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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

PAMELA WORMAN,

Plaintiff and Respondent,

v.

INVESTMENT CO. OF SANTA
MONICA et al.,

Defendants and Appellants.

B276710

(Los Angeles County
Super. Ct. No. BS145802)

APPEAL from an order of the Superior Court of Los Angeles County. Mary H. Strobel, Judge. Reversed.

Tangalakis & Tangalakis, Phillip Tangalakis and Christopher G. Hook; Davis Wright Tremaine, Jacob M. Harper and Everett W. Jack, Jr. for Defendants and Appellants.

Sheppard Mullin Richter & Hampton, Paul S. Malingagio and Paul L. Seeley for Plaintiff and Respondent.

Appellants Investment Co. of Santa Monica (ICSM), Pacific Systems, Thompson Industrial Properties (collectively, the Companies), and Robert Thompson (Thompson)¹ appeal from a postjudgment order requiring them to produce to respondent Pamela Worman, also known as Pamela Wells (Worman), attorney billing invoices and other financial documents disclosing the Companies' litigation expenses in certain pending and active legal matters. We reverse the order because it requires appellants to disclose information protected by the attorney-client privilege and contravenes the California Supreme Court's holding in *Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282 (*Board of Supervisors*).

BACKGROUND

The parties

The Companies are Nevada corporations owned by Thompson (who owns 50 percent of each company) and by various members of the Wells family, who together own the remaining 50 percent of each company. Worman, who is a member of the Wells family, owns 25 percent of the stock of ICSM, 20 percent of the stock of Pacific Systems, and 20 percent of the stock of Thompson Industrial Properties.

Worman's inspection demands

In July 2013, Worman contacted Thompson to request payment of dividends she claimed the Companies owed her. Worman maintained that although each of the Companies had paid her dividend distributions at least twice a year until 2011, she received no dividends from 2011 to 2013 but was nevertheless required to pay personal income tax attributed to her for those years pursuant to Internal Revenue Service (IRS) schedule K-1

¹ Thompson and the Companies are referred to collectively as appellants.

forms issued by the Companies. Neither Thompson nor any of the Companies responded to Worman's request.

On August 20, 2013, Worman served a demand to inspect the Companies' corporate books and records pursuant to Nevada Revised Statutes sections 78.105 and 78.257.² The Companies did not respond to the demand.

Mandamus action and Worman's other lawsuits

When two additional demands to inspect the Companies' corporate books and records yielded no results, Worman filed a petition for writ of mandate in the superior court on November 1, 2013.

While the mandamus action was pending, Worman filed two lawsuits against ICSM, Thompson, and John Thompson (Thompson's son and ICSM's Treasurer). The first lawsuit, *Worman v. Investment Co. of Santa Monica*, Los Angeles Superior Court (LASC) case No. SC123284, seeks recovery of shareholder distributions Worman claims she is owed over several years. The second lawsuit, *Worman v. Investment Co. of Santa Monica*, LASC case No. SC123285, is a shareholder derivative action in which Worman sued Robert Thompson and John Thompson for alleged breaches of their fiduciary duty.³

² Nevada Revised Statutes section 78.257 provides that "[a]ny person who has been a stockholder of record of any corporation and owns not less than 15 percent of all of the issued and outstanding shares of the stock of such corporation or has been authorized in writing by the holders of at least 15 percent of all its issued and outstanding shares, upon at least 5 days' written demand, is entitled to inspect in person or by agent or attorney, during normal business hours, the books of account and all financial records of the corporation, to make copies of records, and to conduct an audit of such records."

³ The Companies, in turn, filed a series of complaints and cross-complaints in interpleader. In addition to the individual

After litigating the mandamus action for 18 months, the parties entered into a stipulated judgment on April 1, 2015. The stipulated judgment provides that Worman has a right to inspect “books of account and all financial records” of the Companies, while she owns at least 15 percent of the outstanding shares of each of the Companies and if she provides an affidavit stating that such inspection “is not desired for any purpose not related to . . . her interest in the corporation as a stockholder.” The judgment accords Worman the right to inspect “corporate minute books, stock ledgers, stock certificates (whether blank, issued, or cancelled), cancelled checks, invoice files, tax returns, income statements, ledgers (including general ledgers and sub-ledgers), electronic accounting records, check registers, financial statements, profit and loss statements, tenant leasing files, bank account statements, financial account statements, expense reports, contracts (to the extent not privileged), by-laws, articles of incorporation, documents filed with the Nevada or California Secretaries of State, corporate resolutions, shareholder and board of director minutes, property leases, loan agreements, and disbursement/dividend records.”

Postjudgment proceedings

On December 9, 2015, Worman sent requests to inspect the financial records of each of the Companies. The requests sought to inspect five categories of documents: (1) cancelled checks and

and shareholder derivative actions Worman filed against the Companies, the following lawsuits between the parties are currently pending: *Parr Investment Company of Santa Monica v. Wells*, LASC case No. SC124695, *Thompson Industrial Properties v. Wells*, LASC case No. SC124696, *Pacific Systems v. Wells*, LASC case No. SC124699, *Garden Gate, Inc. v. Thompson Industrial Properties*, LASC case No. BC566908, and *Thompson v. Wells*, LASC case No. SC127126.

check registers for the time period of January 1, 2015, to the present; (2) ledgers and electronic accounting records for the same time period; (3) bank account statements for the same time period; (4) expense reports for the same time period; and (5) billing statements for legal fees and expenses received and/or paid since December 2014. Each request was accompanied by Worman's affidavit stating that the inspection was not sought for any purpose unrelated to her interest as a shareholder in the Companies.

On December 14, 2015, each of the Companies sent a letter raising various objections to the respective requests, including that Worman's affidavit did not comply with Nevada law, that Worman should be made to stipulate to a protective order, and that the billing statements for legal fees and expenses were privileged and not subject to disclosure.

On May 2, 2016, Worman filed a motion for an order to enforce her inspection demand for corporate records. In the motion, Worman argued that neither the stipulated judgment nor Nevada law imposed any of the conditions urged by the Companies. She further asserted that the Companies had improperly used corporate funds in the past, and that she was entitled to know whether or not they had stopped that practice. With regard to the attorney billing records, Worman argued that she had obtained information indicating that the Companies were misusing funds to pay Robert Thompson's and John Thompson's legal bills.

The Companies opposed Worman's motion on various grounds, including that the attorney billing records were privileged.

Trial court's order

A hearing on the motion to enforce the inspection demand was held on May 26, 2016. The trial court issued its ruling on

June 10, 2016, granting Worman's request to inspect the following documents for the period January 1, 2015, to the date of the order: cancelled checks and check registers, ledgers and electronic accounting records, bank account statements, and expense reports, subject to a protective order that would prohibit the unnecessary dissemination of confidential information or competitively sensitive business information.

With regard to whether attorney billing statements could be withheld from inspection as privileged attorney-client communications, the trial court stated that because the parties had presented no evidence of any material difference between Nevada and California law on the issue, California law would apply. The trial court noted that the issue of whether an attorney's written fee statements and billing invoices are protected attorney-client communications was then pending before the California Supreme Court (*Board of Supervisors, supra*, 2 Cal.5th 282) but proceeded to address the issue.

Citing *Hartford Casualty Ins. Co. v. J.R. Marketing, L.L.C.* (2015) 61 Cal.4th 988 as "persuasive authority" that the Companies could be compelled to produce redacted billing records, the trial court ruled as follows: "To the extent [the Companies] have received any bills from the attorneys which state only the amount due, and include no descriptive or back up information, [the Companies] have not shown that the communication is privileged. In that case, the bill would appear to serve an independent and ancillary financial purpose of establishing the amount of compensation an attorney is seeking for work done in representing a client. [Worman's] request to view these documents, if any exist, is granted. [¶] The extent [the Companies] have received bills from the attorneys that contain attorney-client or work product information, they are

compelled to make those bills available for inspection with the privileged information redacted pursuant to *Hartford*.”

The trial court denied a motion by appellants to stay enforcement of the order pending the Supreme Court’s decision in the *Board of Supervisors* case.

Writ proceedings

Appellants filed a petition for writ on supersedeas on September 9, 2016. This court granted the petition on October 3, 2016, staying the trial court’s June 10, 2016 order requiring the Companies to produce financial documents and attorney billing statements pending the California Supreme Court’s decision in *Board of Supervisors*.

The instant appeal

On December 29, 2016, the Supreme Court issued its opinion in *Board of Supervisors*. In a letter dated February 7, 2017, the clerk gave notice to the parties that the remittitur was issued on January 31, 2017. This appeal followed.

DISCUSSION

I. Standard of review

A trial court’s ruling on a motion to compel discovery is reviewed under the abuse of discretion standard. (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733 (*Costco*).)

II. Attorney-client privilege

A. General principles

The attorney-client privilege, codified at Evidence Code section 954, provides that a client “has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer.” (Evid. Code, § 954.) The phrase “‘confidential communication between client and lawyer’ means information transmitted between a client and his

or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client.” (Evid. Code, § 952.)

B. Board of Supervisors

Whether the attorney-client privilege protects information contained in invoices for legal services is an issue that was recently addressed by the California Supreme Court in *Board of Supervisors, supra*, 2 Cal.5th 282, a case involving a California Public Records Act (PRA) (Gov. Code, § 6250 et seq.)⁴ request seeking invoices for legal expenses billed to the County of Los Angeles in connection with lawsuits alleging excessive force against jail inmates. (*Board of Supervisors*, at p. 288.)

The Supreme Court in *Board of Supervisors* concluded that “the [attorney-client privilege] does not apply to every single communication transmitted confidentially between lawyer and client. Rather, the heartland of the privilege protects those communications that bear some relationship to the attorney’s provision of legal consultation. [Citation.]” (*Board of Supervisors, supra*, 2 Cal.5th at p. 294.) With regard to attorney billing statements, the Supreme Court stated: “Invoices for legal services are generally not communicated for the purpose of legal consultation. Rather, they are communicated for the purpose of billing the client and, to the extent they have no other purpose or effect, they fall outside the scope of an attorney’s professional representation. . . . While invoices may convey some very general

⁴ The attorney-client privilege is incorporated into the PRA by Government Code section 6254. Subdivision (k) of section 6254 exempts from PRA disclosure “[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.”

information about the process through which a client obtains legal advice, their purpose is to ensure proper payment for services rendered, not to seek or deliver the attorney's legal advice or representation.” (*Id.* at p. 295.) The Supreme Court nevertheless recognized that “while billing invoices are generally not ‘made for the purpose of . . . legal representation,’ the information contained within certain invoices may be within the scope of the privilege.” (*Id.* at p. 297.)

The court in *Board of Supervisors* identified two categories of privileged information that may be contained in an invoice for legal services: the first category consists of “billing information . . . conveyed ‘for the purpose of . . . legal representation’ -- perhaps to inform the client of the nature or amount of work occurring in connection with a pending legal issue -- such information lies in the heartland of the attorney-client privilege.” (*Board of Supervisors, supra*, 2 Cal.5th at p. 297.) The second category encompasses more general information “such as aggregate figures describing the total amount spent on continuing litigation during a given quarter or year” -- information that comes “close enough” to the heartland of the privilege “to threaten the confidentiality of information directly relevant to the attorney’s distinctive professional role.” (*Ibid.*) The Supreme Court stated that “[t]he attorney-client privilege protects the confidentiality of information in both those categories, even if the information happens to be transmitted in a document that is not itself categorically privileged.” (*Ibid.*)

For pending and active legal matters, the Supreme Court applied a much broader protective standard: “When a legal matter remains pending and active, the privilege encompasses everything in an invoice, including the amount of aggregate fees.” (*Board of Supervisors, supra*, 2 Cal.5th at p. 297.) The court explained that a categorical privilege applies to pending and

active legal matters “because, even though the amount of money paid for legal services is generally not privileged, an invoice that shows a sudden uptick in spending ‘might very well reveal much of [a client]’s investigative efforts and trial strategy.’ [Citation.] Midlitigation swings in spending, for example, could reveal an impending filing or outsized concern about a recent event.” (*Ibid.*)

The Supreme Court’s holding in *Board of Supervisors* applies to the attorney billing records and financial documents that are at issue here, which disclose the Companies’ litigation expenses for pending and active legal matters. The trial court’s order compelling such disclosure must therefore be reversed.

DISPOSITION

The order granting the motion to enforce the inspection demand for corporate records is reversed to the extent that it requires disclosure of (1) attorney billing records and invoices for pending and active legal matters, whether or not such records and invoices have been redacted; and (2) other documents, such as checks, ledgers, and accounting and financial documents, to the extent that they disclose the Companies’ litigation expenses for pending and active legal matters. Appellants are awarded

their costs on appeal.⁵

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_____, Acting P. J.
CHAVEZ

We concur:

_____, J.
HOFFSTADT

_____, J.*
GOODMAN

⁵ Worman filed no opposition to appellants’ appeal, but instead withdrew “her demand to inspect redacted attorneys’ bills, without prejudice to [her] right to seek such inspection at a later time in any manner consistent with” *Board of Supervisors*. On that basis, she opposes “any request for attorneys’ fees and/or costs incurred by Appellants as a result of this unnecessary appeal.” As appellants point out, Worman’s withdrawal does not include her demand for other financial documents such as checks, ledgers, and accounting documents that disclose the Companies’ litigation expenses for pending and active legal matters, nor does it invalidate the trial court’s order requiring disclosure of such documents.

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