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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

Q-SOFT, INC., Petitioner, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; REZA MAHALLATY et al., Real Parties in Interest.	G037275 (Super. Ct. No. 99HF1125) ORDER MODIFYING OPINION AND DENYING REHEARING [NO CHANGE IN JUDGMENT]

The opinion, filed on November 29, 2007, and certified for publication, is ordered modified as follows:

1. Page 6, delete footnote no. 3, and renumber all succeeding footnotes. Same page, lines 11-12, change "*Semaan, supra,* 42 Cal.4th at p. 86" to "*People v. Semaan* (2007) 42 Cal.4th 79, 86 (*Semaan*)".

2. Page 8, delete the second full paragraph (beginning with "Q-Soft's writ from the July 26, 2005 distribution order") and delete the third full paragraph (beginning with "On remand, the trial court shall determine"). Substitute the following:

> Q-Soft's writ from the July 26, 2005 distribution order does not challenge either the facts underlying this determination or the procedural fairness of the restitution proceedings. In its petition for rehearing, Q-Soft complains that it "continues to be victimized." Q-Soft says that it was thrust into the restitution proceedings with limited rights, including "no right to demand production of documents, no right to take depositions, no right to serve interrogatories, no right to request admissions and no effective means of preventing the disappearance of the only known assets if they are returned to [real parties in interest]."
>
> Q-Soft was represented by counsel below, and received notice of the receiver's reports and hearing dates. There were evidentiary submissions by the parties, an adversarial hearing on April 9, 2004, and a written, signed and file-stamped restitution order of May 13, 2004. Much of the embezzled funds were returned to Q-Soft in the August 3, 2004 distribution order. Even so, Q-Soft had the opportunity to file written objections and legal memoranda, seek appropriate clarifications and modifications, and participate in further hearings. The net effect was a further award to Q-Soft in the July 26, 2005 order.
>
> The instant writ proceeding has provided Q-Soft an opportunity for full appellate review of all the pertinent trial court orders below. Nowhere in its petition does Q-Soft claim that any of these orders were unsupported by substantial evidence or violated its due process rights. Q-Soft never raised any due process objections, nor has it claimed that procedural shortcomings deprived it of right to full restitution. Any due process issues come too late and in too conclusory a form on a petition for rehearing. (See *Wells Fargo Bank Minnesota, N.A. v. B.C.B.U.* (2006) 143 Cal.App.4th 493, 507, fn. 9 ["An argument may not be raised for the first time in a petition for rehearing."].)
>
> Under these circumstances, we cannot substitute our judgment about the proper amount of full restitution for the judgment of the trial judge. Judge Kreber acts as the finder of fact, not us. (See *People v. Carmony* (2004) 33 Cal.4th 367, 377; *People v. Stanley* (1995) 10 Cal.4th 764, 793.)
>
> Q-Soft suggests in its petition for rehearing that its restitutionary rights may be diminished because third party creditors of Wife may come forward to levy on the funds once distributed. Not so. On remand, the trial court shall determine the amount of full restitution to which Q-Soft is entitled, and distribute such funds *directly* to Q-Soft. Once full restitution has been achieved, the matter is at an end

insofar as the Freeze and Seize Law is concerned, and Mahallaty and Cummings are entitled to the remaining funds held by the receiver.

3. Page 12, lines 2-5, delete the second sentence (beginning with "In its reply, Q-Soft requests") and substitute the following:

> Not until its reply did Q-Soft modify its prayer to specifically request that we "enter a new and different order granting release of all funds as payment toward restitution due to Petitioner, *as set forth in the civil judgment against* [*Wife*.]" (Italics added.)

4. Page 13, line 1: add the following sentence after the sentence ending with the phrase "judgment for compensatory damages" and before the sentence beginning with the phrase "But whichever it is,".

(Q-Soft's petition for rehearing still fails to clarify our query.)

5. Page 13, line 8: add the following sentence after the sentence ending with the phrase "summons and complaint in the civil action" and before the sentence beginning with the phrase "Because the matter has not been briefed":

> The writ papers only indirectly mentioned the default judgment, and implicitly assumed its automatic application as to any distributions to Mahallaty and Cummings.

This modification does not change the judgment.

The petition for rehearing is DENIED.

SILLS, P. J.

WE CONCUR:

RYLAARSDAM, J.

IKOLA, J.