

***Dalessandro v. Mitchell (12/17/19)***

**Los Angeles Superior Court Case No. BS138171 (2DCA, Div. 8)**

The trial court did not err in denying a postjudgment motion to compel and sanctions were proper.

**FACTS/PROCEDURE**

The underlying litigation of this appeal was for residual payments owed by Eric Mitchell to James Dalessandro. The issues on appeal concerned discovery abuses and sanctions. James Dalessandro (represented by Paul Levine) appealed a *postjudgment* order that denied Dalessandro's motion to compel the production of documents. The order instead imposed \$3,456.70 in sanctions against Levine for discovery abuses.

The appellate court had already affirmed a default judgment against Mitchell and two sanction orders against Dalessandro. As part of his efforts to collect on the default judgment, Dalessandro issued a demand to Mitchell for the identification, production, and copying of documents. Mitchell failed to respond to the demand, so Dalessandro filed a post judgment motion to compel. The trial court had denied Dalessandro's motion to compel and ordered his attorney Levine to pay Mitchell \$3,456.70 in monetary sanctions for failing to comply with discovery rules and procedures, including to affix postage to the demand. It further found service of the demand "was false" and Levine's declaration in support of the motion "was false."

Mitchell, with the help of counsel, filed a motion to dismiss Dalessandro's appeal for lack of standing on the sanctions order issued only against Levine.

**HOLDING/DISCUSSION**

Affirmed. The trial court did not err in denying Dalessandro's postjudgment motion to compel. Service was improper, namely because there was no postage affixed to the envelope.

As to the monetary sanctions, there is no "safe harbor" requirement for monetary sanctions issued for discovery abuse. California Code of Civil Procedure section 128.5 (safe harbor) has no application to sanctions authorized under the Discovery Act. (§2023.010 et seq.) The court was also not persuaded that there must have been a meet and confer effort before the sanctions were issued. Section 2023.010(d) merely provides that failing to respond to authorized discovery is a misuse of the discovery process. There is nothing in that section that requires a party to meet and confer with the opposing party to alert him to the defects in his discovery requests, particularly when they were not validly served. Lastly, attorneys fees are recoverable even if at periods Mitchell represented himself. Mitchell only sought payment for the fees his counsel incurred.