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NEWcases

of BUSINESS LITIGATION INTEREST

Orange County Bar Association • Business Litigation Section

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S T A T E

Attorneys' Fees—Amount— Reasonableness—Proof of Hours Spent—Multiplier

The courts of appeal have been busy lately discussing attorneys' fees issues. In one case, the court held that the prevailing defendant's entitlement to attorneys' fees was not constrained by the amount paid to its insurance defense counsel. Instead, the trial court was entitled to set a reasonable rate, even if the rate exceeded what the insurer paid (and in this case, defense counsel never disclosed what that hourly rate was). *Syers Properties III, Inc. v. Rankin*, 226 Cal.App.4th 691, 172 Cal.Rptr.3d 456 (2014). This case also explains that California does not require a particular level of detail to justify the hours claimed and the work done, and that the trial court did not abuse its discretion in making the award here. In a second case, *Chodos v. Borman*, 227 Cal.App.4th 76, 173 Cal.Rptr.3d 266 (2014), the court of appeal held that the trial court wrongly instructed the jury it could apply a multiplier to the lodestar amount in lawyer-client fee dispute where the lawyer had not assumed the risk of nonpayment of his hourly rate if his client (with whom he had the fee dispute) recovered nothing in her suit. The court went on to say that an enhancement would be particularly inappropriate where—as here—the lawyer was suing in quantum meruit, which strives to reach a fair and reasonable fee based on equitable principles.

Attorneys' Fees—Appeal— Enforcement of Judgments

Under the Code of Civil Procedure, a judgment creditor is entitled to reasonable and necessary costs of collecting

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the judgment, including attorneys' fees "otherwise provided by law." But there is a hitch. Any motion seeking such fees must be made "before the judgment is satisfied in full." Code Civ. Proc. § 685.080(a). In *Conservatorship of McQueen*, 59 Cal.4th 602 (2014), a conservator recovered a judgment in a financial elder abuse case. The defendant appealed. The court of appeal affirmed the judgment and the defendant paid the judgment. The plaintiff then sought an award of attorneys' fees for defending the judgment on appeal. The trial court granted the motion, but the court of appeal reversed, holding that the motion was subject to CCP § 685.080(a) and therefore had been filed too late. The supreme court reversed the court of appeal. The supreme court had no trouble concluding that fees incurred in *defending* a judgment on appeal are not subject to a limitation imposed on obtaining fees for *enforcing* a judgment. In coming to this conclusion, the court stated that there was no indication that appellate fees authorized by statute were in any way dependent on the Enforcement of Judgments statute.

Litigation—Alter Ego—Res
Judicata

A bank sued a law firm for failing to repay its loan and its sole owner for breach of a guaranty. Among the boilerplate allegations was that each defendant was the alter ego of the others. The individual successfully demurred to the cause of action against him, but the bank recovered against the law firm. The bank then moved to amend the judgment to add the lawyer-owner as an alter ego. Was this claim barred by res judicata? No. *Wells Fargo Bank v. Weinberg*, 227 Cal.App.4th 1, 173 Cal.Rptr.3d 113 (2014). The court of appeal held that (i) despite the boilerplate pleading, alter ego was not litigated before judgment was entered; (ii) the bank did not realize alter ego might apply until enforcement discovery, (iii) res judicata does not apply to claims that arise after the initial complaint; and (iv) perhaps most importantly, alter ego was entirely separate from any claim for breach of contract and simply sought to hold the lawyer liable for his control over the corporation.

Litigation—Supplemental
Jurisdiction—Remand—Time
Limitations on Refiling

The proper interpretation of 28 U.S.C. § 1367(d) is one that has vexed the courts. Under that statute, when a federal district court dismisses a claim over which it had

asserted supplemental jurisdiction, the limitations period is “tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.” In *City of Los Angeles v. County of Kern*, 59 Cal.4th 618, 174 Cal.Rptr.3d 67 (2014) various municipalities were duking it out in federal court over a Kern County ballot measure banning the use of biosolids as fertilizer in parts of Kern County. Years into the litigation and after a trip to the Ninth Circuit, the district court dismissed claims over which it had exercised supplemental jurisdiction. The City of L.A. filed a new action in state court 78 days later and the question was whether it was timely. The City argued that section 1367(d) suspended the running of the statute of limitations the entire time the case had been pending in federal court and therefore it had whatever unexpired time remained, *plus* the 30 days granted by section 1367(d). The supreme court rejected this argument. It observed that the cases around the country had split almost evenly over the meaning of section 1367(d), but the court concluded that under a proper interpretation, section 1367(d) does not abate the *running* of the statute of limitations, but only its *expiration*. That is to say, to be timely, an action must be filed within 30 days of dismissal of the federal claim. Since Los Angeles did not file until the 78th day, its case was time-barred.

Litigation—Summary
Judgment—Issue of Liability
Only

May a plaintiff seek summary judgment limited to liability for breach of contract, leaving solely the issue of damages for trial? No. *Paramount Petroleum Corp. v. Superior Court*, 227 Cal.App.4th 226, 173 Cal.Rptr.3d 518 (2014). First the court held that despite the confusing language of the statute, a *plaintiff* may move for summary adjudication of a cause of action if the plaintiff asserts there is no defense to it. But, the court of appeal explained, that that wasn’t what plaintiff was seeking to do here. To do that, the plaintiff would be required to prove “each element of the cause of action entitling the party to judgment on that cause of action.” But since damages are an essential element of a breach of contract claim, and the plaintiff explicitly wanted to leave that issue for later, plaintiff was not entitled to have its motion granted. The court also rejected plaintiff’s creative argument that defendant’s obligation under the contract

could be treated as a question of “duty,” for which summary adjudication would be appropriate.

Litigation—Trial—Time Limits

California Crane School v. National Comm’n for Certification of Crane Operators, 226 Cal.App.4th 12, 171 Cal.Rptr.3d 752 (2014), thoroughly explores the trial court’s authority to set time limits for trial and rejects plaintiff’s challenge that the trial court abused its discretion in limiting the time within which plaintiff could present its case.