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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

BRENDA OCHOA et al.,
Plaintiffs and Respondents,
v.
ERLINDA SAN JUAN et al.,
Defendants and Appellants.

A130993, A131051

(San Francisco City & County
Super. Ct., No. CGC-09- 489587)

INTRODUCTION

In this consolidated appeal, defendants San Juan and Fred San Juan appeal from a judgment following a jury verdict in favor of plaintiffs Brenda Ochoa, Jenner Ochoa, Eve Segasture, and Michael Ciofalo. Plaintiffs had sued defendants (their landlords) for actions defendants took in violation of the San Francisco Rent Ordinance and plaintiffs' leases. On appeal, defendants challenge the trial court's denial of their motion for judgment notwithstanding the verdict (Code Civ. Proc., § 629) as to the jury's award of punitive damages in the case. Defendants also challenge the trial court's award of attorney fees to plaintiffs Segasture and Ciofalo. We shall dismiss defendants' untimely appeal from the judgment and from the order denying defendants' motion for new trial and motion for judgment notwithstanding verdict. We shall affirm the trial court's award of attorney fees.

I. The appeal of the judgment and of the order denying defendants' motion for new trial and for judgment notwithstanding verdict was untimely

The judgment was entered on September 24, 2010, and a file-stamped copy was served on the parties by the superior court clerk by mail on that date. Defendants moved for a new trial and for judgment notwithstanding verdict. The superior court denied those motions by an order entered on November 17, 2010. The superior court clerk served the parties by mail with a file-stamped copy of the order on that date. On December 21, 2010, the court awarded attorney fees to plaintiffs as prevailing parties. The superior court clerk served a file-stamped copy of the order on the parties by mail that same day.

On January 10, 2011, defendants filed a notice of appeal from the final judgment, from the order denying their motion for new trial and for judgment notwithstanding verdict, and from the December 21, 2010 order awarding attorney fees. (A130993.) On January 20, 2011, defendants filed another notice of appeal from the attorney fees order only. (A131051.) The two appeals were consolidated on April 4, 2011.

The appeal of the attorney fees award is timely. (Cal. Rules of Court, rule 8.104.)¹ The appeal of the final judgment, the denial of the motion for new trial, and the denial of the motion for judgment notwithstanding verdict is not. (Rule 8.108.)²

Rule 8.104(a) provides in relevant part that, “[u]nless a statute or rule 8.108 provides otherwise, a notice of appeal must be filed on or before the earliest of: [¶] (A) **60 days** after the superior court clerk serves on the party filing the notice of appeal . . . a file-stamped copy of the judgment, showing the date either was served” (Bolding added.)

As relevant here, rule 8.108 extends the time to appeal in cases of the filing of a motion for new trial or of a motion for judgment notwithstanding verdict until **30 days**

¹ All references to rules are to the California Rules of Court, unless otherwise indicated.

² Plaintiffs moved to dismiss the notice of appeal on February 24, 2011. Because the motion was filed before the record on appeal and plaintiffs failed to provide the court with “specific factual information outlined in rule 8.57,” we ordered that the motion to dismiss would be considered along with the arguments on appeal.

after the superior court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order. (Rule, 8.108(b)(1)(A) & (d)(1)(A).)

The notice of appeal of the judgment, and orders denying the motion for new trial and for judgment notwithstanding verdict were filed here 108 days after the clerk served the notice of the judgment and 54 days after the superior court served the parties with copies of the order denying the motions for new trial and for judgment notwithstanding the verdict. It is clear the notice of appeal from these determinations was untimely filed.

Defendants maintain they had 60 days from the date the superior court clerk served them the file stamped copy of the order denying their motion for judgment notwithstanding the verdict and that their notice of appeal was timely filed. They are confusing the time for filing the notice of appeal from the entry of judgment (60 days from service by the clerk) and the extended time of 30 days from the clerk's service of a copy of the order denying the new trial motion and the motion for judgment notwithstanding the verdict.

Nor does the filing of the timely notice of appeal from the attorney fee order extend the time for filing of the notice of appeal from the judgment, new trial motion or motion for judgment notwithstanding verdict. (See *CC-California Plaza Associates v. Paller & Goldstein* (1996) 51 Cal.App.4th 1042, 1047 [“an appeal from a postjudgment order denying attorneys’ fees does not reopen the time for appealing from the underlying judgment”].)

The failure to file a timely notice of appeal is jurisdictional and requires dismissal of the appeal. (Rule 8.104(b).) We hereby dismiss the appeal from the judgment entered September 24, 2010, and from the order entered November 17, 2010, denying defendants’ motion for new trial and motion for judgment notwithstanding the verdict in A130993.³

³ Because the notice of appeal in case No. A130993 included a timely appeal of the attorney fees, we do not dismiss that appeal in toto. Case No. A131051 is an appeal of the attorney fee award only. Consequently, we are left with two appeals from the same

II. Attorney fees award

Defendants challenge the court's award of attorney fees of \$184,330.40 to plaintiffs. Defendants do not here challenge either the court's determination of the hours spent by counsel representing plaintiffs on the litigation or the rates applied in its calculation of the lodestar fee award. Rather, they contend the court erred in determining plaintiffs Segasture and Ciofalo were prevailing parties entitled to attorney fees under the San Francisco Rent Stabilization and Arbitration Ordinance (the Rent Ordinance), section 37.9(f)⁴ and under Proposition M (Rent Ord., § 37.10B(c)(6))⁵. Defendants further argue the court erred in failing to consider the size of plaintiff Segasture and Ciofalo's recovery in awarding attorney fees under their statutory causes of action.

A. *The judgment*

The judgment in the action was based upon a jury verdict in favor of plaintiffs on all but one of the causes of action of the plaintiffs' complaint. Damages were awarded in

attorney fees award. As the appeals were consolidated, we will proceed to address the attorney fee issue under both appellate numbers.

⁴ The Rent Ordinance section 37.9(f) provides: "Whenever a landlord wrongfully endeavors to recover possession or recovers possession of a rental unit in violation of Sections 37.9 and/or 37.10 as enacted herein, the tenant or Board may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages, (including damages for mental or emotional distress), and whatever other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of Section 37.9 or 37.10A herein. *The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.* The remedy available under this Section 37.9(f) shall be in addition to any other existing remedies which may be available to the tenant or the Board." (Italics added.)

⁵ The attorney fee provision of Proposition M was held invalid in *Larson v. City and County of San Francisco* (2011) 192 Cal.App.4th 1263. That one-sided provision of Proposition M awarded attorney fees to the *tenant* victim of harassment. Although the opinion could be viewed as authority that no municipal ordinance may provide for attorney fees absent specific statutory authorization, no case has held and no one here has contended that the reciprocal fee provision of section 37.9(f) of the Rent Ordinance stating that the "*prevailing party shall be entitled to reasonable attorney fees,*" is similarly invalid. (Italics added.)

favor of the Ochoas and against defendants, in the amount of \$53,195 and in favor of Segasture and Ciofalo and against defendants in the amount of \$45,441.⁶

⁶ The special verdict is not in the record before us. In a memorandum filed with the judgment, the court explained its calculation of the judgment, observing the parties disagreed in their interpretations of the special verdict form. Based in part on the parties' agreement that no type of damage would be awarded more than once and that the court would select the highest award in a category and award that in the judgment, the court explained the damages award in detail. We summarize that reasoning as follows:

1. Rent Ordinance:

Ochoas: \$200, trebled = \$600; Segasture and Ciofalo: \$200, trebled = \$600

[Emotional distress award of \$1 each, trebled to \$3 is subsumed in higher emotional distress award below]

2. Warranty of habitability:

Ochoas: \$19,595; Segasture and Ciofalo: \$16,841

3. Negligence: No damages

4. Negligent infliction of emotional distress:

Ochoas: \$25,000; Segasture and Ciofalo: \$20,000

5. Intentional infliction of emotional distress:

Ochoas: \$25,000; Segasture and Ciofalo: \$20,000

[Both of these awards drop out because these sums have been awarded under the cause of action for negligent infliction of emotional distress (Fourth Cause of Action)]

6. Wrongful use of Civil Proceedings:

Ochoas: \$0 damages, plus \$1 for emotional distress

Segasture and Ciofalo: \$0 plus \$1 for emotional distress

[Both of these awards drop out; given higher awards elsewhere for emotional distress]

7. Proposition M:

Ochoas: \$0 plus \$1 in emotional distress;

Segasture and Ciofalo: \$0 plus \$1 in emotional distress

[Both of these awards drop out; given higher awards elsewhere for emotional distress]

Each plaintiff is entitled to \$1,000 (Rent Ord., § 39.10B(5)), thus, \$2,000 for each couple.

8. Punitive damages:

Ochoas: \$6,000; Segasture and Ciofalo: \$6,000

Totals: Ochoas: \$53,195 and Segasture and Ciofalo: \$45,441

B. *The trial court's fee award*

Plaintiffs sought their attorney fees and the court, finding the time sheets submitted by plaintiffs confusing, directed plaintiffs to provide a further declaration, with supporting timesheets and additional detail. This was done. The court then awarded fees to plaintiffs in the sum of \$184,330.40. In calculating this sum, the trial court reduced the amount sought by plaintiffs' counsel by \$24,827, analyzing the time sheets in detail, and making deductions for time it considered, among other things, excessive, duplicative, unnecessary or erroneous. Unlike the damages awards, which were calculated for each couple, the court did not apportion the fee award between the two couples.

C. *The lodestar*

The abuse of discretion standard governs our review of the trial court's determination of a reasonable attorney fee. (E.g., *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140 (*Ketchum*); *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096 (*PLCM Group*); accord, *Nemecek & Cole v. Horn* (2012) 208 Cal.App.4th 641, 650.)

“Under the lodestar method, attorney fees are calculated by first multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate of compensation. (See *Ketchum*, . . . *supra*, 24 Cal.4th at p. 1136; *Serrano v. Priest* (1977) 20 Cal.3d 25, 48, fn. 23. . . ; [citation].)” (*Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1259.)

Our Supreme Court has recognized that the lodestar is the basic fee for comparable legal services in the community and that it may be adjusted by the court based on a number of factors in order “to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services.” (*Ketchum*, *supra*, 24 Cal.4th at p. 1132.) *Ketchum* “reaffirmed the primacy of the lodestar method for *all* fee-shifting statutes” (Pearl, Cal. Attorney Fee Awards (Cont.Ed.Bar 3d ed. Mar. 2014 update) § 8.4, pp. 8-5, italics added (Pearl, Cal. Attorney Fee Awards); see *Chacon v. Litke*, *supra*, 181 Cal.App.4th at pp. 1259–1260 [holding

lodestar method appropriate for fee awards under the Rent Ord., § 37.9(f)].) Here, counsel were compensated based on the lodestar calculated by the court, without adjustment.

Furthermore, “[t]he ‘experienced trial judge is the best judge of the value of professional services rendered in his court, and while [that] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.’” [Citation.]” (*Ketchum v. Moses, supra*, 24 Cal.4th at p. 1132; *PCLM Group, supra*, 22 Cal.4th at p. 1096; accord, *Chacon v. Litke, supra*, 181 Cal.App.4th at p. 1259.)

D. Analysis

In making its fee award, the court determined that both the Ochoas and Ciofalo and Segasture plaintiffs were prevailing parties. There is no dispute that the Ochoas were prevailing parties entitled to attorneys fees. The court recognized that unlike the Ochoa lease, the lease of Ciofalo and Segasture did not contain an attorney fees clause. However, the court observed that fees were recoverable under section 37.9(f) of the Rent Ordinance and under Proposition M, disagreeing with defendants’ suggestion that the recoveries under those provisions was so small that for all “practical” effect, Segasture and Ciofalo were not prevailing parties.

1. Prevailing parties. “Under California law, a plaintiff who obtains *any* relief as a result of its action is considered the prevailing party.” (Pearl, Cal. Attorney Fee Awards, *supra*, § 2.86, pp. 2-73.) “The definition of ‘prevailing party’ for purposes of fee-shifting statutes is pragmatic and flexible, depending more on the impact of the action than on the manner in which the action is resolved. [Citations.]” (*Id.* at § 2.45, pp. 2-36.) As described in *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 153, “It is settled that ‘plaintiffs may be considered ‘prevailing parties’ for attorney’s fee purposes if they succeed on *any significant issue* in the litigation which achieves *some of the benefit* the parties sought in bringing suit.’” (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 433.)” Among the factors the trial court must consider in determining whether a party prevailed is the extent to which each party realized its litigation objectives. (*Zuehlsdorf v. Simi Valley Unified School Dist.* (2007) 148 Cal.App.4th 249, 257.) In

doing so, courts should respect substance rather than form. (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 877.) “For example, a party who is denied direct relief on a claim may nonetheless be found to be a prevailing party if it is clear that the party has otherwise achieved its main litigation objective.” (*Ibid.*)

There is no question here that Segasture and Ciofalo achieved their litigation objectives, having been awarded damages totaling \$45,441. Were we to look solely at the damage award under Rent Ordinance section 37.9, the award of \$600 is sufficient to support the court’s determination that they are the “prevailing parties” in this litigation.

Moreover, defendants did not contend that work performed for the Ochoas was unrelated or distinct from work performed for Segasture and Ciofalo. Nor did they attempt to separate out or distinguish services performed solely for Segasture and Ciofalo on claims unrelated to compensable claims under the Rent Ordinance. California law recognizes that “[t]ime spent on work that is common to both fee-shifting and non-fee shifting claims is fully compensable, without reduction or apportionment. [Citations.]” (Pearl, Cal. Attorney Fee Awards, *supra*, § 9.59, pp. 9-53, citing, e.g., *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129; *In re Tobacco Cases I*. (2013) 216 Cal.App.4th 570, 588.) Here, the time sheets submitted by plaintiffs’ counsel rarely indicate whether time was spent on the Ochoa claims as distinct from time spent on the Segasture and Ciofalo claims. Nor do the time sheets distinguish time spent on claims compensable under the Rent Ordinance from other claims. We assume the court knew it could reduce the lodestar amount even for related claims, as California law “gives the court discretion to ‘apportion fees even where the issues are connected, related or intertwined. [Citation.]” (*In re Tobacco Cases I*, at p. 589.)

2. Proportionality. Defendants also argue the court erred in failing to consider the *size* of plaintiffs’ recovery in awarding attorney fees under the statutory causes of action. In awarding fees, the court stated it was “sensitive to the issue whether the fees expended are commensurate with the recovery,” but observed it could not automatically assume that fees in excess of the recovery are unreasonable, that defendants had not expressly made that argument, and that plaintiffs had no opportunity to respond to it.

Defendants contend they did raise in the trial court the issue of the size of the recovery in relation to the fees sought.

First, we reject the claim that the court did not *consider* the issue. The court expressly stated it was “sensitive to the issue whether the fees expended are commensurate with the recovery.” It further rejected any contention that it must “automatically assume that fees in excess of the recovery are unreasonable.”

With regard to the court’s view that defendants had not argued expressly that the size of the fees sought were disproportionate to the damages awarded, we tend to agree with the court. Defendants’ arguments that the damages awarded to Segasture and Ciofalo were insufficient to allow them to be considered prevailing parties is a different argument. Further, it is questionable whether defense counsel’s statement at the fee hearing that “our fallback position would be that the court should, at the very least, acknowledge the small amount of recovery and adjust the fees awarded to those plaintiffs based on that” was sufficient in the circumstances to raise the issue. Be that as it may, assuming the issue was properly raised below, it is well-established that a reduction in attorney fees is not required by the fact that the damages awarded were small. (E.g., *Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407, 426, quoting *Beaty v. BET Holdings, Inc.* (9th Cir. 2000) 222 F.3d 607, 610 [“California law allows the trial court to reduce . . . attorneys’ fees award based on the results . . . obtained, or not to reduce the fee award, as the trial judge finds is appropriate in the exercise of . . . discretion”]; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 446 [affirming \$470,000 fee award on plaintiff’s recovery of \$37,500 “[u]nder the lodestar method, a party who qualifies for a fee should recover for all hours reasonably spent unless special circumstances would render an award unjust”]; *Pearl, Cal. Attorney Fees, supra*, §§ 8.25 – 8.26 [lodestar-based fee awards are generally not limited by the amount of damages recovered; no rule of proportionality], § 10.56, pp. 8-22 – 8-25, 10-64 – 10-65.) Defendants have failed to establish that the attorney fee award was unjust.

Consequently, we are satisfied the attorney fee award here comports with the trial court’s broad discretion in these matters.

DISPOSITION

The appeal from the judgment entered September 24, 2010, and from the order entered November 17, 2010, denying defendants' motion for new trial and motion for judgment notwithstanding the verdict in case No. A130993 is dismissed. We affirm the trial court order awarding attorney fees. Plaintiffs are awarded their costs on these appeals.

Kline, P.J.

We concur:

Richman, J.

Brick, J.*

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