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

CHETAN THAKAR,

Plaintiff and Appellant,

v.

SMITRAY, INC., et al.,

Defendants and Respondents.

B234776

(Los Angeles County  
Super. Ct. No. YC064739)

APPEAL from an order of the Superior Court of Los Angeles County, Stuart M. Rice, Judge. Affirmed.

Chetan Thakar, in pro. per., for Plaintiff and Appellant.

Little Mendelson and Robert W. Conti for Defendants and Respondents Smitray, Inc., SDP Investments, Inc., Dinu Dahy Abhai Patel, and Nick Dahya.

Waxler♦Carner♦Brodsky, Barry Z. Brodsky, and Jodi L. Girten for Defendant and Respondent Robert Conti.

## **INTRODUCTION**

In this appeal we consider the trial court's order denying plaintiff's ex parte application for a preliminary injunction. Because we readily conclude that the trial court properly determined that plaintiff failed to establish entitlement to injunctive relief, we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff and appellant Chetan Thakar filed an unverified complaint in the underlying action on May 6, 2011. Therein, he alleged that in 1998 Drs. Gizzi and Hariharan (who are not parties to this appeal) wrongfully terminated him from a hospital residency program in New Jersey. Those individuals purportedly began conducting surveillance of him and interfering with his attempts to obtain a medical license and employment. Thakar tried to engage attorneys in order to sue the doctors, but was thwarted by their interference with his efforts to do so. At some point, Thakar moved to California and in 2006 began working for defendants and respondents Smitray, Inc., SDP Investments, Inc., Dinu Dahy Abhai Patel, and Nick Dahya (collectively doing business as a Days Inn hotel and referred to here as the employer defendants). Thakar alleges that the employer defendants were contacted by Drs. Gizzi and Hariharan and given false information, which eventually led to their conspiring with the doctors to terminate his employment and interfere with his rights in a multitude of ways. Defendant and respondent Robert Conti is an attorney retained by the employer defendants in relation to various legal actions initiated by Thakar. However, Thakar alleges Conti has connections with Drs. Gizzi and Hariharan, and is part of the conspiracy to thwart Thakar's efforts to obtain legal assistance and employment. Thakar further asserts that he began working in May 2010 as an insurance sales agent, and faced discrimination and unfair treatment there as well, including payment of unfair commissions and interference with his business relationships with clients and potential clients.

Thakar sought an injunction prohibiting all of the defendants from interfering with his search for legal representation and with his employment. He also asserted causes of action for invasion of privacy, intentional interference with his exercise of legal rights, defamation, intentional interference with contract, breach of contract, malicious prosecution, fraud, false imprisonment, intentional infliction of pain and suffering, various forms of conspiracy, and interference with prospective economic advantage. He prayed for injunctive relief, compensatory and punitive damages, and costs of suit.

In support of his application for a preliminary injunction, Thakar presented the following documents: a notice of application and ex parte application of plaintiff for preliminary injunction, plaintiff's declaration in support of ex parte application for preliminary injunction, and a memorandum of points and authorities in support of plaintiff's ex parte application for a preliminary injunction. In his declaration, he avowed that he is under constant surveillance, including at his residence. He continued:

"Information derived from surveillance has been used towards contacting a large number of my clients and potential clients. These individuals were contacted, coerced, brain washed and/or intimidated in to canceling their policies and/or Application(s) for insurance and purchase from other source over the past year. [¶] . . . As a direct result, I have lost thousands of dollars in commission income, got eviction notice and almost became homeless in February 2011. [¶] . . . My Surveillance and the information derived therefrom is being used to create hostilities, obstacles, intimidation and terminations at my various employments and Independent Contractor Positions. [¶] . . . I am being systematically black balled and deprived of a representation, legal or other aid, despite my numerous attempts and outrageous damages, by using information derived from my constant surveillance." Accordingly, Thakar sought an injunction prohibiting defendants from performing surveillance on him, or communicating with his prospective attorneys, clients, employers, and coworkers.

Conti filed opposition to the application for a preliminary injunction. He objected to Thakar's declaration on the grounds of relevancy (Evid. Code, §§ 210, 350, 351); speculation; lacking foundation and/or personal knowledge (Evid. Code, § 403);

improper opinion and legal conclusion (Evid. Code, § 803); and hearsay (Evid. Code, § 1200).

Thakar's ex parte application for a preliminary injunction was heard on July 20, 2011. The trial court denied the application in its entirety. The court stated that it found no basis to grant a preliminary injunction on the grounds set forth, and that it was neither substantively nor procedurally appropriate to grant such relief.

This appeal followed.

## **DISCUSSION**

“This court has traditionally held that trial courts should evaluate two interrelated factors when deciding whether or not to issue a preliminary injunction. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued. [Citations.]’ [Citations & fn. omitted.] “[By] balancing the respective equities of the parties, [the trial court] concludes that, pending a trial on the merits, the defendant should or that he should not be restrained from exercising the right claimed by him.” [Citation.]

“The granting or denying of a preliminary injunction does not constitute an adjudication of the ultimate rights in controversy. [Citations.] Generally, the ruling on an application for a preliminary injunction rests in the sound discretion of the trial court. The exercise of that discretion will not be disturbed on appeal absent a showing that it has been abused. [Citations.]

“When a trial court denies an application for a preliminary injunction, it implicitly determines that the plaintiffs have failed to satisfy either or both of the ‘interim harm’ and ‘likelihood of prevailing on the merits’ factors. On appeal, the question becomes whether the trial court abused its discretion in ruling on *both* factors. Even if the appellate court finds that the trial court abused its discretion as to one of the factors, it

nevertheless may affirm the trial court's order if it finds no abuse of discretion as to the other." (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286-287.)

With respect to factual determinations made by the trial court, the substantial evidence rule governs appellate review. The facts must be interpreted in the light most favorable to the prevailing party and all reasonable inferences in support of the trial court's order must be indulged. (*Bennett v. Lew* (1984) 151 Cal.App.3d 1177, 1182; *Volpicelli v. Jared Sydney Torrance Memorial Hosp.* (1980) 109 Cal.App.3d 242, 247; see generally *Weingand v. Atlantic Sav. & Loan Assn.* (1970) 1 Cal.3d 806, 820.)

A ruling on an application for a preliminary injunction represents the trial court's discretionary decision, after balancing the respective duties of the parties, that defendants should or should not be restrained from exercising a right which they claim. Here, defendants claim no right, desire, or intention to interfere with Thakar's employment or livelihood, or to conduct surveillance of him. Moreover, Thakar utterly failed to present any evidence, other than his own self-serving declaration, to support his claims that defendants were doing so. The trial court acted well within its discretion in implicitly concluding that Thakar will not prevail on the merits of his complaint, and that Thakar failed to establish that he will suffer interim harm if his request for an injunction is denied. Thakar presented no evidence other than his own declaration, which the trial court was entitled to discredit, that defendants were engaged in or even desired to engage in the activities Thakar sought to enjoin.

We note that defendants request that this court, on its own motion, impose sanctions on Thakar for filing a frivolous appeal. Because we conclude that doing so would lead to a noticed hearing and thus a further expenditure of judicial resources, we decline to do so.

## **DISPOSITION**

The order denying plaintiff's application for a preliminary injunction is affirmed.  
Costs on appeal are awarded to defendants and respondents.

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SUZUKAWA, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.