

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

LANGER'S DELICATESSEN, INC.,

Plaintiff and Respondent,

v.

SINO ENTERPRISES, INC. et al.,

Defendants and Appellants.

B287333

(Los Angeles County
Super. Ct. No. BC543450)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rita Miller, Judge. Affirmed.

Lowe & Baik and John A.S. Baik for Defendants and Appellants.

Steven M. Garber & Associates, Steven M. Garber and Lawrence M. Boesch for Plaintiff and Respondent.

Defendants and appellants Sino Enterprises, Inc., New Sino, Inc., CL & LZ, LLC, Chien Ping Luu, and Lixia Zhao appeal from the judgment entered for plaintiff Langer's Delicatessen, Inc., in Langer's action alleging that they conspired to fraudulently hide the assets of Sino in order to avoid paying a judgment for Langer's from an earlier action. We reject appellants' contentions that the judgment—consisting almost exclusively of Langer's attorney fees and costs from this action—must be reversed because it was an untimely and improper attempt to enforce the judgment from the earlier action.

FACTS AND PROCEDURAL HISTORY

Langer's Delicatessen, Inc., sued Sino Enterprises, Inc., in 2013, alleging that Sino breached its contract and committed various torts in connection with Sino's agreement to install new booths at Langer's. The parties settled in 2014, with Sino agreeing that judgment be entered on the following terms: Sino to pay \$4,000 up front, with another \$36,000 to be paid with interest accruing at an annual rate of 10 percent.

Each party agreed to bear its own attorney fees and costs incurred in the first action. However, the settlement agreement also provided that in any action “arising out of or relating to” the agreement, the prevailing party would recover its reasonable fees and costs “incurred in connection with such litigation as determined in *that* proceeding.” (Italics added.) Judgment was entered for Langer's in the sum of \$40,000.

Two months later, Langers sued Sino and others, alleging that during and after the settlement negotiations in the first action, they conspired to dissolve Sino, strip it of its assets, and

funnel them to: Sino's president, Chien Ping Luu; Karen Wong, who is Luu's daughter; Lixia Zhao, who is Wong's stepmother; New Sino, Inc.; ACACIA Seating, Inc.; and CL & LZ, LLC.¹ Langer's stated causes of action under the Uniform Fraudulent Transfers Act (Civ. Code, § 3439, et seq. (UFTA)), as well as for common law fraudulent concealment.²

In January 2016 Langer's filed a costs memorandum in the first action, seeking \$60 for filing an abstract of judgment and nearly \$7,500 in accrued interest. In April 2016, Sino paid the judgment from the first action in full, including all post-judgment interest and costs. Langer's then filed a satisfaction of judgment in the first action. The second action -- the one on appeal here -- proceeded to a bench trial two months later, with Langer's seeking both punitive damages and its attorney fees and costs incurred in the second action.³

The trial court found that appellants had engaged in a conspiracy to defraud Langer's as alleged in the complaint, that their conduct merited an award of punitive damages, albeit in the nominal amount of \$5, and that the appellants bore alter ego liability as follows: Sino and Luu were alter egos of each other;

¹ Karen Wong and ACACIA Seating, Inc., were later dismissed from the action. We will sometimes refer to the remaining defendants collectively as "appellants".

² Langer's cause of action for injunctive relief was deemed abandoned at trial.

³ The trial court denied appellants' pre-trial motion for judgment on the pleadings, which was brought on the ground that Sino's payment in full of the judgment from the first action rendered the second action moot.

New Sino was the alter ego of Luu and Zhao; Luu and Zhao were each other's alter ego; and CL & LZ, LLC was the alter ego of Luu and Zhao.

Langer's claimed that it incurred attorney fees and costs of nearly \$275,000 in bringing the second action. The trial court discounted that by more than \$86,000, awarding Langer's slightly more than \$188,000 in attorney fees and costs as damages. The trial court awarded those fees pursuant to the terms of the settlement agreement in the first action, as well as under the "tort of another" doctrine. As a result, it did not decide whether such damages were proper under the UFTA.

DISCUSSION

Appellants contend that the trial court erred by letting the second action proceed to trial, and by then awarding Langer's its attorney fees, because the second action was merely an attempt to enforce the judgment in the first action. As a result, they contend, Langer's was required to proceed under the Enforcement of Judgments Law (Code Civ. Proc., § 680.010, et seq.), but was barred from doing so because: (1) the judgment in the first action did not provide for attorney fees and that judgment had been satisfied two months before trial; and (2) the attorney fee provision in the first action's settlement agreement was extinguished by the judgment in that action. We reject these contentions.

We begin by noting that appellants do not contest—and therefore concede—that they fraudulently conspired to conceal Sino's assets during and after the time the first action's settlement agreement was negotiated and executed. They do not

challenge the trial court's implied finding that they acted with oppression, fraud, or malice for purposes of awarding punitive damages. (Civ. Code, § 3294, subd. (a).) They also do not contest that they are each other's alter egos, as found by the trial court. Nor do they dispute the amount of the fee award or that the attorney fee provision in the settlement agreement, with its express application to any action arising out of or relating to that agreement, was broad enough to encompass Langer's fraud cause of action. (*Lerner v. Ward* (1993) 13 Cal.App.4th 155, 159–160 (*Lerner*). Finally, we note that it is proper to try only a fraud cause of action, not a companion breach of contract claim, and recover attorney fees pursuant to such a broadly worded attorney fee provision. (*Id.*, at pp. 160–161.)

Next, none of the decisions relied on by appellants concern a case such as this, where a party to a settlement agreement that resulted in a stipulated judgment then sues for fraud arising from that agreement and seeks to recover its attorney fees pursuant to the settlement's fee provision. (See *Conservatorship of McQueen* (2014) 59 Cal.4th 602 [plaintiff obtained judgment in statutory elder abuse claim, then sued to stop fraudulent transfer of defendant's assets; plaintiff's attempt to obtain post-judgment attorney fees under the Enforcement of Judgments Law by filing a costs motion in the first action was improper because plaintiff had previously accepted satisfaction of the judgment in full]; *Gray1 CPB, LLC v. SCC Acquisitions, Inc.* (2015) 233 Cal.App.4th 882 [judgment creditors who prevailed in an action on a contract providing for attorney fees and were awarded their fees as part of judgment could not file post-trial costs motion for additional fees incurred after accepting satisfaction of the judgment]; *Cardinale v. Miller* (2014) 222 Cal.App.4th 1020 [plaintiffs obtained

judgment in UFTA action that arose from a contract with an attorney fee provision, but the judgment did not provide for such fees, thereby extinguishing the underlying contract and its fee provision].)

As noted, none of these decisions concerned facts similar to those at issue here. (See *Cochran v. Cochran* (1997) 56 Cal.App.4th 1115, 1121 [“the language of an opinion must be construed in light of the facts of the particular case, an opinion’s authority is no broader than its factual setting and the parties cannot rely on a rule announced in a factually dissimilar case”])

The judgment in Langer’s first action did not include attorney fees because the parties agreed to bear their own fees and costs. Instead, they agreed that in contract or tort actions related to the settlement, the prevailing party could recover its fees, and was entitled to the amount of those fees “as determined in that [second] proceeding.” It would stand contract law on its head to hold that a party to such an agreement could commit fraud by hiding its assets, make the plaintiff incur substantial attorney fees, and then absolve itself of all further liability, including punitive damages and the plaintiff’s attorney fees, by paying the original judgment in full shortly before trial. We decline to do so and will therefore affirm the judgment.⁴

⁴ As a result of our holding we need not reach the tort of another doctrine, which was the trial court’s alternative basis for awarding attorney fees.

DISPOSITION

The judgment is affirmed. Respondent shall recover its appellate costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MICON, J.*

We concur:

WILLHITE, Acting P.J.

COLLINS, J.

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