have been confusing to seek consolidation of the appeal with Case 1 as to the 1983 contract,

and with Case 2 as to the 1985 contract. It seemed more appropriate therefore, to file separate notices of appeal, as Wolf did.

The law respects form less than substance. Civil Code 3528. This maxim of jurisprudence was applied in Bank of Alameda County v. McColgan (1945) 69 C.A.2d 464, 159 P.2d 31, which held that the substance rather than the mere form of statutes governs construction if strict adherence to form results in injustice.

Labor Code 1700.44(a) provides that controversies under the Act shall be referred to the Commission who shall hear and determine the same, "subject to an appeal with 10 days after determination, to the superior court where the same shall be heard de novo." The statute does not describe the procedure for making the appeal. For instance, an appeal from a Superior Court to a Court of Appeal is made by filing a notice of appeal in the Superior Court, not in the Court of Appeal. However, although the subject statute does not so indicate, unlike an appeal from a court judgment, an appeal from a Labor Commissioner determination is traditionally filed with the Superior Court, the court appealed to, rather than with the Commissioner, the tribunal appealed from. Frankly, under the language of the statute, if one filed a notice of appeal with the Commissioner, pursuant to the principle that the law respects form less than substance, such a filing should be deemed sufficient. In this regard, the observation in Sales Dimension at 763-764 is instructive where it was held the courts have power: "`to adopt any suitable method of practice, both in ordinary actions and special proceedings, if the procedure is not

specified by the statute or by the rules adopted by the Judicial Counsel.'" Since the subject statute does not specify the procedure for filing an appeal from a determination by the Commissioner, the court has discretion to permit any logical method of doing so.

Robi's reliance on Labor Code 1700.45 is irrelevant and unpersuasive. That section provides that notwithstanding 1700.44(a) (requiring controversies arising under the Act to be referred for determination to the Commissioner), a provision in a contract providing for a decision by arbitration of any controversy under the contract shall be valid if (a) the provision is contained in a contract between a talent agency and an artist, or (b) is inserted in the contract pursuant to a regulation of a bonafide labor union, and (c) if the contract provides for reasonable notice to the Commissioner of the time and place of all arbitration hearings, and (d) it provides that the Commissioner or his authorized representative has the right to attend all arbitration hearings. Section 1700.45 deals with contract provisions which permit the parties to agree to submit a dispute under the talent agency contract for determination by arbitration in the first instance, rather than for initial determination by the Commissioner. Wolf does not contend that his management contract contains a Section 1700.45 provision in it. Hence, Wolf was obligated to permit Robi's Act-based defense to be referred for initial determination to the Commissioner. However, after such initial determination, upon Wolf's appeal, Wolf was entitled to enforcement of the preexisting agreement that his claim under the

1983 management contract be determined by binding arbitration. The determination of that Claim clearly encompassed resolution of the defense that Wolf's contract was void as being in violation of the Act.

Robi's reference to the Civil Case Cover Sheet and the Los Angeles Superior Court Addendum thereto, and to sections of the Labor Code which are not part of the Talent Agencies Act, clearly amounts to nothing more than pounding on the table. The sole issue on Robi's cross-appeal is an unpersuasive attempt to exalt form over substance, which is unsupported by any legal authority in which the issue in question was raised, considered, or resolved.

**APPELLANT'S REPLY BRIEF**

**III. ROBI'S ARGUMENT, THAT SHE DID NOT WAIVE HER ACT-BASED DEFENSE FOR VOIDNESS OF THE 1985 MANAGEMENT CONTRACT ON THE GROUND OF ILLEGALITY BY HER FAILURE TO SPECIALLY PLEAD IT IN CASE 2 AS AN AFFIRMATIVE DEFENSE, IS UNPERSUASIVE.**

Robi admits that her operative answer in Case 2, i.e., Answer to Plaintiff's First Amended Complaint (AA 15), which was deemed to by her answer to the Second Amended Complaint (AA 1162:14), did not include the affirmative defense of illegality of Wolf's management contract for violation of the Act. Robi's Brief, p. 65. She argues, however, that Wolf's contention, that her failure to timely specially plead that affirmative defense constitutes a waiver of the defense, is illogical. Respectfully, it is difficult to discern the points of Robi's argument in this regard.

What she appears to be arguing is that although she did not allege that Wolf's management contracts were void for violation of

the Act in her answer, she did raise that contention in her Petition to Determine Controversy before the Commissioner. She fails to mention that she asserted that contention in Case 2 when she moved in September 2000 to stay that case pending determination of her Petition to the Commissioner.

Notwithstanding, by the time of her September 2000 motion, the defense of illegality had already been waived. A defense that is not timely raised by demurrer or answer is waived except for an objection to subject matter jurisdiction or that the matter pleaded does not state a cause of action. CCP 430.80(a); accord California Concrete Co., Inv. v. Beverly Hills Savings & Loan Association (1989) 215 C.A.3d 216, 261 C.R. 484 (a defendant cannot raise a defense by motion for summary judgment which it did not first raise as an affirmative defense in its answer, because in failing to so raise it in the answer, the defense was waived). Therefore, the fact that Robi mentioned the illegality defense in her motion to stay proceedings in Case 2 pending her Petition to the Commissioner did not serve to resurrect her previously-waived illegality defense. Robi's argument in this respect simply pretends that the authority of CCP 430.80(a) and California Concrete Co. do not exist. This ostrich-like approach is of no avail.

Next, Robi seems to argue that by participating in the Labor Commissioner proceeding, and then filing a notice of appeal from the Commissioner's adverse determination, Wolf has somehow waived his contention that Robi had waived her illegality defense. Frankly, Wolf had no choice but to proceed as he did. Once Robi moved the court to stay proceedings in Case 2 while the Labor

Commissioner determined her colorable Act-based defense, the court below had no alternative but to order Case 2 stayed. Hopefully, Robi is not contending that by defending himself before the Commissioner and attempting to obtain a favorable determination, Wolf somehow waived his right to contend upon resumption of Case 2 after the Commissioner's determination that Robi had waived her illegality defense by failure to timely plead it in her answer. Such an argument would seek to affirm a denial of due process to Wolf.

A defense that a particular contract is void because it is illegal can be raised in various contexts. For instance, a person entering into a contract to perform building contractor's work without a requisite license is subject to such a defense. However, in that situation, there is no statute requiring that the defense be submitted initially for determination by an administrative agency, subject to trial de novo in a court proceeding thereafter. In that situation, if the defendant failed to timely plead the affirmative defense of illegality of the contract in his answer, it would be waived. The fact that illegality of a contract for a violation of the Talent Agency's Act must initially be referred to the Labor Commissioner for determination, subject to a trial de novo thereafter, does not abrogate the aforesaid rules of pleading.

Under the situation faced by Wolf in Case 2, the first opportunity he had to effectively raise the contention that Robi had waived the illegality defense by failure to timely plead it was after the Commissioner had ruled, and Case 2 was resumed. At that juncture, it became ripe for Wolf to assert that contention. He

did so, and the court below erroneously rejected it.

Finally, Robi appears to make the following argument: The Labor Commissioner has original exclusive jurisdiction to determine the illegality defense. A determination of that defense by the Commissioner is a binding final resolution entitled to res judicata effect if no trial de novo is requested. Therefore, a defendant does not have to timely plead the affirmative defense of illegality in its answer.

Respectfully, if this is Robi's argument, it contains no logic. First, it does not address the situation wherein one of the parties does request a trial de novo after the Commissioner's determination. In that event, the determination has no binding, res judicata effect, but is subject to a de novo determination by the Court, without reference to the content of the Commissioner's decision. Buchwald v. Katz (1972) 8 C.3d 493, 505, 503 P.2d 1376, 1381; Sales Dimensions v. Superior Court, supra.

Second, assuming that a determination of illegality by the Commissioner becomes binding with res judicata effect because no trial de novo is requested, Robi has cited no authority for the proposition that the Commissioner's determination could be asserted as a dispositive defense to a pending civil action, if that defense had previously been waived by failure to timely assert it in the answer. Robi should not assume that an appellant court would reach such a conclusion without being furnished with supporting authority.

/ /

/ /

**IV. ROBI'S CONTENTION THAT THE DOCTRINE OF SEVERANCE IS NOT APPLICABLE TO CONTRACTS THAT ARE SUBJECT TO REGULATION UNDER THE TALENT AGENCY'S ACT IS NOT SUPPORTED BY ANY AUTHORITY.**

Appellants' assertion in this case that the doctrine of severance is applicable to the Talent Agency's Act is a case of first impression. This issue has never previously been addressed in any appellate decision. As previously mentioned, an opinion is not authority for a point not raised, considered, or resolved therein. Styne v. Stevens, supra at 57. This issue was not raised, considered nor resolved in any of the Talent Agency Act cases cited in Respondent's Brief. Furthermore, appellants have located no other case in which the issue was raised, let alone considered or resolved.

Robi makes no attempt to distinguish or otherwise refute the authority of the cases cited by Appellants in support of their contention regarding the applicability of the severance doctrine in the instant case. Of particular note is Birbrower, Montalbano, Condon & Frank v. Superior Court (1998) 17 C.4th 119, 949 P.2d 1, discussed at page 27, et seq. of AOB. In that case, the doctrine of severance was applied to void compensation for the portion of the legal services rendered by the attorneys in California for lack of a license to practice law in this State, but to allow recovery of compensation for legal services rendered outside of the State which were not in violation of the California license law. The protection of the public with respect to licenses to practice law is substantially more serious than with regard to talent agency licenses. In order to obtain a license to practice law in

California, one must attend three or four years of law school, pass the Bar examination, and demonstrate good moral character. In order to obtain a talent agency license, no educational requirements nor proficiency examination are required; one must simply demonstrate good moral character. Since the Supreme Court in Birbrower held that the severance doctrine with respect to illegal contracts was applicable to compensate attorneys under contracts between attorneys and clients, it appears reasonably arguable that the same Court would apply the severance doctrine in the context of a contract between an agent and an artist. Certainly, if Robi contends that Birbrower or any of the other cases relied upon by Appellants are not applicable, it should furnish this court with a persuasive argument in support of such contention. Thus far, Robi has not done so.

**V. ROBI HAS ONLY TANGENTIALLY ADDRESSED THE STATUTORY INTERPRETATION "PROCURING CAUSE" ARGUMENT MADE BY APPELLANTS, UNPERSUASIVELY RELYING ON THE CONTENTION THE RECORD CONTAINS SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT'S STATEMENT OF DECISION IN WHICH IT FOUND WOLF PROCURED EMPLOYMENT FOR PAUL ROBI.**

Robi has substantially pounded on the table with respect to the pure issues of law on this appeal, and attempted to pound on the facts on the one issue that rests upon the trial court's determination of disputed issues of fact. In so doing, Robi has improperly contended that the standard of review of that issue is solely the substantial evidence standard. Respectfully, the issue is a mixed question of fact and law, implicating the substantial evidence standard as to the trial court's determination of the

evidence below, but also implicating the de novo standard insofar as it involves interpretation of the Act with respect to the "procuring cause" issue.

In Robi's Brief, she criticizes appellants for not referring to findings and conclusions in the trial court's Statement of Decision. AA 645-1. However, it appears that Robi's Brief itself fails to refer to specific findings and conclusions in the Statement of Decision. Robi's Summary of Evidence (Section IV of Robi's Brief) contains a detailed recitation with reference to testimony and documentary exhibits. However, Robi leaves out how this evidence ties into the Statement of Decision. The portion of the Statement of Decision that specifically addresses Wolf's allegedly employment-procurement conduct in violation of the Act is contained in paragraphs 42-61. AA 645-17 through 645-22. For the most part, the discussion in the Statement of Decision contains general conclusory findings without reference to specific items of testimony and/or trial exhibits.

Appellants filed extensive Objections to (Proposed) Statement of Decision. AA 650. The portion of the Objections which pertain to Wolf's conduct under the Act are set forth in paragraphs 6-10. AA 670-694. The trial court did not revise the (Proposed) Statement of Decision with reference to any of the points made in Appellants' Objections.

Since Robi contends on appeal that the factual findings in the Statement of Decision are supported by substantial evidence, it is incumbent upon Robi to delineate the particular findings in the Statement of Decision and reference the evidence that she contends

substantially supports the same. Robi has not done so. Rather, Robi has merely recited what she claims to be evidence from the reporter's transcript and trial exhibits, but has not demonstrated what findings, if any, the trial court made in its Statement of Decision with respect to that evidence. As such, Robi has failed to demonstrate that the Statement of Decision is support by substantial evidence.

Furthermore, Robi has only tangentially addressed the "procuring cause" argument of Appellants. With respect to the "procuring cause" issue, Robi argues that AOB did not disclose the evidentiary rulings by the trial court as to the lack of foundation and hearsay as to Wolf's assertion that he was "working through agents . . . who were the procuring cause of the engagements." Robi's Brief, p. 47. This assertion is untrue. This Court's attention is respectfully invited to AOB, page 37, last paragraph, through the carryover paragraph on page 39. Notwithstanding the subject evidentiary rulings below, the court received all of the testimony and documentary evidence referred to in the aforesaid segment of AOB. That evidence is the factual foundation of Wolf's "procuring cause" argument.

Robi also unfairly characterized the nature of many trial exhibits which respect to the "procuring cause" issue. For instance, Robi argued that use by Wolf of his own stationary in preparing engagement contracts supported Robi's contention that Wolf was the person who procured the engagements. In this exposition, Robi refers to myriad exhibits that are not signed contracts, but are merely itinerary sheets prepared by Wolf so that

Paul could keep track of the relevant information with respect to upcoming engagements. See, e.g., Exhibits 128, 140, 141, 142. RT 921:20-922:21 All actual engagement contracts (as differentiated from itinerary sheets) contain the signature of Paul Robi. See, e.g., Exhibits 126, 127, 129, 130, 133, 138.

Furthermore, Robi asserts that because many of Wolf's accounting statements to Paul do not indicate payment by Wolf to any talent agent, those statements constitute evidence that with respect to the engagements reflected on those statements, Wolf, rather than a talent agent, procured the engagements. However, Wolf testified, without contradiction, that quite often the talent agents took their commissions directly from the initial deposit from the performance venue before they sent the net deposit to Wolf. In those situations, therefore, Wolf's statements did not reflect payment of an agency commission, because the agent had already been paid and there was no commission due. RT 999, lines 18-28.

Although substantial evidence to support a judgment may include an inference, the inference must be a reasonable conclusion based from the evidence, and cannot be based upon suspicion, imagination, speculation, surmise, conjecture or guesswork. See, e.g., Carrau v. Marvin Lumber And Cedar Co. (2001) 93 C.A.4th 281, 289, 112 C.R.2d 869. In light of Wolf's aforesaid uncontradicted testimony, a finding that the absence of the payment of agency commissions on Wolf's statements constitutes proof that there were no agents for the engagements reflected on such statements, would be an impermissible inference based upon suspicion, imagination,

speculation, surmise, conjecture or guesswork.

**CONCLUSION**

For all of the reasons stated in AOB and the instant Brief, the judgment of the court below should be reversed.

Respectfully submitted,

---

Terran T. Steinhart  
Attorney for Plaintiffs  
and Appellants

ATTORNEY'S CERTIFICATE OF COMPLIANCE WITH CRC 14(c)

Counsel for plaintiffs and appellants hereby certifies that the number of words in **CROSS-RESPONDENTS' BRIEF AND APPELLANTS' REPLY BRIEF** is 7735 words.

Dated: July 26, 2004

---

Terran T. Steinhart  
Attorney for Plaintiffs  
and Appellants

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 4311 Wilshire Boulevard, Suite 415, Los Angeles, California 90010-3713, which is located in the county where the mailing described below took place.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On the date set forth below, at the aforesaid place of business, one copy each of the document described as **CROSS-RESPONDENTS' BRIEF AND APPELLANTS' REPLY BRIEF** was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully pre-paid, addressed as set forth in the attached Service List to opposing counsel and the Superior Court judge care of the court clerk, and five copies to the California Supreme Court per said Service List; and that envelope was placed for collection and mailing on said date following ordinary business practices.

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

Executed on July 26, 2004.

---

Terran T. Steinhart

SERVICE LIST

CALIFORNIA SUPREME COURT  
300 S SPRING ST  
LOS ANGELES CA 90017

ALLEN HYMAN ESQ  
LAW OFFICES OF ALLEN HYMAN  
10737 RIVERSIDE DR  
NORTH HOLLYWOOD CA 91602  
[Attorney for defendant Robi]

DOUGLAS D KAPPLER ESQ  
ROBINSON DIAMANT & WOLKOWITZ APC  
1888 CENTURY PARK EAST STE 1500  
LOS ANGELES CA 90067  
[Attorneys for Timothy J. Yoo, Chapter 7 Trustee in bankruptcy]

HON RONALD M SOHIGIAN  
C/O LOS ANGELES SUPERIOR COURT CLERK  
111 N HILL ST  
LOS ANGELES CA 90012

470\CRBrApRs.Brf