Filed 5/18/16 Lynx Grills v. Edwards CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LYNX GRILLS, INC., Plaintiff and Respondent, v. MARCUS EDWARDS, Defendant and Appellant.	B265713 (Los Angeles County Super. Ct. No. BC545986)

APPEAL from an order of the Superior Court of California, County of Los Angeles, Michael P. Linfield, Judge. Affirmed.

Law Offices of Michael Tracy, Michael L. Tracy for Defendant and Appellant.

Carothers DiSante & Freudenberger, Todd R. Wulffson, Lindsay A. Ayers, Ashley A. Halberda for Plaintiff and Respondent.

In a former action, Marcus Edwards, an information systems specialist, sued his former employer, Lynx Grills, Inc., (Lynx) in federal court for various wage and hour claims, including failure to pay overtime. Edwards presented evidence of the number of hours he worked and, to show he was not exempt from the overtime laws, the nature of the work. Lynx contested Edwards's representations with evidence that on the penultimate day of his employment he deliberately reformatted his hard drive, erasing the company's computer data, in an attempt, Lynx argued, to prevent disclosure of the actual extent and nature of his work. Lynx prevailed in the federal action on the ground that Edwards was exempt from overtime pay.

In this action, Lynx sues Edwards for conversion and trespass to chattels, alleging he used his position of trust to destroy key information from Lynx's computer systems.

Edwards appeals from a judgment in Lynx's favor, contending the company's claims are barred by the compulsory cross-complaint rule, Code of Civil Procedure section 426.30, because they should have been raised in the federal case as counterclaims.

We conclude the compulsory cross-complaint rule does not bar Lynx's claims. Therefore, we affirm.

BACKGROUND

The facts are undisputed. Lynx manufactures outdoor kitchen products and grills. Edwards worked at Lynx as its Manager of Information Technologies. After his employment ended, he sued Lynx in federal court, alleging causes of action under California law for unpaid overtime, wage statement deficiencies, and unfair business practices. In its answer, Lynx denied specified allegations, objected that other allegations were conclusory, and asserted 16 affirmative defenses that are not relevant to this appeal. Lynx filed a counterclaim two days before the filing deadline, alleging that shortly before Edwards's employment ended, he erased data from his company computer, causing damages. Lynx dismissed the counterclaim three weeks later but immediately sought leave to refile it, arguing both Edwards's complaint and Lynx's proposed counterclaim arose "out of the same nucleus of common facts." Lynx argued it was diligent in presenting the counterclaim, as it had tried for more than a year to restore the lost data

and only recently discovered it was unrecoverable. The federal court denied Lynx's motion for leave to amend on the ground it was untimely and Lynx had failed to show it diligently attempted to comply with the court's filing deadline. The court stated, "Lynx became aware of its potential claims against Edwards soon after he left his employment in June 2013 when it discovered that certain data had been deleted and could not be recovered with extraordinary effort. Despite its arguments to the contrary, Lynx had no legal obligation to wait until it had 'exhausted' every effort to recover the lost data or to remedy Edwards' alleged malfeasance prior to filing its tort claims against Edwards."

During trial, Lynx argued and introduced evidence to the effect that Edwards reformatted his company hard drive prior to resigning, erasing data that would have been critical to determining the validity of his overtime claim. For example, Lynx's attorney stated during opening argument that although Edwards claimed he reformatted the hard drive accidentally, "reformatting your hard drive is not something that you can do accidentally, and specifically you can't reformat your hard drive several times, which is what the [outside computer experts] are going to tell you was done in order to make the hard drive in this computer completely unreachable." A Lynx employee testified: "Mr. Edwards had destroyed his hard drive on his personal computer prior to leaving. It was a reformatting." Lynx's computer consultant testified Edwards's hard drive was sent to a recovery specialist but the data on it could not be retrieved. The consultant testified, "It impacted us a lot because without those logins working and the configurations of the Microsoft products that he had on that server, that created problems for us with work stations, distributing work stations, down to even monitoring the servers with the monitoring software that he had on there." "His actual profile was deleted." When asked whether the deletion was accidental, the consultant said, "You can't accidentally format a hard drive in my opinion."

Edwards testified he "was told to reset [his] machine. That resetting it to factory specs means as it came out of the box. There's a partition on the hard drive. You boot up the machine; you say recover."

During closing arguments, Lynx's attorney stated, "Mr. Edwards, for reasons known only to himself, absolutely obliterated his hard drive on the last day he worked there. He deleted all of the e-mails, he deleted all of his memos, all of his reports, everything that could have been used to verify what he did. [¶] He then thought that he had deleted all of the e-mails off the server where it should have been, where everyone else's e-mails were. It was only because the [outside computer experts] were able to spend numerous weeks tracking down those e-mails that they were able to recover some of them." Lynx's attorney continued, "When Mr. Edwards, in fact, destroyed evidence and, in fact, concealed evidence from us and from you and from the Court, you should assume he did that because that evidence was going to be harmful to him. You should assume that the reason why he completely blanked his hard drive, actually demagnetized it so that it couldn't retain any data, the reason he did that was because he didn't want anyone to track his spreadsheet. He didn't want anyone to get in the way of his big surprise [this litigation], because he had it all planned out: He was going to bring a lawsuit, you know, the spreadsheet, there's no way that Lynx is going to be able to counter it because all evidence of what he had done during the time that he worked there, he made sure was completely obliterated."

The federal jury was given a verdict form that posed four questions: Did Edwards work overtime; was he exempt from overtime pay as an administrator; was he exempt as a computer professional; and what damages should he receive. The jury answered the first two questions in the affirmative and awarded zero damages.

In the meantime, Lynx had filed the instant action, alleging causes of action for conversion, trespass to chattels, breach of fiduciary and loyalty duties, interference with prospective economic advantage, and negligence. It alleged Edwards's disruption of its computer system caused extensive damages.

Edwards filed a motion to "dismiss" the complaint, apparently on the ground it was barred by doctrine of res judicata. The trial court summarily denied the motion, concluding state law provides no statutory basis for a motion to dismiss a civil complaint on that ground. Edwards then moved for summary judgment, apparently on the ground

that Lynx's complaint was barred by the doctrines of "res judicata" and collateral estoppel.[1]

The trial court denied the motion, finding collateral estoppel did not bar the complaint because the issues in this action were not actually litigated in the federal action. The court also discussed the compulsory cross-complaint rule at length, finding it too inapplicable because Edwards failed to establish a sufficient logical relationship between Lynx's claims in this action and the evidentiary argument it had offered in the federal action. "Defendant has done a good job of alerting the court to all of the references to data deletion in the federal trial," the court stated, "but these references comprised a rather minor part of that trial. It appears from the transcripts that this was merely an evidentiary issue; plaintiff was attempting to impeach defendant's credibility and to rebut defendant's evidence by suggesting that defendant had deleted evidence that would be harmful to his claims. Defendant provides no authority which holds that such an evidentiary issue involving claims later asserted in another action is sufficient to render such claims compulsory."

After a one-day bench trial, the court found in Lynx's favor and awarded it $18,949.62 in damages.

Edwards timely appealed from the judgment and the order denying his motion for summary judgment.

DISCUSSION

Edwards contends Lynx's claims arose from the same series of transactions on which his federal complaint was based, and therefore had to be asserted in the federal action as a counterclaim or be forever barred. Edwards also argues collateral estoppel bars this action because the issue of whether he disrupted Lynx's computer system was actually litigated and necessarily decided in the federal case. Therefore, Edwards argues, the trial court erred in denying his motion for summary judgment.

[1] Neither the motion to dismiss nor the motion for summary judgment are in the record.

A. Deficiencies in the Record

Preliminarily, Lynx argues Edwards impermissibly included in his appendix a reporter's transcript of the federal proceedings, which had been attached to a request for judicial notice in the state court. Lynx argues this violates California Rules of Court, rule 8.124(b)(3)(B), which prohibits inclusion of a reporter's "transcript of oral proceedings" in an appellant's appendix. The argument is without merit. Rule 8.124(b)(3)(B) states that on appeal, any transcript of the *superior court proceedings* may be offered only by way of a separate reporter's transcript. (Cal. Court Rules, rule 8.120(b)(1) ["If an appellant intends to raise any issue that requires consideration of the oral proceedings in the superior court, the record on appeal must include a record of these oral proceedings in the form of" a reporter's transcript].) A transcript of prior *federal* proceedings of which the superior court took judicial notice may appear in an appellant's appendix containing the request for judicial notice. (See Cal. Court Rules, rule 8.130(b)(1) [a deposit for the cost of a reporter's transcript is given to the superior court]; Advisory Committee Com. ["the phrase 'oral proceedings' includes all instructions that the [superior] court gives"].)

That said, the appellant's appendix is deficient in that it fails to contain copies of: Edwards's motion for summary judgment; the points and authorities or request for judicial notice supporting the motion (the appendix contains only the request for judicial notice supporting Edwards's motion for dismissal); any opposition or reply; or the trial court's order denying the motion. (The appendix contains the trial court's tentative ruling, but not the order adopting it as the final ruling.) (See Cal. Court Rules, rules 8.124(b)(1)(B) [items listed in rule 8.122(b)(3) required], 8.122(b)(1)(C) [appealed order required]; 8.122(b)(3)(A) [documents filed in superior court required].)

The lack of points and authorities is especially problematic because both parties agree Edwards's motion for summary judgment was based on two grounds, res judicata and collateral estoppel, yet his appeal rests primarily on a third ground—that Lynx's complaint was barred by the compulsory cross-complaint rule. Nevertheless, we need not order that the record be augmented (Cal. Court Rules, rule 8.155) because it suffices for our purposes.

B. Standard of Review

As the facts are undisputed and the only questions are one of law, our review is de novo. (*Plaza Home Mortgage, Inc. v. North American Title Co., Inc*. (2010) 184 Cal.App.4th 130, 135.)

A defendant seeking summary adjudication may meet the burden of showing a cause of action has no merit if the party demonstrates there is a complete defense to the cause of action. Once that burden is met, the burden shifts to the plaintiff to show a triable issue of fact exists as to the cause of action, i.e., to rebut the defense. In reviewing the propriety of summary adjudication, the appellate court independently reviews the record and determines whether the facts give rise to a triable issue of material fact. We strictly construe the moving party's evidence and liberally construe that of the opposing party, accepting as undisputed only those facts that are uncontradicted. "'In other words, the facts alleged in the evidence of the party opposing summary judgment and the reasonable inferences therefrom must be accepted as true.'" (*Buxbaum v. Aetna Life & Casualty Co*. (2002) 103 Cal.App.4th 434, 441.)

C. Compulsory Cross-Complaint Rule

Code of Civil Procedure section 426.30 provides in pertinent part that "if a party against whom a complaint has been filed and served fails to allege in a cross-complaint any related cause of action which (at the time of serving his answer to the complaint) he has against the plaintiff, such party may not thereafter in any other action assert against the plaintiff the related cause of action not pleaded." (Code Civ. Proc., § 426.30, subd. (a).)[2] The phrase "related cause of action" is defined as "a cause of action which arises

---

[2] Undesignated statutory references will be to the Code of Civil Procedure.

Section 426.30 provides: (a) Except as otherwise provided by statute, if a party against whom a complaint has been filed and served fails to allege in a cross-complaint any related cause of action which (at the time of serving his answer to the complaint) he has against the plaintiff, such party may not thereafter in any other action assert against the plaintiff the related cause of action not pleaded. [¶] (b) This section does not apply if either of the following are established: [¶] (1) The court in which the action is pending does not have jurisdiction to render a personal judgment against the person who failed to

out of the same transaction, occurrence, or series of transactions or occurrences as the cause of action which the plaintiff alleges in his complaint." (§ 426.10, subd. (c).)

The compulsory cross-complaint statute is designed "to provide for the settlement, in a single action, of all conflicting claims between the parties arising out of the same transaction. [Citation.] Thus, a party cannot by negligence or design withhold issues and litigate them in successive actions; he may not split his demands or defenses; he may not submit his case in piecemeal fashion." (*Flickinger v. Swedlow Engineering Co.* (1955) 45 Cal.2d 388, 393; *Carroll v. Import Motors, Inc.* (1995) 33 Cal.App.4th 1429, 1436.) "[R]eciprocal rights flowing from a common source [should] be determined in a single action, thus avoiding not only unnecessary vexatious litigation but also the contingency of conflicting judgments." (*Kittle Mfg. Co. v. Davis* (1935) 8 Cal.App.2d 504, 513.)

Section 426.30 must be "liberally construed to effectuate its purpose." (*Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 959.) The "transaction" concept is therefore construed broadly. The term embraces almost any activity by one party that affects another party's right and out of which a cause of action may arise. (*Sylvester v. Soulsburg* (1967) 252 Cal.App.2d 185, 191.) A transaction is "not confined to a single, isolated act or occurrence such as, for example, a contract [citation], a lease [citation], or an automobile collision [citations] but may embrace a series of acts or occurrences logically interrelated [citations]." (*Saunders v. New Capital for Small Businesses, Inc.* (1964) 231 Cal.App.2d 324, 336.)

The test whether two causes of action arise out of the same transaction "requires 'not an absolute identity of factual backgrounds for the two claims, but only a logical relationship between them.'" (*Currie Medical Specialties, Inc. v. Bowen* (1982) 136 Cal.App.3d 774, 777.) "At the heart of the approach is the question of duplication of time and effort; i.e., *are any factual or legal issues relevant to both claims*?" (*Id.* at p. 777, italics added.)

---

plead the related cause of action. [¶] (2) The person who failed to plead the related cause of action did not file an answer to the complaint against him.

Here, Edwards's wage and hour claims arose directly from a series of employment transactions, including the duties he performed within the course and scope of his work, Lynx's classification of his position, and payment. Other transactions potentially within logical reach of that series included the parties' mutual performance of ancillary obligations, for example activities performed by Edwards that could be attributed to Lynx or Lynx's performance of its statutory and regulatory duties as an employer.

By contrast, Lynx's claims for conversion and trespass to chattels arose only from Edwards's destruction of its property. "'Conversion is the wrongful exercise of dominion over the property of another.' [Citation.] Proof of conversion requires a showing of ownership or right to possession of the property at the time of the conversion, the defendant's conversion by a wrongful act or disposition of property rights, and resulting damages." (*Avidor v. Sutter's Place, Inc*. (2013) 212 Cal.App.4th 1439, 1452.) The tort of trespass to chattels, "[d]ubbed by Prosser the 'little brother of conversion,' . . . allows recovery for interferences with possession of personal property 'not sufficiently important to be classed as conversion, and so to compel the defendant to pay the full value of the thing with which he has interfered.'" (*Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1350.)

Edwards's overtime claims and Lynx's conversion claims share no relevant factual or legal issue. Whether Edwards interfered with or wrongfully exercised dominion over Lynx's property is wholly irrelevant to whether Lynx adequately paid him.

The only *factual* issue shared by Lynx's conversion claim and Edwards's wage claims was that Edwards disrupted Lynx's computer system allegedly to prevent Lynx from rebutting his wage evidence. But that fact was relevant only to Edwards's *proof* of his wage claims, not to the claims themselves. (Evid. Code, § 413 ["In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain . . . evidence or facts in the case against him, or his willful suppression of evidence relating thereto"].)

We conclude Lynx's conversion claim was not logically related to Edwards's wage claims, but arose from a distinct series of transactions. It was therefore not a related cause of action that Lynx had to assert as a counter-claim in the federal lawsuit.

Edwards relies on several cases dealing with employment or quasi-employment relationships where the courts found the parties' claims were logically related and therefore should have been litigated together. Each is distinguishable.

In *Currie Medical Specialties v. Bowen*, *supra*, 136 Cal.App.3d 774 (*Currie*), Currie Medical Specialties, Inc. and Newell Bowen, both distributors of labels to hospitals, contracted for Currie to stop selling its labels and instead sell Bowen's labels. A year later, Bowen sued Currie in federal court for unfair competition and violation of the Lanham Act (15 U.S.C. § 1051 et seq.), alleging Currie usurped Bowen's business during their contractual relationship. In its answer, Currie alleged Bowen was estopped from asserting his claims because he had breached their agreement and made certain misrepresentations. The case was ultimately dismissed. (*Currie*, *supra*, 136 Cal.App.3d at pp. 775-776.)

Currie later sued Bowen in state court for breach of contract and fraud, again alleging Bowen had breached their agreement and made misrepresentations. The appellate court held the same actions formed the basis of Currie's answer in federal court and its complaint in state court. The claims therefore involved common issues of law and fact and constituted related causes of action, and Currie's lawsuit was barred because it had failed to file a cross-complaint in the prior action. (*Currie*, *supra*, 136 Cal.App.3d at p. 777.)

In *Align Technology v. Tran*, *supra*, 179 Cal.App.4th 949 (*Align*), an employer (Align) sued its employee (Tran), alleging Tran was hired to protect its intellectual property but instead misappropriated it, competed against Align, and made unauthorized charges to Align's accounts, thereby breaching his employment agreement and duty of loyalty. (*Id*. at p. 956.) Tran cross-complained, alleging Align had wrongfully terminated his employment and breached a stock option agreement. (*Ibid*.) In its answer to Tran's cross-complaint, Align alleged Tran's claims were barred under the doctrines of

unclean hands and estoppel based on Tran's "own acts or omissions." (*Ibid*.) The lawsuit ultimately settled and was dismissed.

Two years later, Align again sued Tran, alleging he had breached his contract with Align, used company funds to assist a competitor, and misappropriated Align's patents. (*Align*, *supra*, 179 Cal.App.4th at p. 955.) The court held Align's present claims arose out of the same employment relationship and concerned the same breaches of reciprocal obligations as were the subject of Tran's earlier cross-complaint. Further, Align had alleged in its earlier answer to Tran's cross-complaint the same misconduct as it now alleged in its current complaint. (*Id*. at pp. 962-963.) The court found Align's current claims were therefore logically related to Tran's cross-complaint, and were barred because Align failed to file a cross-complaint in the earlier case. (*Id*. at p. 965.)

In *Saunders v. New Capital for Small Businesses*, *supra*, 231 Cal.App.2d 324 (*Saunders*), New Capital for Small Businesses, Inc. (New Capital) sued Cyril Saunders on a common count to recover $14,000 Saunders had misappropriated. In his answer, Saunders alleged he was entitled to the money by reason of services he had rendered the company in selling its stock and raising working capital. The lawsuit was ultimately resolved in New Capital's favor. (*Id*. at pp. 327-328.)

A year later, Saunders sued New Capital in quantum meruit for $14,000, alleging it was owed him for services performed in connection with providing a loan to a third party. (*Saunders*, *supra*, 231 Cal.App.2d at p. 326.) The court held that even though the services for which Saunders alleged he was owed payment were different in the two actions—selling stock in the first action versus providing a loan in the second—the foundation of both claims was the parties' "dual relationship of director and corporation and attorney and client subsisting between the parties and Saunders' activities pursuant thereto." (*Id*. at p. 338.) Both parties' right to recovery flowed from the same relationship, which the court termed "a common source," which constituted "the 'transaction'." (*Id*. at p. 339.) Therefore, the court held, Saunders's lawsuit was barred because he failed to file a cross-complaint in the earlier action. (*Ibid*.)

Edwards takes away from these three cases the following rule: "In the employment context, all actions which took place during employment are considered part of the same set of transactions and occurrences."

We cannot agree. The common thread running throughout the compulsory cross-complaint doctrine is a focus on the parties' actions, not their relationships. Section 426.30 speaks in terms of related causes of action, not related parties. Section 426.10 explains related causes of action are those arising out of the same transaction, not out of the same relationship. And the above case law instructs that to determine whether two causes of action arise from the same transaction requires determining whether there is a logical relationship between the transactions. Nowhere is the relationship between the parties considered to be a substitute for their transactions. If it was, all claims held by common parties would be compulsory. Such a rule would certainly end piecemeal litigation, but we think it goes too far.

Even the *Saunders* court, which might have come closest to articulating the rule Edwards proposes—it said the parties' rights flowed from their relationship, which itself constituted the transaction—ultimately stopped short of it, explaining, "We do not wish to be understood as holding that a relationship of director and corporation or of attorney and client will in all instances necessarily establish that a cause of action set forth in a complaint and one asserted by counterclaim have arisen out of the same transaction. Particular circumstances may indicate that the dealings between the parties were based on two or more separate and distinct arrangements or were devoid of any logical interrelation." (*Saunders*, *supra*, 231 Cal.App.2d at pp. 338-339.) No other case of which we are aware has moved any closer toward such the rule Edwards proposes.

We conclude piecemeal litigation is best avoided by comparing the substantive factual and legal issues presented by current and former claims, not by focusing on the relationships between the parties. In the employer/employee context, for example, all claims might be deemed "logically related" simply because they would not have arisen but for the employment relationship. But the relationship itself is of only minimal

probative value because it gives rise to no litigation, piecemeal or otherwise. Only actions give rise to causes of action.

Here, although Edwards's and Lynx's claims arose from the same "source" in the sense that Edwards would have been in no position to disrupt Lynx's computer system had he not been its employee, ultimately the parties' claims are based on separate and distinct transactions devoid of any substantive logical relationship. Therefore, Lynx's current claims are not barred by its failure to raise them as counterclaims in the federal action.

D. Collateral Estoppel

Edwards contends Lynx's claims were barred under the doctrine of collateral estoppel because they were actually litigated to judgment in the federal action. We disagree.

The doctrine of res judicata operates to bar multiple litigation "arising out of the same subject matter of a prior action as between the same parties or parties in privity with them." (*Gates v. Superior Court* (1986) 178 Cal.App.3d 301, 308; see *id.* at p. 311; *Frommhagen v. Board of Supervisors* (1987) 197 Cal.App.3d 1292, 1299.) "'The doctrine of res judicata rests upon the ground that the party to be affected, or some other with whom he is in privity, has litigated, or had an opportunity to litigate the same matter in a former action in a court of competent jurisdiction, and should not be permitted to litigate it again to the harassment and vexation of his opponent. Public policy and the interest of litigants alike require that there be an end to litigation.'" (*Citizens for Open Access etc. Tide, Inc. v. Seadrift Assn.* (1998) 60 Cal.App.4th 1053, 1065.) "[R]es judicata benefits both the parties and the courts because it 'seeks to curtail multiple litigation causing vexation and expense to the *parties* and wasted effort and expense in *judicial administration*.'" (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 897.) "[R]es judicata will not be applied 'if injustice would result or if the public interest requires that relitigation not be foreclosed.'" (*Dunkin v. Boskey* (2000) 82 Cal.App.4th 171, 181.)

The doctrine has two effects. "First, where the causes of action and the parties are the same, a prior judgment is a complete bar in the second action. This is fundamental and is everywhere conceded." (*Sutphin v. Speik* (1940) 15 Cal.2d 195, 201.) "In its secondary aspect res judicata has a limited application to a second suit between the same parties, though based on a different cause of action. The prior judgment is not a complete bar, but it 'operates as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action.' (*Todhunter v. Smith* [(1934)] 219 Cal. 690, 695 [28 P.2d 916].) This aspect of the doctrine of res judicata, now commonly referred to as the doctrine of collateral estoppel, is confined to issues actually litigated." (*Clark v. Lesher* (1956) 46 Cal.2d 874, 880; see *Sutphin v. Speik*, *supra*, 15 Cal.2d at pp. 201-202.)

Here, although Lynx argued and introduced evidence in the federal trial to the effect that Edwards had suppressed evidence, the issues asserted in this action—conversion and trespass to chattels—were not litigated. Neither was a decision ultimately reached on them in the federal action, as the jury found only that Edwards had worked overtime but was exempt from the overtime laws. It did not find he had suppressed evidence. Therefore, collateral estoppel is no bar to Lynx's claims.

DISPOSITION

The judgment is affirmed. Respondent is to recover its costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.