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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

SANDRA D'AMATO FLORES,

Plaintiff and Appellant,

v.

OPUS BANK,

Defendant and Respondent.

2d Civil No. B278309
(Super. Ct. No. BC573070)
(Los Angeles County)

Sandra D'Amato Flores appeals an order that awarded attorney's fees against her counsel, Brown Gitt Law Group ALC (Brown Gitt), in this wage and hour class action.¹

¹ Flores's notice of appeal identifies the order appealed from as "Judgment denying mediation and enforcing severance agreement against attorneys. [Code Civ. Proc., §] 904.1(a)(1)." There is no such judgment in the record. Flores never amended her notice of appeal to identify the fee award she discusses in her briefs, but she filed an amended civil case information sheet that states the appeal is from "Judgment for Attorneys' Fees Against [Brown Gitt] after Motion by Opus Bank to Enforce George

The court awarded the fees jointly and severally against Brown Gitt and a potential class representative, George Lazar.

Lazar is not a party to the underlying action and does not appeal. Brown Gitt has not appealed the order on its own behalf. We conclude Flores does not have standing to challenge the fee award because it was not imposed against her.

Flores states in her brief that she “also appeals from the [c]ourt’s unannounced and unnoticed decision to dismiss the class action which, according to the [c]ourt docket, seems to have occurred on or around September 12, 2016.” Her notice of appeal does not identify any such order and it is beyond the scope of our review.

We dismiss the appeal.

FACTUAL AND PROCEDURAL HISTORY

This is one of three appeals by Flores: one from judgment after a bench trial on her individual misclassification action against Opus Bank (the Bank) (Los Angeles Superior Court Case No. BC514928 [the individual action]), and two from intermediate orders in her putative class action against the Bank (Los Angeles Superior Court Case No. BC573070 [the class action]).

The first intermediate order in the class action is the subject of our opinion in 2d Civil Case No. B269866, in which we dismiss Flores’s appeal from an order granting the Bank’s motion to enforce a release of claims against George Lazar. After the court entered that order, the Bank moved for an award of attorney’s fees in the amount of \$62,731.50 “to be paid by [Lazar]

Lazar’s Severance Agreement and deny his intervention in wage-hour class action.”

and/or his attorney of record, [Brown Gitt].” The request was based on a fee provision in the release agreement. The resulting award of attorney’s fees against Lazar and Brown Gitt is the subject of this appeal.

The only parties to the release agreement were the Bank and Lazar. It provides: “Attorney’s Fees. In the event that either Party brings an action to enforce or affect its rights under this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys’ fees and costs incurred in connection with such an action.” It also provides that Lazar agrees to “indemnify and hold harmless [the Bank] from and against any and all . . . attorneys’ fees or expenses incurred by [the Bank] arising out of the breach of this Agreement by [Lazar]” and “any legal proceeding [in which] this Agreement may be pled by [the Bank] as a complete defense. . . .”

Flores opposed the fee motion on the grounds that the motion to enforce was not an “action on the contract,” but merely a proceeding within a wage and hour action; that Labor Code provisions and public policy do not permit an employer to recover fees or costs in wage and hour actions absent bad faith (Lab. Code, §§ 1194, 218.5, 226.7, 226, subd. (e)); and the amount of fees requested was unreasonable. She did not argue, as she does now, that her counsel was not a party to the contract upon which the Bank based its request.

The court reduced the Bank’s fee request by \$8,000, and entered an order awarding the Bank \$54,691.50 in fees “to be paid by [Lazar] and/or his attorneys of record, [Brown Gitt].” The record does not show that Brown Gitt was Lazar’s attorney of record or that Lazar ever appeared in the action. At the hearing on the fee motion, counsel announced his appearance as follows:

“Thomas Brown on behalf of the plaintiff [Flores]. [¶] Sitting to my left is not counsel but [Lazar] himself.” The trial court referred to Lazar as “your client,” but we find nothing in this record to demonstrate that Flores or Brown Gitt were acting on Lazar’s behalf. In connection with the cross-motions, Flores submitted two declarations that Lazar signed, but they do not identify him as a party to the action.

DISCUSSION

Flores contends the Bank is not entitled to an award of fees against Brown Gitt because (1) the Bank’s motion was not “an action on the contract” within the meaning of the release, (2) Brown Gitt was not a party to the contract, and (3) Labor Code provisions and public policy do not allow employers to recover fees in wage and hour cases, absent bad faith which the Bank does not demonstrate. She further contends the award is excessive because it amounts to two-thirds of Lazar’s former salary, it is eight-fold the severance pay he received in exchange for the release, and he is unemployed.

Flores does not have standing to appeal the fee award because it does not affect her rights. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.) She argues she has an “interest in this appeal” because the award adversely impacts her ability to find attorneys to represent her and because the court effectively precluded her from finding another class representative or acting as the representative herself. But the trial court expressly reserved the question whether Flores could act as class representative or obtain discovery to find other plaintiffs. It invited her to brief the issues. Nothing in the record demonstrates that she ever raised the issue again or made any further effort to prosecute the class action.

We do not reach the merits of Brown Gitt's objection, raised for the first time on appeal, that it was not a party to the contract upon which the fee award was based because it is forfeited and Brown Gitt does not appeal the fee order on its own behalf. (*Calhoun v. Vallejo City Unified School District* (1993) 20 Cal.App.4th 39, 42.)

We express no opinion on the enforceability of the fee award against Lazar, who was not a party to the proceedings below and may or may not have been served with notice of the motion for an award of attorney's fees.

DISPOSITION

The appeal is dismissed. Opus Bank is awarded costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

John Shepard Wiley, Jr., Judge
Superior Court County of Los Angeles

Brown Gitt Law Group, Cynthia E. Gitt and Thomas
P. Brown, for Plaintiff and Appellant.

Carothers DiSante & Freudenberger, Todd R.
Wulffson, Robin E. Largent and Ashley A. Halberda, for
Defendant and Respondent.