

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 TWO

PACIFIC SYSTEMS,

Plaintiff and Appellant,

v.

GIANT SKATEBOARD DISTRIBUTION
et al.,

Defendants and Respondents.

B234026

(Los Angeles County
Super. Ct. No. BC362382)

APPEAL from an order of the Superior Court of Los Angeles County. Ramona G.
See, Judge. Affirmed.

Tangalakis & Tangalakis and Phillip L. Tangalakis for Plaintiff and Appellant.

Friedman Stroffee & Gerard, James D. Stroffe, Eoin L. Kreditor, and Joshua D.
Meier for Defendants and Respondents.

Plaintiff and appellant Pacific Systems (plaintiff) appeals from a postjudgment order denying its motion for attorney fees incurred with the Law Offices of William G. Wells (Wells) under Civil Code section 1717. In an unpublished opinion, we reversed a previous trial court order denying plaintiff's motion for attorney fees incurred with Wells and remanded the matter to the trial court to determine the amount of Wells's fees, if any, to be awarded to plaintiff. (*Pacific Systems v. Giant Skateboard Distribution et al.* (Jun. 21, 2010, B211380) (*Pacific Systems I*.) Upon remand, the trial court denied plaintiff's motion on the grounds that plaintiff failed to set forth in its moving papers the amount of fees it was seeking, failed to timely provide any evidence of Wells's hourly rate, time entries, billing memos, invoices, or work summaries to support any amount for attorney fees, and failed to explain how Wells could have represented plaintiff at any time after October 30, 2009, when the California State Bar ordered him to be on inactive status.

The record discloses no abuse of discretion by the trial court. We therefore affirm the order denying plaintiff's motion for attorney fees incurred with Wells.

BACKGROUND

On May 12, 2008, plaintiff filed a motion for attorney fees seeking \$115,955 in fees to Wells. In support of the motion, plaintiff submitted, among other things, a 48-page billing statement from Wells documenting the work he performed in connection with a lawsuit against the defendants in this action. (*Pacific Systems I*, p. 3.)

On August 25, 2008, the trial court denied plaintiff's motion for Wells's attorney fees on the grounds that Wells's status as plaintiff's owner and general manager precluded plaintiff from recovering fees for Wells's legal services and that there was no evidence that plaintiff incurred any fees owed to Wells. (*Pacific Systems I*, pp. 3-4.)

We reversed the trial court's order denying the attorney fee motion, concluding there was no evidence in the record that Wells was an owner of plaintiff and that his status as plaintiff's general manager should not preclude plaintiff from recovering Wells's fees, so long as Wells was not representing his own personal interests. We further found there was evidence of an attorney-client relationship between Wells and

plaintiff. We remanded the matter to the trial court to determine the amount of fees, if any, to be awarded to plaintiff. (*Pacific Systems I*, pp. 7-8.)

On March 8, 2011, plaintiff filed separate motions for attorney fees incurred with Wells and with the Law Offices of Tangalakis & Tangalakis (Tangalakis), respectively. The motion for Tangalakis's fees states that plaintiff had paid Tangalakis \$12,712.50 in attorney fees and costs and that it had paid Wells "the amount of \$105,000 for services rendered in this matter." The Tangalakis motion requested an award of \$145,000 to plaintiff "as a reasonable amount of attorney fees as the prevailing party" under Civil Code section 1717.

In support of the motion for Tangalakis's fees plaintiff submitted a declaration by Phillip Tangalakis stating that he had served as plaintiff's attorney of record since November 30, 2009, that his normal billing rate was \$300 per hour, and that based on his 33-year practice in Culver City and West Los Angeles, it was his opinion that an hourly rate of \$300 was a reasonable and customary rate for the legal services rendered on plaintiff's behalf. Attached to Tangalakis's declaration were billing statements showing that Tangalakis had expended 56.5 hours representing plaintiff in this matter.

The motion for attorney fees incurred with Wells does not state the amount of fees plaintiff had paid to Wells, nor does it state the amount plaintiff was seeking to recover by that motion. The motion for Wells's fees was supported by Wells's declaration dated March 7, 2011,¹ in which he states that his "Declaration of itemized legal fees was filed separately on June 2, 2008." No itemization of Well's legal fees is attached to the March 7, 2011 declaration.

Concurrently with the motion for Wells's fees, plaintiff filed a request for judicial notice asking the trial court to take judicial notice of declarations by Wells previously filed on June 9, 2008, June 2, 2008, and May 12, 2008, as well as the trial court's then current case summary. Attached to the request for judicial notice is another declaration by Wells, dated March 7, 2011, to which he attaches "a true and correct copy of the

¹ The first page of Wells's March 7, 2011 declaration is missing and does not appear to be part of the record on appeal.

original Pacific Systems Motion for Attorney Fees filed May 12, 2008” and “a true copy of a check for \$105,000 executed by Robert Thompson, President of Pacific Systems and paid to me on account of Pacific Systems’ attorney fees incurred in this litigation and pending the conclusion.”

On April 5, 2011, defendants filed oppositions to both of plaintiff’s fee motions, as well as objections to plaintiff’s request for judicial notice and objections to Wells’s and Tangalakis’s declarations. In opposition to the motion for Wells’s fees, defendants argued that plaintiff failed to submit any admissible evidence of fees incurred with Wells, as plaintiff’s moving papers included no time entries, billing memos, invoices, or work summaries of the specific work purportedly performed by Wells or the hours spent doing that work. Defendants further argued that the trial court could not take judicial notice of the check plaintiff had issued to Wells or the contents of the various declarations by Wells that were previously filed with the court. Finally, defendants argued that plaintiff was not entitled to recover any fees incurred with Wells after October 30, 2009, because Wells had not been authorized to practice law since that date.

On April 5, 2011, the same date that defendants filed their opposition to the fee motions, plaintiff filed a “Supplemental and Amended Notice of Motion and Motion for Pacific Systems’ Attorney Fees on Appeal” requesting an award of attorney fees incurred with Wells in the amount of \$168,890. The supplemental motion was supported by Wells’s declaration dated April 5, 2011 stating that “Pacific Systems has incurred attorney’s fees in this litigation for my professional services of over 391 hours of billable time which is the usual and customary hourly rate charged by experienced professional attorneys in the Santa Monica and West Los Angeles area for comparable work.” Attached to Wells’s declaration is an itemized billing statement documenting work allegedly performed by Wells on plaintiff’s behalf between September 2006 and April 2011.

On April 13, 2011, defendants filed an opposition to plaintiff’s supplemental and amended motion for attorney fees in which they urged the trial court to disregard the April 5, 2011 motion as untimely and in conflict with a previous ruling by the trial court

prohibiting plaintiff from filing supplemental information to support its motions for attorney fees. Defendants pointed out that the supplemental and amended motion sought fees allegedly incurred with Wells during a period of time after October 30, 2009, when Wells was not authorized to practice law.

Plaintiff's motions for attorney fees were heard on April 18, 2011. On April 26, 2011, the trial court issued its ruling denying plaintiff's motion for fees incurred with Wells on the grounds that plaintiff failed to set forth the amount of fees it was seeking in its moving papers, failed to provide evidence of Wells's hourly rate, time entries, billing memos, invoices, or work summaries to support any amount for attorney fees, and failed to explain how Wells could have represented plaintiff at any time after October 30, 2009. The trial court granted in part plaintiff's motion for attorney fees incurred with Tangalakis and awarded plaintiff the amount of \$9,877.50.

This appeal followed.

DISCUSSION

I. Standard of review

A trial court's determination of an attorney fee award under Civil Code section 1717 is generally reviewed under the abuse of discretion standard. (*Estate of Drummond* (2007) 149 Cal.App.4th 46, 50-51.) Although plaintiff argues for de novo review of the trial court's ruling, its appellate challenge is directed to the sufficiency of the evidence supporting the trial court's factual findings. De novo review of those findings is not appropriate. Rather, we review the record to determine whether substantial evidence supports the trial court's findings. (*Federal Home Loan Mortgage Corp. v. La Conchita Ranch Co.* (1998) 68 Cal.App.4th 856, 860.)

II. General legal principles

To determine the amount of reasonable attorney fees to award to a prevailing party under Civil Code section 1717, a trial court must begin with the "lodestar," or the number of hours reasonably expended multiplied by the reasonable hourly rate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) "California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is

fundamental to a determination of an appropriate attorneys' fee award.' [Citation.]" (*Ibid.*) A moving party seeking to recover its attorney fees under Civil Code section 1717 bears the burden of establishing the reasonableness of the fees claimed. (*Civic Western Corp. v. Zila Industries, Inc.* (1977) 66 Cal.App.3d 1, 16.)

III. Substantial evidence supports the trial court's finding

Substantial evidence supports the trial court's finding that plaintiff failed to sustain its burden of establishing the reasonableness of the fees incurred with Wells. Plaintiff's motion for Wells's fees did not state the amount of fees it was seeking to recover, nor did it include any itemized billing statements, invoices, or other evidence of the number of hours Wells spent on this case.

Plaintiff cites its supplemental and amended motion for Wells's attorney fees, the April 5, 2011 declaration by Wells, and the itemized billing statement attached to that declaration as evidence of the fees it incurred with Wells. As noted earlier, defendants objected to the supplemental filing as untimely and in violation of the trial court's previous directive that no supplemental filings would be considered. Although the trial court's order contains no express ruling on defendants' objections, it is evident that the court disregarded plaintiff's supplemental filing and impliedly ruled in defendants' favor. Plaintiff has not challenged that implied ruling.

Plaintiff's request that the trial court take judicial notice of Wells's declarations filed in support of previous motions for attorney fees and the \$105,000 check plaintiff issued to Wells did not satisfy its evidentiary burden with respect to the instant motion. Although the trial court could take judicial notice, under Evidence Code section 452, of the fact that Wells submitted declarations in support of plaintiff's May 2008 motion for attorney fees, it could not take judicial notice of the truth of the matters asserted in the previous motion and declarations. (Evid. Code, § 452; *Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125; *Bach v. McNelis* (1989) 207 Cal.App.3d 852, 865.) The \$105,000 check issued by plaintiff to Wells does not come within any of the categories of matters that may be judicially noticed under Evidence Code sections 451 and 452. (Evid. Code, §§ 451, 452.)

Substantial evidence supports the trial court's determination that plaintiff failed to sustain its evidentiary burden. Accordingly, the trial court's order denying plaintiff's motion for Wells's attorney fees was not an abuse of discretion.

DISPOSITION

The order denying plaintiff's motion for attorney fees is affirmed. Defendants are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST