Filed 2/16/17 Future Publishing v. Langdell CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

FUTURE PUBLISHING LTD., Plaintiff and Respondent, v. TIMOTHY LANGDELL, Defendant and Appellant.	B262006 (Los Angeles County Super. Ct. No. GC047963)

APPEAL from a judgment of the Superior Court of Los Angeles County, Donna Fields Goldstein, Judge. Affirmed.

Timothy Langdell, in pro. per., for Defendant and Appellant.

The Guerrini Law Firm and John D. Guerrini for Plaintiff and Respondent.

INTRODUCTION

Defendant Timothy Langdell appeals from a judgment entered against him and his two companies pursuant to the Uniform Foreign-Country Money Judgments Recognition Act. (Code Civ. Proc., § 1713 et seq. (the Uniform Act).)[1] He contends that the cost award entered against him by a court in England was not final and constituted a penalty, with the result it should not be recognized in California. We conclude that the trial court did not err and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The English cost order*

Plaintiff Future Publishing Limited obtained a judgment in June 2011 from the English High Court of Justice, Chancery Division, finding defendants Langdell and his two companies, The Edge Interactive Media, Inc. and Edge Games, Inc. (together defendants), liable for copyright and trademark infringement. Future submitted a schedule of its costs for prosecution of the lawsuit, seeking a total of £658,074.18, for solicitors' fees, counsel's fees, disbursements, and transcript fees, among other things, and requesting an interim cost payment of approximately 61 percent of that amount, or £400,000.

On July 7, 2011, the High Court of Justice, Chancery Division issued an order permanently enjoining defendants from certain activity, revoking certain trademarks, declaring a contract terminated, and authorizing Future to bring contempt of court proceedings against Langdell for perjuring himself during trial. The order also commanded defendants to pay Future

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[1] All further statutory references are to the Code of Civil Procedure.

damages for copyright infringement, passing off, and breach of contract, the amount of which damages would be determined in a separate "inquiry." (The English cost order.)

Of particular importance are paragraphs 10 and 11 of the English cost order. Paragraph 10 awarded Future "its costs of this action on the indemnity basis, such costs to be subject to detailed assessment if not agreed." (The paragraph 10 costs.) Paragraph 11 ordered that "*The defendants shall within 28 days of the date of this Order pay to* [*Future*] *the sum of £340,000 on account of such costs*." (Italics added.) (The paragraph 11 costs.) The 28th day was August 4, 2011.

Defendants attempted to appeal the English judgment and raised two issues with respect to the English cost order. Defendants' appeal and their request for stay of execution of judgment were denied by the English Court of Appeal in February 2012.[2] In so doing, the Court of Appeal rejected defendants' contentions directed at the English cost order, reasoning that the High Court, Chancery Division did not abuse "the generous . . . discretion which the rules allowed [it] to exercise" as "the default position is that costs follow the event."

The Civil Appeals Office confirmed that defendants' application to appeal was dismissed and that the order of the

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[2] In an e-mail to defendants, the Civil Appeals Office explained that once an appeal for judicial review has been refused at a hearing in the High Court, the appellant may apply to the Court of Appeal for permission to appeal, and on that application, the Court of Appeal may, instead of giving permission to appeal, give permission to apply for judicial review. However, defendants' application had been considered and refused by the English Court of Appeal.

Court of Appeal was "*a final Order* and that domestic appeal rights have been exhausted. [¶] . . . [¶] "[The] file on this matter is now closed and *we consider this matter concluded*." (Italics added.) A letter sent on June 29, 2012 from the HM Court and Tribunals Service of the Royal Courts of Justice Group Civil Appeals Office, in response to defendants' inquiry, "confirm[ed] that the decision . . . refusing permission to appeal at an oral hearing was a final decision. There is no further right of review or appeal. The domestic appeal process has been exhausted." Thereafter, the High Court of Justice, Chancery Division awarded Future another £36,500. A note at the bottom of this most recent cost order stated: "Your application for permission to appeal to this Court has been refused. *No appeal may be made against this decision to the Supreme Court of the United Kingdom*." (Italics added.)

2. *Future's variance application*

Future applied to vary paragraph 6 of the English cost order, which terminated an agreement between the parties (the variance application). Future's variance application was denied by the English High Court of Justice, Chancery Division in January 2013, who awarded defendants costs occasioned by the application. The court directed that such costs would be subject to detailed assessment "undertaken at the same time as the assessment of the costs in the underlying action," and would be "*set-off against any costs awarded to* [*Future*] *at the assessment of the costs in the underlying action*." (Italics added.) (The variance order.)

No part of the English cost order has been paid. The High Court of Justice, Chancery Division noted that "Langdell has not complied with any of the costs orders in the action . . . ." That

court noted "it has been difficult for [Future] to enforce those orders since the defendants are all based in the United States and have put all sorts of difficulties in [Future's] way."

3. *Future's California complaint for domestication of the English cost order and summary judgment motion*

Future brought the instant action in California against all three defendants. The operative complaint, filed after defendants' appeals had been repeatedly rejected in England, states one cause of action under the Uniform Act and sought $518,748.79, which represented the £340,000 English cost order based on the rate for converting Pounds Sterling to U.S. Dollars on the date the complaint was filed, plus interest and costs of suit. Future then moved for summary judgment, and offered the above facts in support of its motion under the authenticating declaration of its commercial solicitor.

In their opposition, defendants disputed only two of plaintiff's proffered facts: (1) that the £340,000 awarded Future in the English cost order was final; and (2) that the English cost order did not include costs and interest. As evidence that the English judgment was not final, defendants submitted the declaration of Keith Philip Maynard, a practicing solicitor in England, who interpreted the English cost order and opined, where that order was "to be the subject of a detailed assessment if not agreed," that "it is conceivable that at such an assessment hearing the costs may be increased or decreased." He also construed the English cost order along with the variance order, and opined, where the former was to be offset by any costs awarded under the latter, that "the £340,000.00 cost award set forth in the [English cost order] will be reduced in the amount of

the set off ordered pursuant to the [variance order], and as such . . . the amount of the [English cost order] is in flux."

Future's reply contained the declaration of David Clifford Wilkinson, the solicitor who represented Future in the English lawsuit. Wilkinson authenticated a copy of the English Queen's Bench Division, Civil Procedure Rules 1998, rule 44.3 (before Apr. 1, 2013)[3] (hereafter Rule 44.3) and related notes for guidance, along with a case entitled *Beach v. Smirnov* (QB 2007) 2007 EWHC 3499 (*Beach*). Wilkinson explained that the £340,000 described in paragraph 11 of the English cost order was a final award, not subject to a detailed assessment, and not in "flux." Wilkinson explicated, based on the above legal authorities, that in England, an "interim" payment of costs is a "payment on account of costs." Paragraph 10 of the English cost order awarded Future costs of the action after a detailed assessment to determine how much of the remaining £318,075 of Future's £658,074.18 in total claimed costs would be payable. In contrast Future observed, the interim payment in paragraph 11 clearly and simply directed payment of the £340,000 on account to plaintiff within 28 days of the order. Thus, Future argued, the variance order would not change the paragraph 11 £340,000 cost award on account.[4]

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[3] Rule 44.3 was "not repealed" but was moved to a new heading as part of the amendment of Part 44. Rule 44.3 cited in this opinion was renumbered as of April 1, 2013, and became Rule 44.2.

[4] Future also objected to Maynard's declaration on the basis that it was improper expert testimony offered to interpret a court order.

The trial court tentatively denied summary judgment, but after oral argument, granted Future's motion for the reasons stated in court. The appellate record does not contain a transcript of the oral proceedings. An order granting summary judgment was filed on December 12, 2013.

4. *Reconsideration*

The summary judgment order was reconsidered three times by the trial court. First, defendants timely moved for reconsideration under section 1008 on the ground, inter alia, that Future had returned to the English High Court and waived all costs above the £340,000 awarded in paragraph 11 of the English cost order. Defendants argued that the paragraph 11 costs would then be the costs that were subject to reduction under the variance order. The trial court granted the reconsideration motion reasoning that the amount of the paragraph 11 damages was not final and not recognizable in California under the Uniform Act. (§ 1715, subd. (a)(2).)

The second reconsideration occurred following several case management conferences. In June 2014, the trial court issued an order to show cause concerning finality. In response, Future submitted another Wilkinson declaration explaining that defendants had obtained a English order in January 2014, estopping Future from claiming costs above the £340,000 awarded in the English cost order. However, that order was set aside in April 2014 by the English court after it received evidence that defendants had obtained it without serving Future with any motion, and that Future had never actually limited its claim for costs to £340,000. Wilkinson also clarified that Future's time for commencing a detailed assessment proceeding under paragraph 10 of the English cost order had been extended until 28 days after

defendants paid the "interim sum on account of £340,000" under paragraph 11, plus £36,500 for defendants' unsuccessful appeal. Defendants had also been ordered by the English court to pay Future an additional £10,000 in connection with the set aside of the January 2014 order.

Pursuant to its authority to sua sponte reconsider its earlier ruling, the trial court in California concluded, after a hearing and in consideration of Wilkinson's declaration, that paragraph 11 of the English cost order was indeed final. The court vacated its ruling granting defendants' section 1008 motion and reinstated its order granting Future summary judgment. The court filed a judgment on November 4, 2014, and an amended judgment on December 26, 2014 in the amount of $518,748.79.

Third, defendants filed another motion for reconsideration on November 14, 2014 again citing Future's waiver of all costs in the English cost order that exceeded £340,000, and adding, without substantiation, that "additional proceedings have been initiated in [England]" that underscored the non-conclusiveness of the English cost order. Defendants submitted a declaration from a different solicitor, Thomas Spanyol, repeating Maynard's opinion that the English cost order was not final.

The court denied defendants' reconsideration motion on the grounds it did not comply with section 1008, subdivisions (a) and (b) and that entry of the judgment had divested the court of authority to rule on the motion. (*Safeco Ins. Co. v. Architectural Facades Unlimited, Inc.* (2005) 134 Cal.App.4th 1477, 1482.) The court also denied defendants' motion for stay of enforcement of

the judgment. Langdell filed his timely notice of appeal in propria persona.[5] The corporate defendants did not appeal.

DISCUSSION

1. *No error in granting summary judgment*

a. *summary judgment principles*

A motion for summary judgment is properly granted only when there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. (§ 437c, subd. (c); *Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 460.) When, as here, the moving party is the plaintiff, its burden is to show that it has proved each element of the cause of action and that the defendant has no defense thereto. (§ 437c, subd. (p)(1).) Once the moving party has met that burden, the burden shifts to the party opposing the motion to show a triable issue of one or more material fact exists to that cause of action or defense. (*Ibid.*)

The standards applicable to appellate review are well established. "We independently review an order granting summary judgment. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860 . . . .) We determine whether the court's ruling was correct, not its reasons or rationale. (*Salazar v. Southern Cal. Gas Co.* (1997) 54 Cal.App.4th 1370, 1376 . . . .) 'In practical effect, we assume the role of a trial court and apply the same rules and standards which govern a trial court's determination of a motion for summary judgment.' [Citation.]" (*Shugart v. Regents of University of California* (2011)

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[5] As The Edge Interactive Media, Inc. and Edge Games, Inc. have not filed appeals from the California judgment, it is final as to them.

199 Cal.App.4th 499, 504–505.) When conducting our de novo review, we view the evidence in the light most favorable to Langdell as the party opposing summary judgment. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.)

b. *the Uniform Act*

The Uniform Act applies to a foreign country's judgment that (1) grants recovery of a sum of money (§ 1715, subd. (a)(1)), and that (2) is final, conclusive, and enforceable under the law of the foreign country where rendered (*id.*, subd. (a)(2) & § 1724). The Uniform Act does not apply to a foreign judgment for a fine or other penalty. (§ 1715, subd. (b).)

The Uniform Act also enumerates defenses. (*Hyundai Securities Co., Ltd. v. Lee* (2015) 232 Cal.App.4th 1379, 1386 (*Hyundai*).) Among other things, section 1716, subdivision (c) provides that "A court of this state is not required to recognize a foreign-country judgment if . . . [¶] . . . [¶] (4) The judgment conflicts with another final and conclusive judgment." (§ 1716, subd. (c)(4).) Similarly, a foreign-country judgment may not be recognized by a California court if "The foreign court did not have personal jurisdiction over the defendant." (*Id.*, subd. (b)(2).) Unless one of the enumerated defenses applies, a court of this state "shall recognize a foreign-country judgment to which [the Act] applies." (§ 1716, subd. (a).) Once a California court recognizes a foreign-country money judgment, it becomes "conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive, and the foreign-country money judgment is enforceable in the same manner and to the same extent as a judgment rendered in this state. (§ 1719.)" (*Hyundai*, *supra*, at p. 1386.)

The party who seeks recognition of a foreign-country money judgment has the burden of establishing entitlement to recognition under the Uniform Act. The party resisting recognition has the burden to establish a specified ground for nonrecognition of the existence of the foreign judgment. (§§ 1715, subd. (c), 1716, subd. (d).)

c. *The English cost order was a final order for the recovery of a sum certain* (*§ 1715, subd. (a)(1)*).

The determination of the law of a foreign nation is a legal question made by judicial notice. (Evid. Code, §§ 310, subd. (b); 452, subd. (f).) Whether the English cost order is final is a legal question governed by the law of England. (*Herczog v. Herczog* (1960) 186 Cal.App.2d 318, 323). The interpretation of a foreign judgment is also a question of law. (*Societe Civile Succession Richard Guino v. Redstar Corp*. (2007) 153 Cal.App.4th 697, 701.) There being no conflicting extrinsic evidence concerning the meaning of the English cost order, interpretation of that document is a question of law.

Rule 44.3, submitted to the trial court by Future's solicitor Wilkinson, and in this court as part of Future's respondent's appendix, provide, "the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party." (Rule 44.3, subd. (2)(a).) The court has discretion to order costs and determine when they are to be paid. (Rule 44.3, subd. (1); *Beach v. Smirnov*, *supra*, 2007 EWHC 3499, par. 8.) Additionally, the rules provide that "Where the court has ordered a party to pay costs, it may order an amount to be paid *on account* before the costs are assessed." (Rule 44.3, subd. (8),

italics added.)[6] Costs under Rule 44.3 are called an interim payment of costs. (See *Beach*, *supra*, at par. 8.)

The principle underlying the interim payment of costs is that "the claimant is entitled to something by way of costs and he should be paid it *without delay*" and that "justice requires that the claimant should not be kept out of costs clearly due to him." (*Beach*, *supra*, 2007 EWHC 3499 at par. 11, italics added.) As the *Beach* court explained with respect to Rule 44.3, subdivision 8, " '[w]here a party has won and has got an order for costs, the only reason that he does not get the money straightaway is because of the need for detailed assessment. . . . If the detailed assessment were carried out instantly, he would get the order instantly. *So the successful party is entitled to the money*. In principle he ought to get it as soon as possible. It does not seem to me to be a good reason for keeping this out of some of his costs that you need time to work out the total amount. *A payment for some lesser amount, which he will almost certainly collect, is a close-up approximation to justice*. So . . . where a party is successful, the court should on a round and ready basis also normally order an amount to be paid *on account*, the amount being a lesser sum than the likely full amount.' " (*Beach*, *supra*, at par. 8, italics added, quoting from *Mars UK Ltd. v. Teknowledge Ltd. (Costs)* (1999) 2 Costs L.R. 44.) Stated otherwise, the so-called interim payment of costs

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[6] Rule 44.3, subdivision (8) was amended as of April 1, 2013 to read: "Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so." (Rule 44.2, subd. (8).) This amendment, occurring after the events in this lawsuit, does not change the result here, but serves to reinforce our conclusion.

is a final award of costs on account and the principle behind the rule awarding such costs is to enable the prevailing party to recoup a portion of its outlay while awaiting full assessment.

The court in *Beach* calculated the interim cost award by reducing the total fees requested by 60 percent and adding certain non-legal disbursements. *Beach* concluded that the total was "almost inevitably going to be exceeded" at the assessment and ordered a payment of such interim costs within 14 days. (*Beach*, *supra*, 2007 EWHC 3499 at par. 14.),

Here, exercising our independent review (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 860), we conclude that, in moving for summary judgment, Future demonstrated that paragraph 11 of the English cost order awarded Future a recovery of £340,000, and that this cost order was final, conclusive, and enforceable under English law. (§ 1715, subds. (a)(1), (2), (c).)

First, the English cost order contained two distinct paragraphs ordering separate portions of Future's total costs: Paragraph 10 fixed no specific amount whereas paragraph 11 awarded a sum certain. Paragraph 10 directed that the costs would be assessed at a later date. Paragraph 11 ordered defendants to pay Future £340,000, on account of the total cost award "within 28 days of the date of" the English cost order. Future requested a total of £658,074.18 in costs. Thus, paragraph 11, calling for an interim payment of the lesser £340,000 would inevitably be exceeded. (*Beach*, *supra*, 2007 EWHC 3499 at par. 14.) Future demonstrated that the interim cost order was clearly for a definite sum of money. (§ 1715, subd. (a)(1).)

Second, paragraph 11 of the English cost order was final (§ 1715, subd. (a)(2)) as a matter of English law, Langdell's contention to the contrary notwithstanding. (*Beach*, *supra*, 2007 EWHC 3499 at pars. 8 & 11.) Paragraph 11 was an order for payment of costs on account to which Future, as the successful party, was immediately entitled. (*Ibid.*)[7] Finality was confirmed by the Court of Appeal. Its denial of defendants' appeal, including their challenges to the English cost order, was considered "final," and the matter was "closed" and "concluded," and no appeal was available to the Supreme Court of the United Kingdom. While aspects of the liability judgment and the English cost order -- including the amount of the paragraph 10 costs -- could still be varied, the paragraph 11 cost order could not. Thus, Future carried its burden in moving for summary judgment to show that paragraph 11 was an order for recovery of a sum certain that was final and conclusive and enforceable under the laws of the United Kingdom. (§ 1715, subd. (a)(1) & (2).)

Defendants' opposition to the summary judgment motion did not demonstrate a factual dispute. They submitted the declaration of solicitor Maynard. However, Maynard did not represent defendants in the lawsuit in England and hence his declaration did not submit or attest to *facts*. His declaration proffered opinion about the meaning of the English cost order. As noted, whether the English cost order is final is a legal question. (*Herczog v. Herczog*, *supra*, 186 Cal.App.2d at p. 323.) Experts

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[7] Pursuant to English law, we reject Langdell's contention, grounded in California law notions of finality, that the paragraph 11 cost order was not final because it was not a "judgment."

"may not testify about issues of law or draw legal conclusions." (*Nevarrez v. San Marino Skilled Nursing & Wellness Centre, LLC* (2013) 221 Cal.App.4th 102, 122.) Thus, Maynard's declaration failed to demonstrate a triable issue of material *fact*. (§ 437c, subds. (c) & (p)(1).)

Defendants also argued to the trial court, and Langdell argues on appeal, that the paragraph 11 costs were not final because they were subject to the setoff under the variance order. However, the variance order clearly designated paragraph 10 of the English cost as the portion of the cost award subject to set off. Paragraph 10 plainly awarded Future "its costs of this action on the indemnity basis, such costs to be subject to *detailed assessment* if not agreed." (Italics added.) The variance order directed that the costs awarded to defendants would be "set-off against any costs awarded to [Future] *at the assessment of the costs in the underlying action*," i.e., in paragraph 10. (Italics added.) Thus, the setoff under the variance order was *not* to be made against the £340,000 costs ordered in paragraph 11. For this reason, Langdell's further argument is unavailing that the variance order conflicts with the paragraph 11 cost order so as to render the latter nonrecognizable under section 1716, subdivision (c)(4). Defendants did not demonstrate a triable issue of material fact with the result, as a matter of law, paragraph 11 of the English cost order is final.

Moreover, defendants effectively acknowledge the finality of the English cost order's paragraph 11. Knowing full well that the paragraph 10 costs were those subject to the variance order's set off, defendants attempted to persuade the English High Court of Justice that Future had waived all costs above £340,000, i.e., in excess of the paragraph 11 amount. Defendants then argued to

the trial court here that the variance order's set off would have to be taken against that £340,000, with the result that the paragraph 11 number was subject to change and not final. The English court rejected that ruse as did the trial court in California in its sua sponte reconsideration. Defendants' subterfuge, repeatedly relied on by Langdell in his appeal, constitutes a tacit recognition that paragraph 11 was indeed a final order.[8]

Langdell persists in pressing the waiver argument. On appeal he requests we take judicial notice of an order issued by the High Court of Justice, Senior Courts Costs Office dated April 26, 2016, long after the summary judgment under review here. That order directed defendants immediately to pay £376,500, comprised of the £340,000 and the £36,500 occasioned by defendants' unsuccessful appeal. Citing this order, Langdell asserts that "there is now no UK money judgment or foreign court order which requires Defendants/Appellants to pay Claimant/respondent £340,000" and hence his own appeal is moot. We grant Langdell's May 2, 2016 motion for judicial notice and conclude that the order therein demonstrates two facts only: (1) Defendants still owed the paragraph 11 costs as recently as April 26, 2016; and (2) Paragraph 11 of the English cost order

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[8] Langdell appears to reiterate this argument in his opening brief under the heading "III. The sum represents an over-payment (a finding of fact by the lower court), and the lower court stated it would be wrong for any court to enter judgment for a known over-payment." He relies on the same waiver argument rejected by the trial court. As our discussion above demonstrates, Langdell's contention is specious.

remains final and enforceable.[9] The order does not demonstrate that defendants satisfied paragraph 11 of the English cost order.

Langdell next contends, without citation to authority, that the English cost order directed payment of a *penalty* and hence may not be recognized under the Uniform Act. (§ 1715, subd. (b)(2).) The Uniform Act does not apply to a foreign-country judgment "to the extent that judgment is . . . [¶] . . . [¶] A fine or other penalty." (*Ibid.*) *Java Oil Ltd v. Sullivan* (2008) 168 Cal.App.4th 1178, is on point and controlling. There, the court held that the judgment in Gibraltar ordering the appellant to pay attorney fees was not a penalty because it did not punish the appellant for an offense against the public, but ordered him to compensate the respondents for the fees they incurred in defending the lawsuit. The award was not payable to the state or to the court, but to the respondents. The judgment arose from a civil action, the order at issue was not designed to provide an example or punish the appellant, and imposed no mandatory fine, sanction, or multiplier. (*Id.* at pp. 1188-1189; accord, *Hyundai*, *supra*, 232 Cal.App.4th at p. 1388.) Here, for the same reasons, the English cost order is not a penalty. That order did not punish defendants for an offense against the public. The interim cost award was made on account of solicitor's fees and costs incurred by Future in its lawsuit against defendants. The English cost order arose under the civil laws of England and was not designed to make defendants an example or to punish them. Finally, no

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[9] Although the order contained in Langdell's motion for judicial notice directs defendants to pay £100,000 of the £376,500 to the Court Funds Office in Glasgow, the record contains absolutely nothing to indicate the factual or legal genesis of that portion of the order or its import.

mandatory fine, sanction or multiplier was imposed. That the English Rules of Civil Procedure authorize the court, in its discretion, to order the losing party to pay the costs of the prevailing party does not mean that the cost award is a penalty.

Langdell raises two defenses against recognition of the English cost order: (1) that he did not receive notice of the lawsuit in England in sufficient time to enable him to defend (§ 1716, subd. (c)(1)); and (2) that the English High Court of Justice, Chancery Division did not have personal jurisdiction over him (§ 1716, subd. (b)(2)). The contentions are rejected. These issues were not raised in the trial court and so the record does not contain the facts or the law to support the defenses. Contentions must be supported by legal authority and citation to the record; facts must be contained in the record. (*Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003 & fn. 2.) Therefore, Langdell has not carried his burden to demonstrate applicability of these defenses. (§ 437c, subd. (p)(1).)

Langdell next contends that the judgment here is " 'Court sanctioned theft' " and cites statements made by the trial court in its tentative ruling denying summary judgment. The tentative ruling never became the final judgment because, after oral argument, the trial court granted summary judgment. More important, in reviewing a summary judgment ruling, we do not consider the trial court's reasoning or rational, we make our independent determination based on motion and supporting affidavits and declarations. (*Salazar v. Southern Cal. Gas Co.*, *supra*, 54 Cal.App.4th at pp. 1375-1376.) Langdell's contention here is really a repeat of his earlier unavailing argument that the

paragraph 11 cost order was subject to a set off of the amount awarded in the variance order.[10]

2. *No error in denying defendants' second motion for reconsideration brought on November 14, 2014.*

Langdell assigns as error the trial court's ruling denying defendants' second reconsideration motion. He correctly argues that the trial court erred in ruling that the November 2014 motion was untimely. However, apart from the timeliness issue, Langdell's contention is unavailing. Not only has he forfeited the challenge to the denial of defendants' second reconsideration motion for failure to cite to legal authority (*Pringle v. La Chapelle*, *supra*, 73 Cal.App.4th at p. 1003), but even were we to consider the contention, we would discern no trial court error. Reconsideration motions are "based upon new or different facts, circumstances, or law." (§ 1008, subd. (a).) The party seeking reconsideration must provide a " ' " 'satisfactory explanation for the failure to produce that evidence at an earlier time.' " ' [Citations.]" (*Shiffer v. CBS Corp.* (2015) 240 Cal.App.4th 246, 255.) Defendants produced no new evidence in connection with their second reconsideration motion. Rather, they reiterated the waiver argument submitted in their first motion, dressed up in the declaration of a different solicitor. The trial court did not abuse its discretion in denying the motion for failure to comply with section 1008, subdivision (a).

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[10] We have read and considered Langdell's remaining contentions and conclude they are meritless.

DISPOSITION

The judgment is affirmed. Respondent Future Publishing LTD. is to recover costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

EDMON, P. J.

GOSWAMI, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.