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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ROBERT AZINIAN et al., Plaintiffs and Respondents, v. LUBY'S FUDDRUCKERS RESTAURANTS LLC, Defendant and Appellant.	B256660 (Los Angeles County Super. Ct. No. SC118469)

APPEAL from an order of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge. Affirmed.

Manning & Kass, Ellrod, Ramirez, Trester, Anthony J. Ellrod and Steven J. Renick for Defendant and Appellant.

Mathew E. Hess for Plaintiffs and Respondents.

INTRODUCTION

This appeal concerns an attorney fee order entered in favor of Defendant Luby's Fuddruckers Restaurants, LLC (LFR) against Plaintiffs Robert Azinian, Karine Azinian, Christina Azinian and Catyana Azinian. LFR appeals the order to the extent the trial court denied LFR the full amount of its requested attorney fees. We conclude LFR has failed to present an adequate record to demonstrate a clear abuse of discretion by the trial court. We affirm.

FACTS AND PROCEDURAL HISTORY

LFR is the franchisor entity for the Fuddruckers chain of hamburger restaurants. Plaintiffs and several individual defendants who are not parties to this appeal jointly owned four corporate entities that contracted with LFR to franchise and operate several Fuddruckers restaurants pursuant to a Fuddruckers Restaurant Franchise Agreement (Franchise Agreement). Plaintiffs sued the individual defendants for fraud, breach of fiduciary duty and other business torts, alleging the defendants had opened competing hamburger restaurants in the vicinity of the jointly operated Fuddruckers restaurants. Plaintiffs sued LFR in the same action, alleging LFR breached the Franchise Agreement by failing to enforce its non-compete provisions.

After successfully demurring to the operative third amended complaint, and opposing Plaintiffs' motion for new trial, LFR moved for attorney fees and costs pursuant to a prevailing party fee provision in the Franchise Agreement. The motion sought $46,958.22, which, according to LFR's counsel's declaration, constituted the total fees and costs billed to LFR based on counsel's review of his firm's invoices for the action. The declaration included redacted invoices for the most recent two months, with itemized entries for only 38.5 hours, billed at a rate of $300 an hour. The final invoice included a "Billing and Payment Recap" showing an "Inception-to-Date" total of $43,205 in attorney fees and $5,030.21 in costs. Counsel's declaration did not explain this discrepancy and, apart from the declaration and redacted invoices attached thereto, LFR offered no other evidence concerning the reasonableness of the requested attorney fees and costs.

Plaintiffs' opposition challenged the amount requested, arguing it was "exorbitant and unreasonable" in view of LFR's "limited" involvement in the case. Plaintiffs also argued the evidence included with LFR's moving papers was insufficient to support the amount. In particular, Plaintiffs argued $46,958.22 was not a reasonable sum for the work performed, which they maintained had been limited to "one demurrer and one opposition to a motion for new trial." Additionally, Plaintiffs emphasized the discrepancy between the amount requested and the work evidenced by the redacted invoices, noting that LFR's counsel's declaration had "fail[ed] to elaborate or detail what services or costs" were included in the total.

In advance of the hearing, the trial court issued a tentative decision granting LFR's motion and awarding LFR $36,000 in attorney fees. The tentative stated that the court had found 120 hours at a rate of $300 an hour to be reasonable for the work performed. After argument, the court continued the hearing to allow LFR to submit an unredacted invoice for in camera review.

The unredacted invoice showed total charges of $49,610.80, consisting of itemized entries for 146 hours billed at a partner rate of $300 an hour, an additional 2.9 hours billed at an associate rate of $250 an hour, and itemized costs totaling $5,085.80. After reviewing the invoice, the trial court entered its tentative ruling as the final order on LFR's fee motion.

DISCUSSION

Civil Code section 1717 authorizes the award of reasonable attorney fees "[i]n any action on a contract, where the contract specifically provides that attorney's fees and costs . . . shall be awarded either to one of the parties or to the prevailing party." (Civ. Code, § 1717, subd. (a).) Under the statute, "[r]easonable attorney's fees shall be fixed by the court, and shall be an element of the costs of suit." (*Ibid.*)

The trial court's first step in fixing the amount of attorney fees to be awarded "involves the lodestar figure—a calculation based on the number of hours reasonably expended multiplied by the lawyer's hourly rate. 'The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided.' [Citation.] In short, after determining the lodestar amount, the court shall then ' "consider whether the total award so calculated under all of the circumstances of the case is more than a reasonable amount and, if so, shall reduce the [Civil Code] section 1717 award so that it is a reasonable figure." ' [Citation.]" (*EnPalm, LLC v. Teitler* (2008) 162 Cal.App.4th 770, 774, citing *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094–1096 (*PLCM*).)

In adjusting the lodestar figure to account for specific factors impacting the reasonableness of an award, the trial court has broad discretion. (*PLCM, supra,* 22 Cal.4th at pp. 1095-1096.) " 'The "experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong" '--meaning that it abused its discretion." (*Id.* at p. 1095.)

On appeal, LFR complains that "the trial court did not award [LFR] compensation for all of the hours worked by its attorneys, nor did it offer even a hint as to why it did so." Relying on the absence of a stated reason for the court's decision, LFR argues there is "simply nothing in the record" that would "appear" to justify a fee award based on less than all hours billed by its attorneys. We disagree.

The principal problem with this argument is it overlooks LFR's burden, as " 'the party challenging the fee award on appeal[,] to provide an adequate record to assess error.' " (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) The trial court here plainly determined that only a portion of the fees billed were reasonably incurred to defend the contract-related claims against LFR. In reviewing that determination for error, " ' "[a]ll intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown." ' " (*Id.* at p. 1140.) Insofar as LFR complains the trial court did not specify its reasons for denying

fees with respect to some of the hours billed, the obligation rested with LFR to "request a statement of decision with specific findings" that could be challenged on appeal. (*Ibid.*) Having failed to do so, LFR's mere assertion that there "appears" to be "nothing in the record" to support the court's conclusion is wholly inadequate to satisfy its burden as the appellant.

As we have discussed, the trial court is in the best position to assess the value of professional services rendered in the litigation pending before it. In view of its familiarity with the proceedings, the court has broad discretion to adjust the hour and rate components of the loadstar to account for such factors as " 'the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case.' " (*PLCM, supra,* 22 Cal.4th at p. 1096.) Given the relatively straightforward nature of the contract-related claims asserted against LFR, and equally straightforward nature of LFR's defense to these claims, it is not difficult to posit reasonable inferences that would justify the trial court's decision to award fees for only 120 of the roughly 150 hours billed by LFR's attorneys.[1] Thus, in the absence of a record clearly demonstrating that the trial court based its ruling on an improper ground, we find no abuse of discretion.

[1] For instance, LFR's demurrer to the breach of contract claim consisted of a one-page argument pointing out that it had no obligations under the Franchise Agreement's non-compete provisions, because those provisions restricted only the franchisee's conduct. The trial court accepted this argument in sustaining LFR's demurrer without leave to amend.

DISPOSITION

The order is affirmed. Plaintiffs Robert Azinian, Karine Azinian, Christina Azinian and Catyana Azinian are entitled to their costs.

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JONES, J.*

We concur:

ALDRICH, Acting P. J.

LAVIN, J.

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