Filed 7/30/19 Broadcast Music v. Structured Asset Sales CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

BROADCAST MUSIC, INC., Plaintiff, v. STRUCTURED ASSET SALES, LLC, Defendant and Appellant; CURRENCY CORPORATION, Defendant and Respondent.	B272418 (c/w B278379) (Los Angeles County Super. Ct. No. BC379432)

APPEAL from a judgment and order of the Superior Court of Los Angeles County. Barbara Ann Meiers, Judge. Affirmed in part and reversed in part.

Law Offices of Edward A. Hoffman, Edward A. Hoffman; Law Offices of F. Jay Rahimi, F. Jay Rahimi; Matthew D. Kanin; AlvaradoSmith and W. Michael Hensley for Defendant and Appellant.

Huarte Law Office, Anne M. Huarte; Smith Law Firm and Craig Richard Smith for Defendant and Respondent.

This case arises from an interpleader and declaratory relief action in which Structured Asset Sales, Inc. (Structured) and Currency Corporation (Currency) are fighting over royalties and rights related to two sets of musical compositions (works) written by Adeniyi Jacob Paris (Paris) known in this litigation as the Named Songs and the Remainder Songs. The trial court granted summary judgment for Currency regarding ownership of the Named Songs and denied summary judgment for Structured regarding ownership of the Named Songs and Remainder Songs. The judgment awarded the interpleaded royalties to Currency, declared it the owner of the Named Songs, and declared that Paris owns the Remainder Songs subject to Currency's security interest. The trial court awarded Currency $176,869.09 in attorney fees pursuant to former Code of Civil Procedure section 128.5.[1] At the same time, the trial court denied Structured's motion to tax costs.

Structured appeals the judgment, the award of sanctions and the denial of its motion to tax costs.

We affirm the judgment because collateral estoppel establishes that Currency owns the Named Songs, and because Structured failed to establish that it has a valid assignment of the Remainder Songs. We reverse the sanctions because Currency's motion violated section 128.7, subdivision (c)(1) by failing to comply with the 21-day safe harbor provision, and by

---

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

The trial court made the attorney fee award on August 23, 2016. Former section 128.5 was "in effect from January 1, 2015 to August 7, 2017[.]" (*Nutrition Distribution, LLC v. Southern SARMs, Inc.* (2018) 20 Cal.App.5th 117, 124 (*Nutrition Distribution*).)

combining a sanctions motion with a motion for attorney fees under Civil Code section 1717. The denial of the motion to tax costs is moot.

FACTS

First Interpleader Action

In a limited jurisdiction action, Broadcast Music, Inc. (BMI) filed an interpleader complaint against Currency, Music Royalty Consulting, Inc. (Music Royalty), Paris and Structured alleging: BMI was in the business of licensing the public performance rights of copyrighted musical compositions. Paris's works have been licensed by BMI since 1970. In September 2006, $889.92 in royalties became payable due to the performance of Paris's works.

Structured claimed a right to the royalties due to a January 10, 2006 assignment (January 10 Assignment). Currency, Music Royalty, and Paris, in contrast, averred that Currency had a perfected security interest in Paris's works, Currency foreclosed on the Named Songs because Paris defaulted on loans from Currency, and Music Royalty purchased the Named Songs at a public sale. They further averred that the portion of the royalties "attributable to those compositions of [Paris] entitled 'Lulu,' 'Sooner or Later,' and 'I've Just Got a Feeling Something' (alternate title 'Something Good Is Coming My Way') [(Named Songs)] should be distributed by BMI to [Music Royalty]," and the portion of the royalties as to the rest of Paris's works (Remainder Songs) should be distributed to Currency.

The two main parties—Structured and Currency—sought to undermine the other's position with BMI. Structured claimed that Currency and Music Royalty did not have a claim to the royalties because Currency's loans to Paris were invalid due to

violations of the Financial Code, and because the public sale was invalid. Currency, on the other hand, asserted that the January 10 Assignment was rescinded by Paris or was otherwise unenforceable.

BMI requested a legal determination regarding how it should distribute the royalties. The complaint incorporated documentation of the public sale to Music Royalty, the transfer of title to Music Royalty, and Paris's assignment to Structured.

Paris defaulted. Structured defaulted, too, because it determined that $889.92 was not worth the cost of litigation. While the case was pending, Music Royalty assigned its interest in the Named Songs to Currency. Music Royalty was later dismissed.

The judgment (2007 Judgment) awarded the interpleaded royalties to Currency.[2]

Second Interpleader Action

In an unlimited jurisdiction action, BMI filed a complaint for interpleader and declaratory relief against Currency, Music Royalty, Paris and Structured. The complaint alleged that BMI was in possession of $771.94 in royalties and indicated, essentially, that Structured claimed ownership of all rights to the works through the January 10 Assignment and Currency claimed it was entitled to all of Paris's works due to the collateral estoppel effect of the first interpleader action. BMI requested a legal

---

[2] The amount of royalties accrued during the pendency of the first interpleader action so the award was for $2,810.21. The judgment stated that Currency was the owner of the Named Songs and entitled to all future royalties. That language was deleted by a nunc pro tunc order because the relief was improvidently granted under section 386, the interpleader statute.

determination as to who should receive the royalties and a declaration of the parties' rights.

Currency moved for summary judgment based on the collateral estoppel effect of the 2007 Judgment.[3] The evidence established that the Named Songs were the only songs to ever generate royalties. In its papers, Currency disavowed any claim to the Remainder Songs. Structured filed a cross-motion for summary judgment and claimed ownership of all the works based on the January 10 Assignment.

The trial court granted Currency's motion and denied Structured's motion based on collateral estoppel and Structured's failure to establish a triable issue as to whether it obtained a valid assignment. Also, the trial court deemed the motions to be "motions for declaratory relief[,] and in that respect[] a declaration is made as to the relief sought by [the] parties in their cross-motions and in their [a]nswers[.]" The judgment stated Currency was entitled to recover the interpleaded funds. It declared that Structured had no rights to any of the songs, Currency was the owner of the Named Songs, and Paris was the owner of the Remainder Songs subject to Currency's security interest.

Structured appealed the judgment.

---

[3] This was Currency's second motion for summary judgment. Previously, the trial court granted Currency's first motion for summary judgment and we reversed in *Broadcast Music, Inc. v. Structured Asset Sales, Inc.* (Nov. 25, 2014, B248011) [nonpub. opn.]. Currency's first motion was deficient because it focused on ownership of the Named Songs and did not resolve, inter alia, issues pertaining to the Remainder Songs or the source of the royalties.

On June 13, 2016, Currency filed and served a notice and notice of motion for $176,869.09 in attorney fees and costs. It sought relief alternatively under Civil Code section 1717 or former section 128.5. Structured filed a motion to tax costs. On August 23, 2016, the trial court granted Currency's motion under former section 128.5 and denied Structured's motion.

Structured appealed the sanctions order.[4]

DISCUSSION

I. The Trial Court Properly Granted Currency's Motion for Summary Judgment and Properly Denied Structured's Cross-Motion.

When reviewing the grant or denial of a summary judgment motion, we take a blank slate approach and determine whether triable issues exist. (*Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1402.)

---

[4] Currency states that this appeal is potentially untimely. A notice of appeal must be filed 60 days after the superior court or a party serves a document entitled "Notice of Entry" of the judgment or order. If such a document is not served, then an appeal must be filed within 180 days after entry of the judgment or order. (Cal. Rules of Court, rule 8.104(a) & (e).) The August 23, 2016, minute order was served on August 24, 2016. It was not entitled "Notice of Entry" of the order. A written order was signed on September 2, 2016, but was not served. Structured filed two notices of appeal from the sanctions order, one from the August 23, 2016, minute order and one from the September 2, 2016, signed order. The first notice of appeal was filed on October 18, 2016, which is within 180 days as well as 60 days of the minute order. The second notice of appeal was filed on November 3, 2016, which was within 180 days of the written order. We conclude that the appeal of the sanctions order is timely.

The deciding issue on Currency's and Structured's motions for summary judgment is whether collateral estoppel establishes that Currency owns the Named Songs.

Under the collateral estoppel doctrine, an issue cannot be relitigated if it is identical to one that was litigated and necessarily decided in a previous proceeding, and if the party seeking to relitigate the issue was either a party to the prior proceeding or in privity with a party. (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 895–896.) A default judgment triggers collateral estoppel because it establishes the truth of all material allegations in the underlying complaint as well as all facts necessary to uphold the default judgment. (*Four Star Electric, Inc. v. F&H Construction* (1992) 7 Cal.App.4th 1375, 1380 (*Four Star Electric*).)

The allegations in the first interpleader action established that Currency (standing in the shoes of Music Royalty) claimed ownership of the Named Songs through the public sale. The evidence in the current case established that only the Named Songs generated royalties and therefore only issues pertaining to the Named Songs were necessarily decided in the first interpleader action. The necessary facts to support the 2007 Judgment were that Currency foreclosed on a valid security interest and the public sale was valid and transferred title of the Named Songs to Currency.

These issues are identical to the issues related to the Named Songs in the second interpleader action. Currency was therefore entitled to summary judgment.

As we discuss below, Structured has penned a series of arguments urging a contrary analysis. These arguments are unavailing.

First, Structured suggests in multiple ways that the issues of Currency's ownership and the efficacy of Structured's assignment were not submitted for determination or decided in the first interpleader action, but these arguments conflict with *Four Star Electric* and we reject them.

Second, Structured seeks refuge in the rule that collateral estoppel will not apply if any aspect of what was decided in the former proceeding is left to conjecture. (*Bronco Wine Co. v. Frank A. Logoluso Farms* (1989) 214 Cal.App.3d 699, 709.) It claims that the basis of the 2007 Judgment is left to conjecture because nothing in the first interpleader action establishes whether issues pertaining to either the Named Songs or Remainder Songs were decided. But now that Currency has supplied the missing piece of the puzzle—only the Named Songs generated royalties—there is nothing speculative about the facts necessary to uphold the 2007 Judgment, i.e., there was a valid public sale and now Currency holds the rights to the Named Songs to the exclusion of Structured.

Third, we reject Structured's argument that the 2007 Judgment has no collateral estoppel effect because a default judgment can only award relief to a plaintiff (§ 585, subd. (b)) and therefore the trial court never awarded Currency relief against Structured. The problem for Structured is that BMI, a plaintiff, requested a determination of who should receive the royalties and one was made. It is that determination which gives rise to collateral estoppel.

Fourth, contrary to what Structured avers, *Schnyder v. State Bd. of Equalization* (2002) 101 Cal.App.4th 538 is not on point. In that case, the Schnyders purchased a grocery business that owed taxes. The Board of Equalization, among others,

placed a lien on the escrow funds based on successor liability statutes, and the escrow agent filed an interpleader. The parties resolved the interpleader via a stipulation in which the Board of Equalization disclaimed any interest in the interpleaded funds. Later, it levied on the Schnyders's bank account and seized approximately $30,000 to cover the taxes that were still owing from the predecessor. The Schnyders sued for a refund and argued that collateral estoppel prevented them from being held liable for any of the taxes under successor liability statutes. (*Id.* at pp. 542–544.) The reviewing court concluded that collateral estoppel did not apply because successor liability was never litigated. (*Id.* at p. 550.) Given that Currency did not disclaim an interest in the deposited royalties in the first interpleader action, Currency is not in the same position as the Board of Equalization in *Schnyder*.

Fifth, Structured posits that collateral estoppel does not apply because the rights at stake exceeded the $25,000 ceiling on claims in limited civil cases. (§ 85, subd. (a); *Maxfield v. Burtt* (1953) 121 Cal.App.2d 102, 114, ["A judgment is not an adjudication of those matters which were not and could not properly be relied upon and determined in the previous action, but is conclusive where the requisite jurisdiction exists, of all those matters which it clearly adjudicates"].) But Structured cites no evidence establishing that Named Songs were worth more than $25,000 in 2007.[5] Also, Structured cites no law

---

[5] Structured indicates in its opening brief that BMI collected over $20,000 in royalties over nine years from 2006 to 2015. Essentially, Structured asks us to infer that the value of the rights to Paris's songs must exceed $25,000 based on what they have recently generated. But evidence of those royalties is not

establishing that a limited civil court is barred from resolving a claim for less than $25,000 in revenues generated by the exploitation of intellectual property if that intellectual property, separate and apart from its revenues, happens to be worth more than $25,000. We deem this argument waived due to the lack of factual and legal support. (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862; *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.)

Sixth, Structured tries to sidestep collateral estoppel by citing *Murphy v. Murphy* (2008) 164 Cal.App.4th 376, 404, which stated that where the party "to be estopped was a party who participated in the earlier proceeding, due process requires that this party must have had an adequate incentive to fully litigate the issue in the prior proceeding." This quoted rule is inapposite because Structured did not participate in the first interpleader action. Regardless, we conclude that because the first interpleader action involved the validity of competing claims to royalties, and because those claims implicated the underlying rights, Structured had sufficient incentive to litigate to protect its allegedly assigned rights.

Based on collateral estoppel, Currency was entitled to summary judgment, not Structured.[6]

---

evidence of the value of the songs in 2007. Next, Structured avers that it purchased the California Finance Lenders Law (CFFL) claims that Paris has against Currency, and that those claims are worth tens of thousands of dollars. Structured never explains how this is relevant.

[6] Structured has not challenged the trial court's power to grant summary judgment when declaratory relief will then be

II. Declaratory Relief.

1. Named Songs.

Based on the summary judgment rulings, the trial court properly rendered declaratory relief in favor of Currency as to the Named Songs.

2. Remainder Songs.

The motions for summary judgment did not dispose of the Remainder Songs. For this reason, it appears, the trial court opted to treat the motions as though they were also requesting declaratory relief. Though this procedure is irregular, the parties have not objected to it. We therefore accept it at face value without deciding if it was proper.

Structured does not challenge the trial court's ruling on the "motions for declaratory relief." Accordingly, any challenge to that ruling is waived. (*Tan v. California Fed. Sav. & Loan Assn.* (1983) 140 Cal.App.3d 800, 811.) Even if Structured challenged that ruling, it would be unavailing.

The trial court, as an alternative ruling, found against Structured due to a failure of proof that it has a valid and still existing assignment from Paris.[7]

---

entered in favor of the moving party. We express no opinion on this issue.

[7] Contrary to Currency's position and the trial court's rulings, collateral estoppel does not implicate ownership of the Remainder songs or whether Structured holds a valid and existing assignment. Now that the issues have been properly presented, the only thing necessarily decided in the first interpleader action was that Currency foreclosed on a valid, preexisting security interest and obtained the rights to the Named Songs after the public sale. Whether Structured had a

On appeal, Structured asserts its rights to all the works because Paris signed a purchase agreement and the January 10 Assignment. Though Paris purported to rescind the purchase agreement, Structured contends that the rescission was ineffective. There is an omission in Structured's briefing that proves fatal to its position. To establish the terms of the purchase agreement, Structured cites to a copy of the purchase agreement attached to a 2010 declaration from its attorney in opposition to a motion to compel arbitration. Structured does not cite to evidence it submitted in support of its motion for summary judgment. Its argument is therefore waived. (*Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1050 ["'The reviewing court is not required to make an independent, unassisted study of the record in search of error'"].)

To be complete, we have reviewed the purchase agreement attached to the 2010 declaration. The purchase agreement was between the Pullman Group, LLC[8] and its nominees or assignees (defined as Pullman) and Paris.

The purchase agreement contemplated a closing "upon the final approval and recognition by BMI and [EMI Music Publishing (EMI)] of the transfer of the Rights to Pullman" or a Special Purpose Vehicle, "with the Rights being free and clear of

---

valid assignment from Paris was irrelevant; but if it did have one, then its rights to the Named Songs were extinguished. In other words, the 2007 Judgment was not inconsistent with Structured owning the Remainder Songs through the assignment, if valid, but subject to Currency's security interest.

[8] Structured is owned by David Pullman. He also owns the Pullman Group, LLC.

any liens, claims or encumbrances." It stated that the "Closing will not occur unless Pullman has received a complete release of all claims from any and all lien claimants of all claims against the Rights, and a written acknowledgment from BMI and EMI, . . . and of their acceptance of the transfer of the Rights to Pullman." Pullman had the right to opt out of the purchase.

One section stated: "In the event that [Paris fails] to proceed with the sale of the Rights, in addition to any other remedies that Pullman may have under law, Pullman may, at its sole discretion, elect as its remedy to receive either a break-up fee in an amount equal to Ten Percent (10%) of the Purchase Price plus any and all costs and expenses incurred by Pullman in connection with this transaction, . . . or specific performance of this agreement[.]"

The purchase price was $20,000. Minus specified deductions, it was due at closing. The purchase agreement was signed January 10, 2006, the same date as the January 10 Assignment.

We construe the purchase agreement and the January 10 Assignment as one contract. (Civ. Code, § 1642 ["Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together"].) Consequently, we conclude that the assignment was effective only when contemplated by the purchase agreement.

Structured has not interpreted the purchase agreement and explained when the assignment was supposed to be effective. It appears a closing was contemplated. If Paris did not honor the purchase agreement, Structured could seek specified damages or specific performance. Structured has not stated that the

purchase closed or that it sued for specific performance. It is possible that the parties had an agreement, Paris breached it, and there was never an effective transfer of rights. It may be that Structured only had a breach of contract claim and specific performance claims against Paris (and possibly a claim against Currency for intentional interference with contractual relations). Structured's incomplete argument is therefore waived. (*Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1206, fn. 11 ["[i]t is not our responsibility to develop an appellant's argument"].)

III. The Sanctions Award.

Structured argues that the sanctions award under former section 128.5 must be reversed because, among other defects, Currency's motion violated the applicable 21-day safe harbor provision and it was combined with a motion for attorney fees under Civil Code section 1717.[9]

We review the basis for an attorney fee award de novo. (*Sessions Payroll Management, Inc. v. Noble Construction Co.* (2000) 84 Cal.App.4th 671, 677.)

Under former section 128.5, a trial court could order a "party . . . to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics, that are frivolous or solely intended to cause unnecessary delay." (Former § 128.5, subd. (a).) The statute provided: "Any sanctions imposed pursuant to this section shall be imposed consistently with the standards, conditions, and procedures set forth in subdivisions (c), (d), and (h) of Section 128.7." (Former

---

[9] Civil Code section 1717 provides that a prevailing party in an action on a contract can recover attorney fees and costs if the contract provides for them.

§ 128.5, subd. (f); *Nutrition Distribution*, *supra*, 20 Cal.App.5th at pp. 123–130 [reversing sanctions due to noncompliance with the 21-day safe harbor provision in § 128.7, subd. (c)(1).) Section 128.7, subdivision (c)(1) provides, "A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court unless, within 21 days after service of the motion, or any other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected[.]"

Currency filed its motion on the same day that it served it on Structured. Based on *Nutrition Distribution*, the sanctions award must be reversed because Currency did not comply with the 21-day safe harbor provision.

We are urged by Currency to conclude that the safe harbor provision does not apply because none of Structured's alleged bad faith actions or tactics could be withdrawn or corrected. (*Nutrition Distribution*, *supra*, 20 Cal.App.5th at p. 130 ["when the motion for sanctions was based on a purportedly frivolous complaint, written motion or court filing that could be withdrawn or on some other alleged action or tactic that could be appropriately corrected, former [§ 128.5, subd.] (f) required the moving party to comply with the safe harbor waiting provisions of [§] 128.7, [subd.] (c)(1)"].)

Currency argues that the bad faith action here "was that Structured [persisted] in making its claim to BMI[] despite the first interpleader default judgment having disposed of Structured's claim, thereby triggering BMI to file the

interpleader action[.]" Next, Currency avers: "This action could not be 'withdrawn[]' because it had already triggered the interpleader action. In light of [David] Pullman's litigious reputation, BMI would not release the royalties until it got a court order to do so, so once [he] asserted his improper claim and the interpleader action was filed, [his] 'action or tact' could not be withdrawn."

The only authority Currency cites for the proposition that the trial court could sanction Structured for the entire cost of the interpleader action based on something it did before it appeared is *Dwyer v. Crocker Nat'l Bank* (1987) 194 Cal.App.3d 1418 (*Dwyer*). In that case, however, the trial court based sanctions on conduct occurring during the pendency of the case. *Dwyer* did not hold that former section 128.5 authorizes a trial court to impose sanctions based on prelitigation conduct. (*Dwyer, supra,* at pp. 1426–1435.) It therefore does not assist Currency's position. (*People v. Gilbert* (1969) 1 Cal.3d 475, 482, fn. 7 [cases are not authority on issues they did not decide].)

Alternatively, we conclude that Currency's motion violated the requirement in section 128.7, subdivision (c)(1) that a sanctions motion be made separately. Because it fails to cite any supporting law, we easily reject Currency's suggestion that it was permissible for it to combine a motion for sanctions under former section 128.5 and a motion for prevailing party attorney fees under Civil Code section 1717.

Currency argues that we can affirm the sanctions order based on Civil Code section 1717. In support, it cites law for the general proposition that a ruling can be affirmed on grounds other than those cited by the trial court if the ruling is otherwise correct. But a sanctions award was not authorized given the

procedural deficiencies of the motion, and Civil Code section 1717 does not authorize sanctions.[10]

IV. Currency's Request for Appellate Attorney Fees.

Currency requests an award of attorney fees on appeal based on Civil Code section 1717. But an award of such fees on appeal is only warranted when they were previously granted at the trial level. (*Butler-Rupp v. Lourdeaux* (2007) 154 Cal.App.4th 918, 923 ["Where a [Civil Code] section 1717 fee award is made at the trial level, the prevailing party may, at the appropriate time, request fees attributable to a subsequent appeal"].) Here, the trial court did not award attorney fees based on Civil Code section 1717.

Currency requests that we award it attorney fees for "the prior two appeals." We are not aware of any authority permitting a Court of Appeal to reach back in time and make an award in an appeal that is final.

We decline these requests.

---

[10] Because we are reversing the sanctions order for attorney fees and costs, we need not address the denial of the motion to tax costs.

DISPOSITION

The judgment is affirmed and the sanctions order pursuant to former section 128.5 is reversed. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ