Filed 7/31/18 Sancandi v. City of Los Angeles CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

DAVID SANCANDI et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES, Defendant and Appellant; CITY OF LONG BEACH et al., Defendants and Respondents.	B268839 (Los Angeles County Super. Ct. No. BC469942)

APPEALS from an order and a judgment of the Superior Court of Los Angeles County, Elihu Berle, Judge. Affirmed.

Kaye, McLane, Bednarski & Litt, Barrett S. Litt; Cynthia Anderson-Barker; Robert Mann and Donald W. Cook for Plaintiffs and Appellants.

Michael N. Feuer, City Attorney (Los Angeles), and Gabriel S. Dermer, Assistant City Attorney, for Defendant and Appellant.

Jeffrey R. Epp, City Attorney (Escondido), Michael R. McGuinness, Assistant City Attorney, Adam C. Phillips, Deputy City Attorney; Charles Parkin, City Attorney (Long Beach), and Howard D. Russell, Deputy City Attorney, for Defendants and Respondents.

Three groups of parties appeal. The trial court awarded $100,000 in attorney fees. Plaintiffs and fee recipients Laurencio Marin and Vincent Soltero appeal because they contend the right award should have been about $1.7 million. Defendant City of Los Angeles cross-appeals on the ground there should have been no award at all. The third appeal is by David Sancandi, Jose Rodriguez, and Efren Ruiz, who attack the later entry of summary judgment against them and in favor of the cities of Escondido and Long Beach. The trial court ruled previous litigation between these parties already had resolved the decisive question of law between them. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This litigation is about when city police can impound a car. The law permits police to impound cars under certain conditions, including when a person was driving the car "without . . . having

been issued a driver's license" (Veh. Code, § 14602.6, subd. (a)(1)). The specific question here is whether, under this provision, police may impound a car when a person was driving with a foreign driver's license but no California driver's license.

Events began in 2007. Sancandi and Rodriguez co-owned a car. Sancandi drove the car one day, a police officer stopped him for an unlawful turn, and the officer asked Sancandi for his driver's license. Sancandi showed his license from Italy. The officer impounded Sancandi's and Rodriguez's car on the basis of Vehicle Code section 14602.6, which, again, allows police to seize a car if its driver has never "been issued *a driver's license*." (Veh. Code, § 14602.6, subd. (a)(1), italics added.) In accord with the municipal policy at the time, the officer interpreted this statutory reference to "*a driver's license*" to mean a *California* driver's license. A driver's license from Italy is not a California driver's license.

Rodriguez and others sued. On the plaintiffs' side, at times there have been at least 22 people named as class representatives. The parties to this appeal are Sancandi, Rodriguez, Marin, Soltero, and Ruiz. There have been a plethora of defendants at various times as well, but the defendants who are parties to this appeal are the cities of Los Angeles, Long Beach, and Escondido. The basic claim is police in these cities impounded cars to the detriment of the plaintiffs.

The first suit in this chain of litigation was a federal class action filed in 2007. Juan Jose Salazar's name came first in the caption of the complaint, so this class action became known as the "*Salazar*" litigation. (*Salazar v. Schwarzenegger* (C.D.Cal. 2007) No. CV 07-1854 SJO (VBKx) (*Salazar*).) Salazar claimed police were impounding—that is to say, seizing—cars

illegitimately because California state law treats a driver's license from a foreign country as an acceptable "license."

In 2007 the federal district court dismissed one of the *Salazar* claims with prejudice. Count 1 of the federal *Salazar* complaint charged a direct violation of article I, section 13 of the California Constitution (section 13), which announces that the people are to be secure against "unreasonable seizures." The federal district court dismissed this claim with prejudice because section 13 "does not provide a private cause of action for damages."

In 2008 the federal district court granted the defendants' motion for summary judgment. The plaintiffs appealed the judgment to the Ninth Circuit Court of Appeals, but they did not challenge the district court's 2007 ruling on the motion to dismiss.

The Ninth Circuit affirmed the summary judgment on the federal claims and remanded the state law claims to the district court to decide whether to assume jurisdiction over those claims.

The federal district court then declined to exercise supplemental jurisdiction over purely state claims and dismissed *Salazar* on August 22, 2011.

The plaintiffs then sued in state court. The named plaintiffs included Rodriguez and Ruiz from the federal litigation. Others joined this group of plaintiffs, including Marin and Soltero. Plaintiffs brought this state class action against cities including Long Beach, Los Angeles, and Escondido.

Plaintiffs' state complaint attacked the legality of police seizure of cars driven by people with licenses from other countries. Plaintiffs filed their original state complaint on September 23, 2011 and amended it three times. On October 16,

2012 the trial court sustained without leave to amend defendants' demurrer to plaintiffs' cause of action for violation of Civil Code section 52.1 in plaintiffs' second amended complaint. On our own motion, we augment the record to include the minute order dated October 16, 2012, which ruled on defendants' joint demurrer to the second amended complaint. (Cal. Rules of Court, rule 8.155 (a)(1)(A).) On August 29, 2014 plaintiffs filed their third amended complaint alleging a single count: a direct violation of section 13, which announces that the people are to be secure against "unreasonable seizures." This is the very claim the federal court had dismissed with prejudice in 2007.

We interrupt this history of the litigation to note that, in the midst of it, on April 10, 2012, the City of Los Angeles amended its impound policy. This amendment, which altered municipal policy in ways plaintiffs favored, is important to this appeal. City officials called it "Special Order No. 7." We will describe this amendment shortly, but first we complete a description of the history of this litigation.

After the trial court denied the plaintiffs' class certification motion, plaintiffs Marin and Soltero settled with the City of Los Angeles for $4,000 each: a total recovery of $8,000. The trial court awarded Marin and Soltero $100,000 in attorney fees under Code of Civil Procedure section 1021.5.

Marin and Soltero appeal from the fee order, contending the trial court erred by failing to award them their requested $842,325 lodestar and by failing to address their request for a multiplier of two, which magnified their total fee request to $1,684,650. The City of Los Angeles also appeals from the fee order on the ground that Marin and Soltero are entitled to no fee award at all.

The cities of Long Beach and Escondido did not settle. Instead, they brought motions for summary judgment, which the trial court granted. Plaintiffs Sancandi, Rodriguez, and Ruiz appeal from the entry of summary judgment against them.

DISCUSSION

A. *The Fee Award Was Proper*

The City of Los Angeles contends the trial court erred by finding Code of Civil Procedure section 1021.5 entitled the plaintiffs to attorney's fees. Appellate courts will uphold the trial court's decision to award attorney fees under this section unless the court has abused its discretion. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 578.) We review the trial court's factual findings in connection with the ruling under the substantial evidence standard. (*Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 882.)

1. *Marin and Soltero Are Entitled to a Fee Award*

The trial court awarded attorney fees to Marin and Soltero under a catalyst theory. Under this theory, a court may award plaintiffs their attorney's fees if the litigation prompted the defendant to change its behavior in the way the plaintiffs sought, even absent judicial resolution of the issue. (*Graham v. DaimlerChrysler Corp.*, *supra*, 34 Cal.4th at p. 560.) The Supreme Court of the United States rejected the catalyst theory as a matter of federal statutory interpretation in *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health and Human Resources* (2001) 532 U.S. 598 [121 S.Ct. 1835, 149 L.Ed.2d 855]. But the California Supreme Court as a matter of

state law rejected *Buckhannon*'s analysis. (*Graham v. DaimlerChrysler Corp.*, *supra*, 34 Cal.4th at pp. 568-573.)

The catalyst theory required Marin and Soltero to establish (1) that their lawsuit was a catalyst motivating the City of Los Angeles to provide the primary relief sought; (2) that the lawsuit had merit and achieved its catalytic effect by threat of victory, not by dint of nuisance and threat of expense; and (3) that Marin and Soltero reasonably attempted to settle the litigation before filing their suit. (*Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608.)

The trial court found Marin and Soltero satisfied these three requirements and thus were entitled to a fee award. The court expressly identified each factor and made appropriate findings.

The City of Los Angeles challenges findings one and three: whether the suit truly was a catalyst and whether Marin and Soltero attempted to settle the litigation before filing suit.

The first requirement is that this suit indeed was a catalyst. Substantial evidence supported the trial court's finding that this suit contributed to policy change. The plaintiffs wanted Los Angeles to treat foreign driver's licenses the same as California driver's licenses. After plaintiffs filed suit, Los Angeles adopted Special Order No. 7. The order stated that officers must be guided by the community caretaking doctrine when deciding whether to impound a vehicle, and that the decision to impound any vehicle "must be reasonable and in furtherance of public safety." The order also stated that officers may impound a vehicle under Vehicle Code section 14602.6 only if the driver has never been issued a driver's license *by any jurisdiction* or is driving with a suspended or revoked license.

Both changes restricted the conditions under which police may impound cars. Both changes served the plaintiffs' goals.

The timing also fit. Plaintiffs sued, and then the city changed its policy in the direction plaintiffs advocated. Correlation need not imply causation, of course, but on these facts the trial court was entitled to draw this conclusion. That court was immersed in the details of these events. Substantial evidence supported its factual findings.

The city asserts the suit was not a catalyst because the plaintiffs never had the primary objective of getting the city to enact Special Order No. 7. Substantial evidence, however, supports the trial court's evaluation. The complaint targeted the city's treatment of foreign license holders.

To show Special Order No. 7 originated from a source different from the plaintiffs' suit, the city cites deposition testimony by a police official. This testimony recounted that there were "some findings by the inspector general's office relative to biased policing, that there was some confusion or lack of clarity on the part of our field personnel relative to . . . impound protocols," which led to meetings with community groups and advocates, and eventually led to Special Order No. 7. The city submits this police official was involved in those events but was unfamiliar with the *Salazar* litigation. Contrary to the city's argument, however, a lawsuit need only be a substantial factor motivating the policy change. The lawsuit need not be the sole cause. (*Cates v. Chiang* (2013) 213 Cal.App.4th 791, 807.)

The City of Los Angeles also challenges the trial court's findings on the third requirement: whether Marin and Soltero tried to settle their case before filing it. Substantial evidence supports the trial court's finding that a settlement demand would

have been futile. (See *Cates v. Chiang*, *supra*, 213 Cal.App.4th 791, 815-817 [futility satisfies the third requirement].) Despite the adverse court rulings, the city persisted in arguing that a foreign license was irrelevant under Vehicle Code section 14602.6. This substantial evidence supported the trial court's finding that a settlement demand would have been futile. While the city disputes this finding, it does so without citation to authority or evidence.

When embracing the catalyst theory, the Supreme Court envisioned that catalyst theory cases could be resolved by "relatively economical, straightforward inquiries by trial court judges close to and familiar with the litigation." (*Graham v. DaimlerChrysler Corp.*, *supra*, 34 Cal.4th at p. 573.) The trial court here was "close to and familiar with" the litigation. That court provided a "relatively economical, straightforward" analysis. The trial court did not abuse its discretion in awarding an attorney fee under the catalyst theory.

2. *Marin and Soltero Show No Abuse of Discretion*

Marin and Soltero asked for about $1.7 million in attorney fees: a $842,325 lodestar with a multiplier of two. The trial court awarded $100,000. This award was not an abuse of discretion.

Plaintiffs argue the trial court failed to determine the lodestar based on counsel's time records, failed to adjust the lodestar by considering the appropriate factors, and improperly excluded time that plaintiffs had already excluded in requesting fees. Plaintiffs also argue that the court failed adequately to explain the calculation of its award.

Attorney fee awards under Code of Civil Procedure section 1021.5 should be fully compensatory. Absent circumstances

rendering the award unjust, an award ordinarily should include compensation for all the hours reasonably spent. In determining reasonable attorney fees under the lodestar method, the court first determines the number of hours reasonably expended by the attorneys and then multiplies this figure by the reasonable hourly rate prevailing in the community for similar work. Next, the court engages in the multiplier analysis, and determines whether the lodestar figure should be augmented or diminished by one or more relevant factors. (*Cates v. Chiang*, *supra*, 213 Cal.App.4th at p. 820.)

Determining an appropriate statutory fee award is committed to the trial court's sound discretion and will not be reversed unless the court abused this discretion and the appellate court is convinced the ruling is clearly wrong. Appellate courts entrust trial judges with this discretion because trial judges are best situated to assess the value of the professional services in their courts. (*Cates v. Chiang*, *supra*, 213 Cal.App.4th at pp. 820-821.)

If a trial court is concerned a particular award is excessive, "it has broad discretion to adjust the fee downward or deny an unreasonable fee altogether." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138, fn. omitted.)

We presume the trial court considered the evidence presented on the fee motion, including plaintiffs' lodestar calculation based on counsel's time records and counsel's explanation of the reductions from the actual time spent on the case to the time claimed in the motion. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1324.)

When determining the $100,000 fee award, the trial court emphasized the limited character of the plaintiffs' success. The

court noted Marin and Soltero obtained compensatory damages of only $4,000 each. Swamping these sums were the plaintiffs' many failures in the case. The court denied the plaintiffs' motion for class certification. The court observed much of plaintiffs' requested relief had eluded them.

The court acknowledged the plaintiffs contributed in some degree to the advent of Special Order No. 7, but noted even that success was mixed. Special Order No. 7 was a move in the right direction, as far as plaintiffs were concerned, but plaintiffs continued to challenge Los Angeles Police Department's impound policies even as embodied in Special Order No. 7. The trial court dryly remarked "[i]t is unusual to argue that plaintiffs have been successful in remedying a state of affairs which they continued to attack."

The trial court then stated that "many of the hours were spent not on the core issue involving the Special Order [No.] 7. There were a lot of other issues that plaintiff pursued, including the efforts to certify a class, which was not certified, and a lot of tangential issues, a lot of wasted efforts. I do note that the hourly rate was very high in this type of case."

The trial court properly acted within its broad discretion.

The plaintiffs incorrectly complain the trial court failed to determine the lodestar based on counsel's time records. The trial court displayed familiarity with the plaintiffs' lodestar request, however, by noting both the claimed hours and hourly rates were excessive. On appeal, plaintiffs fault the court for not expressly acknowledging that plaintiffs themselves reduced their lodestar request by excluding time spent devoted to other parties and to unsuccessful claims. But the plaintiffs' self-imposed reduction did not, for instance, eliminate claims for attorney hours after

April 10, 2012, which was the date on which the city enacted Special Order No. 7. Similarly, the City of Los Angeles criticized the plaintiffs' lodestar submission for its excessive number of timekeepers—21 in all, suggestive of duplication—and for block billing. The plaintiffs do not respond to these critiques in their reply brief to this court. The trial court thus was justified in determining the plaintiffs' reduction in hours was not sufficient to bring their lodestar demand into a reasonable range.

The plaintiffs also argue the trial court failed to adjust the lodestar by considering the appropriate factors. This argument is erroneous. A significant and appropriate factor is the extent of plaintiffs' success. (See, e.g., *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 989.) The trial court conducted "an abbreviated but meaningful review of the merits of the litigation." (*Graham v. DaimlerChrysler Corp.*, *supra*, 34 Cal.4th at p. 576.) After four years in litigation, Marin and Soltero got only $4,000 each, as well as a policy change that dissatisfied them and that they were still attacking. This success is limited. A reduced fee award is appropriate in this situation. (*Chavez v. City of Los Angeles*, *supra*, 47 Cal.4th at p. 989.) The trial court's treatment of this issue was not an abuse of discretion.

Plaintiffs finally argue the court failed adequately to explain the calculation of its award. Beyond the court's express statements on this record, no more detailed explanation was required. (*Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 67 [trial court need not explain its calculation of an attorney fee award]; *Christian Research Institute v. Alnor*, *supra*, 165 Cal.App.4th at p. 1323 [same].) Despite the need to consult the lodestar method to help determine a reasonable attorney fee, trial courts are not required to engage in any

explicit analysis on the record. (*Save Our Uniquely Rural Community Environment v. County of San Bernardino* (2015) 235 Cal.App.4th 1179, 1189-1190.)

Marin and Soltero have not established a basis for upsetting this fee award.

B. *The Trial Court Properly Granted Summary Judgment*

Summary judgment is proper only if there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law. (*Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407, 415.) We review the trial court's ruling de novo, liberally construing the evidence in favor of the party opposing summary judgment and resolving all doubts concerning the evidence in favor of that party. (*State of California v. Allstate Ins. Co.* (2009) 45 Cal.4th 1008, 1017-1018.) We affirm a summary judgment if it is correct on any ground asserted in the trial court, regardless of the trial court's stated reasons. Even if the ground entitling the moving party to a summary judgment was not asserted in the trial court, we will affirm if the parties have had an adequate opportunity to address that ground on appeal. (*Garrett v. Howmedica Osteonics Corp.* (2013) 214 Cal.App.4th 173, 181; see Code Civ. Proc., § 437c, subd. (m)(2).)

The trial court correctly ruled claim preclusion barred the claims of Sancandi, Rodriguez, and Ruiz.

Claim preclusion applies when a second suit involves (1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in the first suit. (*Samara v. Matar* (2018) 5 Cal.5th 322, ___ [p. 2].)

The cities of Escondido and Long Beach established all three elements against Sancandi, Rodriguez, and Ruiz and thus

were entitled to summary judgment, which the trial court properly awarded.

The first step in the claim preclusion test asks whether Sancandi, Rodriguez, and Ruiz litigated the same cause of action in a earlier lawsuit. They did. Sancandi and the others litigated the cause of action for a direct violation of section 13 in the *Salazar* lawsuit. This fact satisfies step one.

Step two asks whether the parties are the same. They were. Sancandi, Rodriguez, and Ruiz were plaintiffs in the federal *Salazar* case and in this state court action. The cities were defendants in both cases. This identity of parties satisfies step two.

Step three inquires whether there was a final judgment on the merits in the first case. There was.

In 2007, the federal district court in *Salazar* ruled there was no private right of action for damages under section 13 and dismissed the plaintiffs' claim that alleged a direct violation of section 13. The identical legal issue arose in Sancandi's state court action. In his third amended state complaint, Sancandi alleged this section 13 claim and no other. The parties actually litigated that issue in 2007, in connection with the defendants' motion to dismiss the first amended federal complaint in *Salazar*. A dismissal for failure to state a claim under rule 12(b)(6) of the Federal Rules of Civil Procedure (28 U.S.C.) is a final decision on the merits. (*Federated Department Stores v. Moitie* (1981) 452 U.S. 394, 399, fn. 3 [101 S.Ct. 2424, 69 L.Ed.2d 103]; *Franceschi v. Franchise Tax Bd.* (2016) 1 Cal.App.5th 247, 259.)

The federal district court's 2007 ruling about section 13 bars Sancandi, Rodriguez, and Ruiz from relitigating the same issue in state court. Applying claim preclusion in these

circumstances preserves the integrity of the judicial system by paying respect to the district court's ruling. Having failed to challenge that ruling in the Ninth Circuit Court of Appeals, plaintiffs are bound by it and cannot relitigate the identical issue in a new forum. By preventing the relitigation of the same issue between the same parties, the application of claim preclusion in this case promotes judicial economy. The public policies underlying the doctrine of claim preclusion support its application in this case.

Plaintiffs argue they were not prejudiced by the district court's ruling that there was no private right of action for damages under section 13 and had no reason to challenge the ruling because the district court allowed them to pursue an alternative remedy under Civil Code section 52.1 for the same alleged constitutional violation.

According to plaintiffs, it would be unjust to apply claim preclusion in these circumstances. This is incorrect. In 2007, the district court permitted the plaintiffs to proceed with a claim under section 13 only through an "alternative remedy: Civil Code [section] 52.1." Under certain conditions, Civil Code section 52.1 expressly authorizes a private right of action for interference with the exercise of a constitutional right. While plaintiffs could pursue the alternative remedy of Civil Code section 52.1, there was never any assurance that plaintiffs would be successful in that pursuit, as shown by the superior court's later sustaining of a demurrer to that cause of action. The dismissal of their cause of action for violation of section 13 was prejudicial because it forced plaintiffs to rely entirely on Civil Code section 52.1. If plaintiffs wished to preserve the option to pursue a remedy under section 13, they should have challenged the district court's ruling

in their appeal. It would not promote judicial economy to allow parties in complex litigation to circle back freely to relitigate battles fought out years earlier. The district court's ruling was prejudicial, plaintiffs had reason to challenge the ruling, and applying claim preclusion in these circumstances is not unjust.

Plaintiffs incorrectly argue the fact that they mounted a later and different appeal to the Ninth Circuit in *Salazar* freed them from the force of the district court's 2007 ruling. The Ninth Circuit wrote that "some defendants would have violated state law . . . if they impounded vehicles driven by individuals with licenses that had merely expired or had been issued by a different jurisdiction." (*Salazar v. City of Maywood* (9th Cir. Feb. 8, 2011, No. 08-56604) [nonpub. opn.].) This statement is consistent with the district court's 2007 holding that plaintiffs could properly allege state constitutional claims through the vehicle of Civil Code section 52.1. The Ninth Circuit did not hold or suggest the district court was wrong to rule there was no private right of action for violation of section 13. That is the end of the matter.

In sum, summary judgment in favor of Long Beach and Escondido was proper.

DISPOSITION

The order and judgment are affirmed. Defendants are entitled to recover their costs on appeal.

WILEY, J.*

We concur:

PERLUSS, P. J.

SEGAL, J.

---

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