CALIFORNIA COURTS OF APPEAL

Ciani v. San Diego Trust and Savings Bank,

25 Cal. App. 4th 563,
94 D.A.R. 9444,
No. D017790 (June 1, 1994).

Attorneys' Fees Are Properly Denied Since Plaintiff's Involvement in Lawsuit and Administrative Proceedings Was Unnecessary

In this proceeding, Anthony Ciani appealed from a judgment which denied his request for reimbursement of the attorneys' fees he incurred in a lawsuit and in a post-litigation administrative appeal. Both proceedings were to prevent San Diego Trust and Savings (SDT&S) from destroying the so-called "Green Dragon Colony" in La Jolla. The trial court held that Ciani's involvement in the lawsuit was unnecessary as it duplicated the work of state attorneys.

On July 9, 1991, Ciani learned of a stipulated agreement between SDT&S and the City of San Diego which resulted in the issuance of a coastal development permit (CDP) authorizing the demolition of the Green Dragon Colony; that same day, Ciani notified the Coastal Commission of the impending plan to demolish the structures. On July 10, 1991, Ciani again contacted the Commission, as well as Deputy Attorney General Jamee Patterson, and implored them to act to stop the demolition. Because demolition had already commenced, Patterson expressed initial doubt as to whether a lawsuit and injunction to stop demolition could be filed in time to save the structures. In the afternoon of July 10, Ciani and Patterson filed separate, but essentially identical, lawsuits seeking to stop demolition pending a judicial determination of whether the Commission had appellate jurisdiction to review the City-issued permit. In *Ciani v. San Diego Trust and Savings Bank* (1991) 233 Cal. App. 3d 1604 *(Ciani I)*, the Fourth District ultimately ruled that the Commission has jurisdiction to review the permit, and ruled the demolition be stayed to permit the Commission to exercise its appellate jurisdiction. However, following an administrative proceeding at which Ciani advocated rejection of the permit, the Commission issued a CDP allowing demolition, subject to some modifications.

In affirming the trial court's rejection of Ciani's attorneys' fees claim, the Fourth District found substantial support for the trial court's conclusion that Ciani's participation in the lawsuit was not necessary, one of the requirements for attorneys' fees under Code of Civil Procedure section 1021.5. Among other things, the Fourth District found that the theory which Ciani argued was "identical" to that advanced by the Commission.

The Fourth District also held that the trial court was justified in considering Ciani's participation in the subsequent Commission proceedings not to be an activity entitling an award of attorneys' fees under section 1021.5; the Fourth District had previously opined that section 1021.5 is limited to parties in a judicial action and does not extend to fees incurred in an administrative proceeding. Unless Ciani's activities before the Commission were useful and necessary and directly contributed to the resolution of the underlying substantive judicial proceeding, they are not to be considered for purposes of a section 1021.5 award. In this case, the Fourth District found that this requirement was not met, since the benefit in *Ciani I* was the affirmation of the Commission's appellate jurisdiction, and that benefit "arose and was complete *regardless* of subsequent proceedings" (emphasis original).

Finally, the Fourth District found that the trial court did not abuse its discretion in rejecting Ciani's request for fees under the "substantial benefit" doctrine, which allows a litigant who has sued in his representative capacity to recover fees when the litigant's efforts have created a substantial, actual, and concrete pecuniary or nonpecuniary benefit, such benefit redounds to members of an ascertainable class, and the court's jurisdiction over the subject matter makes possible an award which spreads the cost proportionately among the members of the benefitted class. The theory rests on concepts of unjust enrichment: those enriched by an economic windfall should bear their fair share of the costs expended to create the benefits obtained. The Fourth District found that the benefits resulting from Ciani's actions did not increase anyone's revenues; did not reduce anyone's expenses; did not create a fund for the benefit of a recognizable group; and were not "substantial" in nature. Further, the court opined that "it is difficult to identify an entity or ascertainable class which may have received these benefits, and as to which it is just that some payment be required."

Shahvar v. Superior Court, ASP Computer Products, et al., Real Parties in Interest,

25 Cal. App. 4th 653,
94 D.A.R. 7505,
No. H011565 (June 2, 1994).

Litigation Privilege Does Not Apply to Communication That Does Not Further the Objects of

Petitioner Elias Shahvar transmitted a facsimile copy of a civil complaint containing false allegations to a San Francisco newspaper; the facsimile communication induced the newspaper to publish an article that summarized the complaint's allegations. The Civil Code section 47 "litigation privilege" shields certain statements from defamation liability; according to California caselaw, the usual formulation is that the privilege applies to communications made in judicial or quasi-judicial proceedings, by litigants or other participants authorized by law, to achieve the objects of the litigation, and that have some logical relation to the action. Further, a document is not privileged merely because it has been filed; the privileged status of a particular statement depends on its relationship to an issue in an underlying action.

Applying the legal standard to the facts, the Sixth District Court of Appeal concluded that Shahvar's communication of his allegations to the newspaper was unrelated to the litigation and therefore not covered by the litigation privilege. In so ruling, the Sixth District disagreed with *Abraham v. Lancaster Community Hospital* (1990) 217 Cal. App. 3d 796, which held that a party's conduct in causing the allegations in his proposed amended federal complaint to be published in the local press, and disseminating them within the local medical community, was absolutely privileged under section 47. According to the Sixth District, *Abraham*'s conclusions are unsupported by caselaw, policy, or statute. The Sixth District criticized *Abraham* for inventing "a 'bridge' privilege between privileged pleadings and a presumably privileged report which extended Civil Code section 47's privilege to the transmittal of pleadings to the press." According to the Sixth District, "[t]his 'bridge' privilege is an unwarranted extension of Civil Code section 47 beyond its terms."

Brown, et al., v. West Covina Toyota,

26 Cal. App. 4th 555,
94 D.A.R. 9555,
No. B083055 (June 30, 1994).

Attorneys' Fees Are Not Recoverable Under Rees-Levering Automobile Sale Finance Act in Warranty Breach Case

The Second District Court of Appeal reviewed a municipal court's attorneys' fee award of $31,300 to West Covina Toyota and against a consumer complainant under Civil Code section 2983.4, part of the Rees-Levering Automobile Sales Finance Act (Rees-Levering), Civil Code section 2981 *et seq.* According to the allegations of the complaint, Brown purchased a 1989 Toyota Tercel from Toyota in May 1990 for $11,970.88 pursuant to a written contract; the car had on it 23,917 miles; Toyota also "appended to the [vehicle] a service contract which defendants told plaintiff, and plaintiff reasonably believed, was an express written warranty in which [Toyota] warranted to perform any repairs or replacement of parts necessary to ensure that the [vehicle] and the components therein were free from all defects in material and workmanship"; in November 1990, at 30,621 miles, Brown discovered that the vehicle failed to conform to the warranties "in that defects, nonconformities, misadjustments or malfunctions relating to the front end were exhibited." Brown also discovered that the vehicle had been involved in an accident prior to its sale to her, contrary to Toyota's representation.

In her complaint for rescission of contract, Brown sought a judicial declaration of rescission plus incidental damages and attorneys' fees; among other things, the first cause of action alleged that "the contract is either a 'conditional sales contract' subject to the provisions of the Rees-Levering Motor Vehicle Sales and Finance Act...or a 'lease contract' subject to the provisions of the Vehicle Leasing Act, Civil Code section 2985.7 *et seq.*" Brown's other causes of action included breach of express warranty under the Song-Beverly Consumer Warranty Act (Song-Beverly), breach of implied warranty of merchantability under Song-Beverly, violation of statute under Song-Beverly, violation of Consumers Legal Remedies Act, and fraud.

On January 4, 1993, the municipal court granted Toyota's motion for a directed verdict; Toyota then filed a memorandum of costs seeking attorneys' fees of $31,300 and other costs which together totaled $32,646. In a declaration accompanying the cost memorandum, Toyota claimed that the transaction giving rise to this lawsuit was the sale of a used vehicle by a contract which is subject to the provisions of Rees-Levering; Toyota claimed that, pursuant to Civil Code section 2983.4, a provision of Rees-Levering, Toyota is a prevailing party entitled to reasonable attorneys' fees and costs. On March 1, 1993, plaintiffs filed a motion to strike Toyota's memorandum of costs on the ground that the gravamen of plaintiffs' action sounded in violations of Song-Beverly and fraudulent misrepresentation; under section 1794(d) of Song-Beverly, the legislature specifically excluded the seller from recovery of costs and attorneys' fees. On March 2, 1993, the court entered a judgment in Toyota's favor for costs and attorneys' fees totaling $32,646.

The Second District explained that the issue before it is whether the action involved a cause of action or claim under Rees-Levering. After reviewing the applicable statutory language and applying it to the record before it, the Second District concluded that because Brown asserted no facts which could invoke Rees-Levering, Toyota is not entitled to costs and attorneys' fees under that Act. The court found that the gravamen of the action, or primary right which Brown sought to enforce, involved an alleged breach of warranty; according to the court, "[n]owhere in the complaint, or in any other part of this record, have appellants asserted a breach by respondent of any duty relating to the financing or repossession of the vehicle, or any other duty arising under Rees-Levering."

Westbrook v. Los Angeles County,

27 Cal. App. 4th 157,
94 D.A.R. 10730,
No. B068360 (July 28, 1994).

Penal Code Scheme Bars Unrestricted Access to Municipal Court's Information System

The Second District Court of Appeal considered whether a private entity in the business of selling criminal background information to the public is entitled to obtain a compilation of data from a database maintained by the Municipal Courts of Los Angeles County; the Municipal Court Information System (MCI) contains information gathered from individual criminal files, including information from booking slips, arrest reports, and other materials that are filed in each case, including name, aliases, monikers, address, race, sex, date of birth, place of birth, height, weight, hair color, eye color, criminal investigation and identification number, FBI number, social security number, California operating license number, arresting agency, booking number, date of arrest, offenses charged, police disposition, county and court name, date complaint filed, original charges and disposition. Although the trial court expressed concern over the loss of privacy which would result from giving private companies access to this information, it ruled that plaintiff and respondent Robert Westbrook was entitled to copies of the entire MCI on computer tape not more than one time per month upon payment of a reasonable amount for each copy.

In reversing the trial court's decision, the Second District noted that dissemination of information in the hands of local criminal justice agencies is controlled by Penal Code sections 13200 through 13326. Specifically, section 13300 sets forth significant restrictions on access to local summary criminal history information; although certain persons, agencies, and entities are entitled to receive the information if it is "needed in the course of their duties," others may obtain the information only "upon a showing of a compelling need" and subject to specified restrictions. The court noted that, despite these restrictions, Westbrook was allowed to obtain monthly copies of computer tapes containing all criminal offender record information generated by the municipal courts of Los Angeles County, "not because he has demonstrated any legally acceptable need to know the information, but solely because he wants to sell the information to others."

The court also rejected Westbrook's contention that the tapes are public records which must be available to the public, despite possible misuse of the data by others, noting that all of the authorities cited by Westbrook in support of this assertion contain general language to the effect that in the absence of a contrary statute or a countervailing public policy, court records are public documents which must remain available for public inspection. The court stated that none of the cited authorities are controlling, since this case involves a contrary statute and a countervailing public policy.

Cortez v. Bootsma,

27 Cal. App. 4th 935,
94 D.A.R. 11704,
No. D017438 (Aug. 19, 1994).

Local Rule Cannot Limit Discretion Vested in Trial Court to Award Reasonable Attorneys' Fees

In this proceeding, the Fourth District Court of Appeal considered whether a local court rule can limit the amount of an attorneys' fee award when a statute requires the superior court to award "reasonable attorneys' fees"; the applicable statute in this case authorizing attorneys' fees is Labor Code section 3709. In the underlying action, the jury awarded plaintiff $121,938.24; the trial court then determined that a reasonable attorneys' fee was $65,000. However, Rule 6.1 of the San Diego County Superior Court Rules provided that in contested actions no attorneys' fees could be awarded "in excess of the amount agreed by the plaintiff to be paid to the plaintiff's attorney." In this case, plaintiff and his attorney agreed to a 40% contingent fee, which would have amounted to $48,775 based on the jury award.

On appeal, Cortez contended that to the extent the local rule limits the trial court's ability to craft a "reasonable" award required under state law, it is superseded. The Fourth District agreed, holding that when the legislature grants statutory authority to the trial courts to award reasonable attorneys' fees, a local rule may not limit discretion by restricting the amounts awardable. To the extent that Rule 6.1 so conflicts with state law, it is inapplicable.

DeWitt-Carter v. Sharp,

No. A063985 (Sept. 9, 1994).

Court Rejects Claim That California Lottery Advertising is Misleading

In an uncertified, unpublished opinion, the First District Court of Appeal rejected a claim that the California State Lottery engages in misleading advertising by overstating the true value of its "million-dollar" prizes. In support of their claim, plaintiffs contended that what the Lottery advertises as a $1 million prize has a true value of only $375,000, since the prize is paid out in installments over a twenty-year period. Lottery officials admitted that they need to invest only approximately $500,000 in U.S. Treasury bonds in order to generate each "million-dollar prize" which they advertise. However, the First District opined that the Lottery makes "every effort" to ensure that the public knows that "million-dollar" prizes are awarded over a twenty-year period, and rejected plaintiffs' argument that the Lottery's advertisements mislead the public.