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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ALEJANDRA PADILLA, Plaintiff and Respondent, v. FEAST FOODS, LLC, Defendant and Appellant.	B343109 (Los Angeles County Super. Ct. No. 23STCV03705)

APPEAL from an order of the Superior Court of Los Angeles County. Daniel M. Crowley, Judge. Affirmed.

The Ramirez Firm, John R. Ramirez, for Defendant and Appellant.

Chami Law PC, Pouya B. Chami and Pablo F. Colmenares for Plaintiff and Respondent.

Plaintiff and respondent, Alejandra Padilla (Padilla), filed suit against her employer, defendant and appellant, Feast Foods, LLC (Feast), for retaliation, unpaid wages and failure to provide rest breaks. Feast successfully moved to send the case to arbitration. After Feast failed to pay fees due the arbitrator, Padilla moved to return the case to the superior court pursuant to Code of Civil Procedure, section 1281.98.[1] Feast stipulated that the motion be granted. Padilla thereafter successfully moved, pursuant to sections 1281.98 and 1281.99, for fees and costs associated with bringing the motion to vacate the arbitration. Feast appeals, arguing that sections 1281.98 and 1281.99 are inapplicable to an arbitration explicitly governed by the Federal Arbitration Act (FAA)[2] and are also preempted by that federal law.

We affirm. Our Supreme Court recently decided in *Hohenshelt v. Superior Court of Los Angeles County* (2025) 18 Cal.5th 310 (*Hohenshelt*), sections 1281.98 and 1281.99 are not generally preempted by the FAA. Those sections thus apply where, as here, Feast waived its right to enforce the arbitration agreement by stipulating to grant Padilla's motion for statutory relief.

I. BACKGROUND

Padilla was employed as a cook in a fast-food restaurant owned by Feast. She sued Feast because she was allegedly terminated from her job in retaliation for her complaints about

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[1] Unless otherwise stated, statutory references are to the California Code of Civil Procedure.

[2] 9 U.S.C. §§ 1–16.

working conditions, and for Feast's alleged failure to pay wages when due and provide timely rest breaks.

Feast answered the complaint and moved to compel arbitration pursuant to the parties' arbitration agreement, which provides in relevant part: "The terms and procedures governing the enforcement of this Agreement are governed by and construed and enforced in accordance with the FAA, and not individual state laws regarding enforcement of arbitration agreements." The motion was granted. The superior court action was stayed, and Padilla's case was referred to arbitration in October 2023.

On April 3, 2024, Feast was billed $20,000 as a deposit for compensation due to the arbitrator. On April 22, the arbitration services provider reminded all counsel of the outstanding invoice. On May 7, 2024, the provider confirmed that the fee had not been paid. As a result, Padilla moved under section 1281.98 to withdraw her case from arbitration.

Feast declined to pay the fees owed the arbitration provider because it decided that proceeding in state court would be more efficient and cost effective than proceeding with arbitration. Accordingly, the parties stipulated that Padilla's motion seeking to withdraw the case from arbitration "per . . . [s]ection 1281.98 . . ., shall be granted." The trial court approved the stipulation and vacated the order compelling arbitration.

Thereafter, Padilla moved under section 1281.99 for an award of her attorneys' fees and costs as a sanction for Feast's failure to timely pay the arbitration fees. Feast argued that the applicable arbitration agreement was explicitly governed by the FAA, and for that reason sections 1281.98 and 1281.99 did not apply. Alternatively, sections 1281.98 and 1281.99 were

generally preempted by federal law. Feast argued that it did not strategically withhold payment to delay the arbitration. Rather, it discovered during the arbitration proceedings that claim preclusion principles could apply to Padilla's wage and rest break claims because she was a compensated member of a plaintiff settlement class in other litigation brought against Feast. So, Feast determined it would be more expeditious to address those claims in superior court rather than arbitration. Finally, Feast argued that the fees and costs sought were excessive.

The trial court rejected these arguments, and granted the motion, awarding Padilla $53,136, consisting of $52,575 incurred in the abandoned arbitration proceeding and $561 in costs. The court concluded that by stipulating to relief under section 1281.98, Feast waived any argument that sections 1281.98 and 1281.99 did not apply in this case.

Feast timely appeals.

II. DISCUSSION

Section 1281.98 provides that in an employment or consumer arbitration, the drafting party, here Feast, must pay certain fees and costs during the pendency of an arbitration proceeding. "[I]f the fees or costs required to continue the arbitration proceeding are not paid within 30 days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel the employee or consumer to proceed with that arbitration as a result of the material breach." (§ 1281.98 subd. (a)(1).) Upon the drafting party's failure to pay fees when due, among other options, the employee or consumer may withdraw the claim from arbitration and proceed in a court with jurisdiction over the controversy. (§ 1281.98, subd. (b)(1).) If the

employee or consumer chooses to proceed in court, section 1281.98, subdivision (c), allows them to recover all fees and costs associated with the abandoned arbitration proceeding. If such a motion for fees and costs is filed, the court shall impose a sanction on the drafting party in accordance with section 1281.99. (§ 1281.98, subd. (c)(2).)

Section 1281.99, subdivision (a), specifies that a sanction imposed under section 1281.98 is to include "the reasonable expenses, including attorney's fees and costs, incurred by the employee or consumer as a result of the material breach."

Feast argues that notwithstanding its stipulation to relief from arbitration, it did not waive any challenge to the application of sections 1281.98 and 1281.99. Moreover, Feast says, the language in the arbitration agreement leaves no room for enforcement of sections 1281.98 and 1281.99 in this case, and if not foreclosed by the explicit language of the agreement, they are otherwise preempted by federal law.[3] We review these issues de novo. (*Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 585 (*Quach*) [waiver of arbitration rights reviewed de novo]; *Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 890 [questions of law reviewed de novo where underlying facts are undisputed].)

After Padilla filed her respondent's brief,[4] our Supreme Court decided *Hohenshelt*, *supra*, 18 Cal.5th 310, which holds that, when properly construed, section 1281.98 is not generally

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[3] Feast does not challenge the method of calculation or the amount of the fees and costs awarded as a sanction under sections 1281.98 & 1281.99.

[4] Feast did not file an appellant's reply brief.

preempted by the FAA. (*Id.* at p. 323.) *Hohenshelt* did not address whether parties to an arbitration agreement may explicitly opt out of California's fee payment statutes, as Feast purports to have done here. (*Id.* at pgs. 326-327.) However, we need not reach that question on this appeal, because we agree with the trial court, and Padilla, that Feast's stipulation to relief waived any objection to the application of section 1281.98.

Waiver of a party's rights under an arbitration agreement is to be analyzed just like any other contract, without the application of special rules or policies favoring arbitration. (*Quach*, *supra*, 16 Cal.5th at p. 583.) "To establish waiver under generally applicable contract law, the party opposing enforcement of a contractual agreement must prove by clear and convincing evidence that the waiving party knew of the contractual right and intentionally relinquished or abandoned it. [Citations.] Under the clear and convincing evidence standard, the proponent of a fact must show that it is 'highly probable' the fact is true. [Citation.] The waiving party's knowledge of the right may be 'actual or constructive.' [Citation.] Its intentional relinquishment or abandonment of the right may be proved by evidence of words expressing an intent to relinquish the right or of conduct that is so inconsistent with an intent to enforce the contractual right as to lead a reasonable factfinder to conclude that the party had abandoned it." (*Id.* at p. 584.)

Here, while Padilla's motion under section 1281.98 was pending, Feast argued that the arbitration agreement specifically invoked the FAA, and that application of section 1281.98 would be preempted. Yet, it stipulated to the requested relief. The record thus shows by clear and convincing evidence that Feast

was aware of its rights under the arbitration agreement, and relinquished them.

Moreover, once Feast agreed that relief "per . . . section 1281.98 . . ., shall be granted," the operability of section 1281.99 was inevitable. Section 1281.98 states that once an employee or consumer withdraws a case from arbitration, "[t]he court shall impose sanctions on the drafting party in accordance with Section 1281.99." (§ 1281.98, subd. (c)(2).)

It is clear a fee award was warranted. Even so, Feast claims the award should be reduced by $16,425, representing the amount of fees attributable to Padilla's opposition to the motion to compel arbitration. Without citation to authority, Feast argues these fees are not eligible for recovery under sections 1281.98 and 1281.99. But section 1281.98 plainly states that an employee who returns an action to the superior court may recover "all attorneys' fees and all costs associated with the abandoned arbitration proceeding." (§ 1281.98, subd. (c)(1))

"The Legislature's intent is best deciphered by giving words their plain meanings." (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 376.) The petition filed by Feast seeking to compel arbitration was undoubtedly "associated with the . . . arbitration proceeding." Feast thus interprets the statutory language too narrowly.

Alternatively, Feast contends that the attorneys fees for Padilla's opposition were not incurred "as a result of [Feast's] material breach" of the arbitration agreement. (§ 1281.99, subd. (a).) Not so. Feast's default on its obligations under the arbitration agreement rendered the entire arbitration process, including the litigation commencing it, an exercise in futility. Feast is thus liable for the full amount of fees awarded to Padilla.

Lastly, Feast makes a generalized claim that the fee award is excessive. However, as Feast admits, it "failed to cite to the record regarding excessive fees claimed by" Padilla in the trial court; nor did Feast provide specific examples of unreasonable fees, claiming only that the fees sought were "replete with" excessive charges for "administrative work." This argument was not preserved for appellate review. (*Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 488 ["'In challenging attorney fees as excessive[,] . . . it is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice. Failure to raise specific challenges in the trial court forfeits the claim on appeal.'"].)

III. DISPOSITION

The order of November 25, 2024, imposing attorneys' fees and costs as sanctions is affirmed.

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_____, J.
SIGGINS*

We concur:

_____, P. J.
LUI

_____, J.
RICHARDSON

* Retired Presiding Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.