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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SUCHA SINGH,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES et al.,

Defendants and Respondents.

B232873

(Los Angeles County
Super. Ct. No. BS124062)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Ann I. Jones, Judge. Affirmed.

Silver, Hadden, Silver, Wexler & Levine, Susan Silver, Michael S. Simidjian, and Jacob A. Kalinski for Plaintiff and Appellant.

Carmen A. Trutanich, City Attorney, and Brian I. Cheng, Deputy City Attorney, for Defendants and Respondents.

Sucha Singh (Singh) is a police officer with the City of Los Angeles (the City). Following an incident on May 1, 2007, his position was downgraded from the pay grade position of Police Officer III to Police Officer II, and he was transferred out of the Metropolitan Division. Singh unsuccessfully pursued an administrative appeal and then filed the instant action seeking a peremptory writ of mandate. The trial court denied Singh's petition on the grounds that Singh had unclean hands and entered judgment in favor of the City and Charlie Beck, as Chief of Police of the City of Los Angeles. Singh appeals the judgment, claiming, inter alia, that he is not barred from relief by the doctrine of unclean hands. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The May 1, 2007, Incident; Singh's Downgrade and Transfer; Two Simultaneous Administrative Proceedings

Singh joined the Los Angeles Police Department (the department) in 1999. In November 2006, he was upgraded to Police Officer III, and in December 2006, he was transferred to the Metropolitan Division.

On May 1, 2007, Singh, along with other Metropolitan Division officers, was involved in an on-duty crowd control incident at MacArthur Park. As a result of that incident, Singh was served with two sustained allegations of misconduct: (1) he delivered an unnecessary strike to the knee of an individual with his baton; and (2) he made a misleading statement during questioning about the incident.

The sustained allegations led to two separate administrative procedures. First, on September 9, 2008, the Assistant Commanding Officer of the Metropolitan Division requested that Singh be downgraded from Police Officer III to Police Officer II. It was further requested that Singh be administratively transferred from the Metropolitan Division. On December 10, 2008, Singh appealed his downgrade and transfer. An administrative appeal hearing convened on July 31, 2009, and on August 25, 2009, the hearing officer recommended that Singh be reinstated to the rank of Police Officer III and transferred back to the Metropolitan Division. On September 15, 2009, the Chief of Police rejected the hearing officer's recommendation.

Meanwhile, Singh apparently opted for a board of rights (board) to hear the evidence of the sustained personnel complaints against him. Following that hearing, on March 17, 2009, the board found Singh guilty as to count one (unnecessary strike) and not guilty as to count two (misleading statement). The board then set forth its rationale of penalty. Keeping in mind the purpose of discipline, the board commented directly to Singh: “[Y]our behavior before and after the incident has remained consistent, which you have demonstrated despite facing the impending board of rights, the removal from Metropolitan Division and downgrade and subsequent transfer to Central Area, where you continue to perform in a commendable, productive level, prompting your supervisors to give praise on your character.” Ultimately, without objection or comment from Singh, the board concluded: “The board feels that you understand what you did was wrong and that there are other ways to accomplish your mission. Your downgrade and transfer [have] been a difficult pill to swallow, but you have accepted this discipline and continue to perform. That is why we feel that an official reprimand for this one act of excessive force is sufficient to change your behavior, which we feel has already been accomplished.”

The Lawsuit

On December 10, 2009, Singh filed a verified petition for peremptory writ of mandate, challenging the Chief of Police’s September 15, 2009, decision to reject the hearing officer’s recommendation. He sought, among other things, an order that defendants reinstate him to his advanced pay grade and to the Metropolitan Division.

In accordance with the trial court’s briefing schedule, Singh filed his moving papers on September 2, 2010. Defendants opposed Singh’s petition.

At the trial court’s request, the parties then submitted supplemental briefs. In particular, the parties addressed the question of whether Singh had unclean hands in the board of rights hearing by not informing the board that he was challenging the decision to downgrade his position and transfer him out of the Metropolitan Division.

Following several continuances, the matter was heard on March 4, 2011. In a detailed minute order, the trial court addressed each argument raised by Singh in his

petition and supporting motion. Regarding the arguments raised in the supplemental briefs by the parties, it found that Singh “clearly ha[d] unclean hands in this proceeding.” After summarizing the law on unclean hands, the trial court held that “there [was] a direct relationship between the improper conduct alleged to have occurred in this case and this Petition. Specifically, having obtained a clear benefit because of his decision to remain silent at the Board of Rights hearing—despite his clear duty to correct the record regarding his intentions not to accept his administrative ‘pill’—and having obtained a benefit in the form of a lighter penalty based on his intentional omission—he thereafter continued to appeal—not accept—his administrative downgrade and transfer. [Singh’s] insistence of obtaining a remedy in this instance gives lie to his silence before the Board of Rights. Accordingly, [Singh’s] inequitable conduct arises from the very right he now asserts. [Citation.]”

Moreover, the trial court found that “[c]learly in the present case, [Singh’s] willingness to stand silent to obtain the benefit of the acceptance of a penalty and then his willingness to prosecute this case to avoid the fate for which he previously [had] been credited with accepting ‘affect[ed] the equitable relations between the parties’ on this very petition. Not only did [Singh’s] misconduct in this case pertain to the general subject matter of this suit, it [was] his willingness to prosecute the action at all—after having allowed the Board of Rights to go light on his discipline based on his ‘acceptance of his downgrade and transfer’—that constitute[d] the unconscionable act.”

Finally, the trial court found that defendants were prejudiced by Singh’s misconduct. After all, defendants were “incapable of revisiting the slap on the wrist administered by the Board of Rights to [Singh] conditioned in substantial part on his acceptance of an administrative downgrade and transfer. [Defendants were] incapable of divesting [Singh] from the benefit he obtained by remaining mute when the Board relied upon that fact in determining his discipline. By remaining silent when he had a duty to speak, and by thereafter prosecuting this action as if he had not represented to the board by way of his omission that he had no intention of appealing that action further, [defendants were] unable to right the inequity.”

Judgment was entered, and Singh's timely appeal ensued.

DISCUSSION

I. Standard of review

The parties agree that we review the trial court's decision for substantial evidence. (*Stevenson v. Board of Retirement of Orange County Employees Retirement System* (2010) 186 Cal.App.4th 498, 508 ["We generally review a trial court's denial of a petition for writ of administrative mandate for substantial evidence"].)

"Whether the unclean hands doctrine can be applied to a particular transaction is a legal issue reviewed de novo." (*Brown v. Grimes* (2011) 192 Cal.App.4th 265, 274.) Once the doctrine has been found legally applicable, case law is split as to whether we review a trial court's unclean hands determination for substantial evidence or abuse of discretion. (*Id.* at p. 275 [comparing *Lovett v. Carrasco* (1998) 63 Cal.App.4th 48, 55 [abuse of discretion] with *Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978 (*Kendall-Jackson*) [substantial evidence].) But, the practical differences between these two standards of review are not significant, and, under either standard, broad deference must be shown to the trial judge. (*People v. Gregerson* (2011) 202 Cal.App.4th 306, 319–320.)

II. The trial court did not err in applying the doctrine of unclean hands

As Singh correctly points out, the trial court determined that the department did not properly follow its own rules and procedures when it implemented his downgrade and transfer. Defendants have not challenged this finding. Rather, the issue presented is whether Singh had unclean hands in pursuing a writ and that, consequently, he cannot obtain relief from the department's failure to adhere to its procedures.

"The defense of unclean hands arises from the maxim, "'He who comes into Equity must come with clean hands.'" [Citation.] The doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim. [Citations.] The defense is available in legal as well as equitable actions. [Citations.]" (*Kendall-Jackson, supra*, 76 Cal.App.4th at p. 978.)

“The unclean hands doctrine protects judicial integrity and promotes justice. It protects judicial integrity because allowing a plaintiff with unclean hands to recover in an action creates doubts as to the justice provided by the judicial system. Thus, precluding recovery to the unclean plaintiff protects the court’s, rather than the opposing party’s, interests. [Citations.] The doctrine promotes justice by making a plaintiff answer for his own misconduct in the action. It prevents ‘a wrongdoer from enjoying the fruits of his transgression.’ [Citations.]” (*Kendall-Jackson, supra*, 76 Cal.App.4th at pp. 978–979.)

“Not every wrongful act constitutes unclean hands. But, the misconduct need not be a crime or an actionable tort. Any conduct that violates conscience, or good faith, or other equitable standards of conduct is sufficient cause to invoke the doctrine. [Citations.]” (*Kendall-Jackson, supra*, 76 Cal.App.4th at p. 979.)

“The misconduct that brings the unclean hands doctrine into play must relate directly to the cause at issue. Past improper conduct or prior misconduct that only indirectly affects the problem before the court does not suffice. The determination of the unclean hands defense cannot be distorted into a proceeding to try the general morals of the parties. [Citation.] Courts have expressed this relationship requirement in various ways. The misconduct ‘must relate directly to the transaction concerning which the complaint is made, i.e., it must pertain to the very subject matter involved and affect the equitable relations between the litigants.’ [Citation.]” (*Kendall-Jackson, supra*, 76 Cal.App.4th at p. 979.)

There is a “three-pronged test to determine the effect to be given to the plaintiff’s unclean hands conduct. Whether the particular misconduct is a bar to the alleged claim for relief depends on (1) analogous case law, (2) the nature of the misconduct, and (3) the relationship of the misconduct to the claimed injuries.” (*Kendall-Jackson, supra*, 76 Cal.App.4th at p. 979.)

Under the three prongs, we readily conclude that Singh’s unclean hands precludes him from any recovery in this action:

A. Analogous Case Law

The parties offer no case law directly on point. Rather, Singh directs us to cases in which courts have found that the unclean hands defense could not be invoked. Each of these cases is distinguishable. In *Brown v. Grimes*, *supra*, 192 Cal.App.4th 265, the court considered whether payment was due under a fee-sharing agreement between two lawyers. (*Id.* at pp. 268–269.) The defendant argued that he was not required to pay the plaintiff, partly because the plaintiff had unclean hands by virtue of his separate, and improper, fee-sharing agreement with a nonlawyer. The Court of Appeal determined that the unclean hands defense did not apply because the plaintiff’s “offending conduct did not affect the fee-sharing agreement” and was not inequitable towards the defendant. (*Id.* at pp. 269, 283.) In contrast, Singh’s misconduct—standing silent and misleading the board into believing that he had accepted his downgrade and transfer—is at the heart of the issues raised in this appeal and, as a result, was inequitable towards defendants. Singh’s claim notwithstanding, the board’s assessment as to what discipline to impose on him for his unauthorized strike is anything but “separate and apart” from whether the transfer and downgrade were an appropriate response to the complaint leveled against Singh.

Similarly, Singh’s reliance upon *O’Flaherty v. Belgum* (2004) 115 Cal.App.4th 1044 is unavailing. In that case, the parties did not raise the defense of unclean hands below, before bringing it to the appellate court’s attention. (*Id.* at p. 1059.) Thus, it was deemed to have been forfeited on appeal. (*Ibid.*) And, even if it had not been waived, the Court of Appeal determined that it did not apply because “the inequitable conduct did not occur in the transaction to which the relief sought relates.” (*Id.* at p. 1060.) Here, the issue of unclean hands was raised at the trial court; in fact, the trial court made very specific findings regarding this defense. And, as set forth below, Singh’s inequitable conduct relates to the transaction in which he seeks relief.

Finally, *Jaramillo v. County of Orange* (2011) 200 Cal.App.4th 811 is distinguishable. In that case, the plaintiff’s misconduct was not related to his summary

termination, the cause of action before the court. (*Id.* at p. 821.) In contrast, as discussed below, Singh's conduct is at cornerstone of his request for relief in this action.

B. Nature of the Misconduct

Defendants' unclean hands defense is based upon Singh's conduct at the board of rights hearing. As the transcript from the hearing confirms, the board knew that Singh had been downgraded and transferred. Based upon numerous character witnesses, the board determined that in spite of the downgrade and transfer, Singh was continuing "to perform in a commendable, productive level." What the board did not know, because Singh did not alert the hearing officers, was that Singh was appealing his downgrade and transfer. Because the board mistakenly believed that Singh had accepted his downgrade and transfer, it recommended the light penalty of an official reprimand for the sustained finding of excessive force.

Singh argues that the board knew or should have known that Singh was appealing his downgrade and transfer. Aside from the fact that he offers no record citations in support of his speculation, we cannot leap to the inference that Singh makes. Just because Singh presented character witnesses at his board of rights hearing does not compel the conclusion that he was appealing his downgrade and transfer. There is no evidence whatsoever that Singh or any of his witnesses so hinted, let alone stated.

C. Relationship of the Misconduct to the Injuries

The final prong requires examination of the relationship between the plaintiff's misconduct and the claimed injuries. (*Kendall-Jackson, supra*, 76 Cal.App.4th at p. 984.) "The misconduct that brings the unclean hands doctrine into play must relate directly to the transaction concerning which the complaint is made. It must infect the cause of action involved and affect the equitable relations between the litigants. [Citation.]" (*Ibid.*)

As the trial court found, Singh's "willingness to stand silent to obtain the benefit of the acceptance of a penalty and then his willingness to prosecute this case to avoid the fate for which he had previously been credited with accepting 'affects the equitable relations between the parties' on this very petition. Not only did [Singh's] misconduct in

this case pertain to the general subject matter of this suit, it is his willingness to prosecute the action at all—after having allowed the Board of Rights to go light on his discipline based on his ‘acceptance of his downgrade and transfer’—that constitutes this unconscionable act.” We agree. As set forth above, substantial evidence supports the trial court’s determination that Singh’s silence at the board of rights hearing directly led to the board’s imposition of a light penalty.

III. *All remaining arguments are moot*

In light of our holding on the issue of unclean hands, all remaining arguments, including (1) Singh’s challenge to the trial court’s application of the doctrine of equitable estoppel, (2) Singh’s objection to the trial court’s finding that the decision to downgrade and transfer Singh was supported by the evidence (3) Singh’s contention that the penalty as excessive, and (4) Singh’s claim that defendants were barred by the doctrine of collateral estoppel are moot.

DISPOSITION

The judgment is affirmed. Defendants are entitled to costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
CHAVEZ