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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

RONG SHENG, INC. etc.,

Plaintiff and Respondent,

v.

LU RONG LI,

Defendant and Appellant.

B239682

(Los Angeles County  
Super. Ct. No. BC433883)

APPEAL from an order of the Superior Court of Los Angeles County, William F. Fahey, Judge. Affirmed as modified.

Law Offices of Shin P. Yang, Shin P. Yang, Frank Carleo; and Joseph P. Pierry for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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## **INTRODUCTION**

Defendant Lu Rong Li appeals from a postjudgment order denying Li's petition for attorney's fees and costs from plaintiff Rong Sheng, Inc. dba Win All E-Z Inn (Rong Sheng). We modify the order to award costs to Li and, in all other respects, we affirm the order.

## **FACTUAL AND PROCEDURAL BACKGROUND**

This appeal follows the judgment in the second of two related lawsuits between the same litigants. In the first lawsuit, Los Angeles County Superior Court case number BC369487, tenants Lu Rong Li, Qong Qin Li, and Xiao Guang Li (collectively, the Li tenants) filed suit in April 2007 against their landlord, Rong Sheng, for breach of the warranty of habitability and for violations of Civil Code sections 1940, 1940.1 and 1942.4. Sections 1940.1 and 1942.4 include mandatory statutory attorney's fees and costs provisions.

The parties entered into a settlement agreement in June 2008, pursuant to which Rong Sheng paid the Li tenants \$50,000 in settlement of all claims except one, the award of attorney's fees, which the agreement provided were to be determined later by binding arbitration. The settlement agreement did not include an attorney's fees clause covering litigation for interpretation or enforcement of the agreement.

A dispute arose at the commencement of the fee arbitration concerning the scope and legal effect of the arbitration. The parties entered into a written agreement to submit to arbitration "all issues pertaining to the award of attorney's fees," such as the issues to be arbitrated, determination of the prevailing party, and the amount of fees to be awarded, and that "the decision of the arbitrator will be final with no rights of appeal." The arbitration agreement incorporated the settlement agreement by reference.

In 2010, the arbitrator awarded a total amount of \$200,760 as fees to attorneys for the Li tenants. The Li tenants petitioned the court to confirm the fees award. Rong

Sheng opposed the petition, in part on the basis that a particular provision in the settlement agreement was illegal and, as a result, the entire settlement agreement was void. The trial court severed the allegedly illegal provision from the settlement agreement and ruled that the settlement agreement was not void, noting that Rong Sheng had failed to raise the illegality issue either before or during the arbitration. The court then confirmed the arbitration attorney's fees award and, on March 18, 2010, entered judgment in favor of the Li tenants and their counsel of record in the amount of \$204,280, including the attorney's fees and costs. Rong Sheng appealed.

Two days before judgment was entered in case number BC369487, Rong Sheng filed suit against the Li tenants for rescission of the settlement agreement in Los Angeles County Superior Court case number BC433883, the case from which the instant appeal originated. Rong Sheng's allegations paralleled its argument in opposition to the Li tenants' petition to confirm the attorney's fees arbitration award and enter judgment in their favor in case number BC369487. Primarily, Rong Sheng alleged rescission was required, in that the settlement agreement contained an illegal provision. The trial court acknowledged the notices of related cases filed by Rong Sheng in Los Angeles County Superior Court cases numbers BC433883 and BC369487. (Cal. Rules of Court, rule 3.300.)

The Li tenants took action by moving for sanctions for pursuing a frivolous lawsuit (Code Civ. Proc., § 128.7), moving to strike the complaint and filing a demurrer to the complaint. At the request of Rong Sheng, the trial court granted a stay during the pendency of Rong Sheng's appeal in case number BC369487. We decided the appeal in favor of the Li tenants and the remittitur was issued on August 10, 2011. (*Lu Rong Li v. Rong Sheng, Inc.* (June 8, 2011, B223357) [nonpub. opn.] )

Rong Sheng requested dismissal of the entire action with prejudice in case number BC433883 on September 20, 2011. Dismissal was entered and notice given on the following day.

In November 2011, the Li tenants filed a post-judgment motion for award of attorney's fees and costs of \$17,365 as the prevailing party, under Code of Civil

Procedure section 1032. Of the total, the amount of \$1,265 was costs for filing fees and \$16,100 was the amount of attorney's fees.

The trial court ruled that the Li tenants were the prevailing party but denied their motion for attorney's fees and costs. The court ruled that, even though the instant case had been deemed related to the earlier case, no authority was cited for extending the statutory attorney's fee provisions in Civil Code sections 1940.1 or 1942.4 to mandate an attorney's fee award to the Li tenants. Lu Rong Li (Li) appealed. The other Li tenants did not join in the appeal.<sup>1</sup>

## DISCUSSION

Li contends that, as a prevailing party, he was entitled to an award of his costs under Code of Civil Procedure sections 1032 (section 1032) and 1033.5 (section 1033.5), subdivision (a), and his reasonable attorney's fees under section 1033.5, subdivision (a)(10), as costs, given that his right to attorney's fees arose under Civil Code sections 1940.1 and 1942.4 (the tenants' rights statutes).

Section 1032, subdivision (b), provides: "Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." Section 1032, subdivision (a)(4), states: "'Prevailing party' includes . . . a defendant in whose favor a dismissal is entered." The subdivision gives a trial court discretion to allow costs or not when "any party recovers other than monetary relief," excluding situations specified in the statute, such as "a defendant in whose favor a dismissal is entered." (§ 1032, subd. (a)(4).)

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<sup>1</sup> In addition, Rong Sheng did not file any response in the instant appeal. Rong Sheng thereby forfeited any right to present any opposition to Li's opening brief or participate in oral argument. California Rules of Court, rule 8.412(d)(1)(B) provides that if no respondent's brief is filed in accordance with applicable rules, "the court will decide the appeal on the record, the opening brief, and any oral argument by the appellant."

Section 1033.5, subdivision (a), lists items that are allowable as costs under section 1032. The items include filing fees (§ 1033.5, subd. (a)(1)) and “[a]ttorney’s fees, when authorized by any of the following: [¶] (A) Contract. [¶] (B) Statute. [¶] (C) Law.” (*Id.*, subd. (a)(10)). As to statutory attorney’s fees and costs, section 1033.5, subdivision (c)(5), provides further that “[w]hen any statute of this state refers to the award of ‘costs and attorney’s fees,’ attorney’s fees are an item and component of the costs to be awarded and are allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a).”

As we shall explain more fully below, we conclude that the statutory attorney’s fee provisions in the tenants’ rights statutes do not apply to the instant litigation. Section 1032 does apply, however, and Li is entitled to his costs as a matter of right. However, there is no contractual or statutory basis for award of attorney’s fees as costs under section 1033.5, subdivision (a)(10).

The determination of the legal basis for an award of attorney’s fees presents a question of law which we review de novo. (*Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1132-1133.) The determination whether a party is entitled to attorney’s fees and costs and, if so, the amount to be awarded is within the sound discretion of the trial court. (*Salehi v. Surfside III Condominium Owners Assn.* (2011) 200 Cal.App.4th 1146, 1154; *Akins, supra*, at p. 1134.) We review the trial court’s determination for abuse of discretion. (*Salehi, supra*, at p. 1154.) A court abuses its discretion when its decision ““exceeds the bounds of reason, all of the circumstances before it being considered.” [Citation.]’ [Citation.]” (*Ibid.*)

Li cites no judicial authority which supports his claim that he is entitled to attorney’s fees under section 1033.5, subdivision (a)(10)(B), on the basis that the attorney’s fees provisions of the tenants’ rights statutes apply to Rong Sheng’s rescission litigation. We are not aware of any. The trial court stated that Li had cited no case supporting his argument “in favor of extending the attorney’s fees provisions of [the tenants’ rights statutes] to a case related to an earlier one.” We agree with the trial court.

The issue, then, is whether the interpretation of the tenants' rights statutes supports Li's claim. We conclude it does not. In statutory construction, our goal is to ascertain the intent of the Legislature "so as to effectuate the purpose of the law. [Citation.] In determining intent, we look first to the words of the statute, giving the language its usual, ordinary meaning. If there is no ambiguity in the language, we presume the Legislature meant what it said, and the plain meaning of the statute governs. [Citation.]" [Citation.] (*McNairy v. C.K. Realty* (2007) 150 Cal.App.4th 1500, 1506 [interpreting "actual damages" in Civil Code section 1942.4 as including damages for emotional distress as a result of a landlord's breach of the warranty of habitability].) We have "no power to rewrite the statute so as to make it conform to [any] intention which is not expressed." [Citation.] (*Drouet v. Superior Court* (2003) 31 Cal.4th 583, 593.)

Civil Code section 1940.1, subdivision (b), states: "In any *action brought pursuant to this section*, the prevailing party shall be entitled to reasonable attorney's fees." (Italics added.) The section prohibits certain rent and eviction practices by a landlord against tenants in a residential hotel. Rong Sheng's lawsuit was not an "action brought pursuant to" Civil Code section 1940.1. Rather, Rong Sheng brought the action under the common law causes of action of rescission of the settlement agreement and related money had and received, unjust enrichment, restitution and constructive trust. According to the plain language of Civil Code section 1940.1, the statute does not apply to authorize an attorney's fees award in the instant action.

Civil Code section 1942.4 does not expressly provide that it applies to "any action brought pursuant to this section." Subdivision (a) prohibits a landlord from demanding or collecting rent if the dwelling is in substandard condition affecting its habitability. Subdivision (b)(1) states: "A landlord who violates *this section* is liable to the tenant or lessee for the actual damages sustained by the tenant or lessee and special damages of not less than one hundred dollars (\$100) and not more than five thousand dollars (\$5,000)." (Italics added.) Subdivision (b)(2), states: "The prevailing party shall be entitled to recovery of reasonable attorney's fees and costs of the suit in an amount fixed by the court." The words of a statute "must be construed in context, and provisions relating to

the same subject matter must be harmonized to the extent possible.” (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) By implication and when read in context of the remainder of Civil Code section 1942.4,<sup>2</sup> we conclude that subdivision (b)(2) applies to a prevailing party in any action brought pursuant to section 1942.4. As we previously explained, Rong Sheng brought this action under common law causes of action and not pursuant to Civil Code section 1942.4. The attorney’s fees provision in Civil Code section 1942.4 does not apply to authorize an attorney’s fees award in the instant action.

Our conclusion that the tenants’ rights statutes do not apply rests on a similar analysis of the applicability of an attorney’s fees provision in a different statute by the court in *SC Manufactured Homes, Inc. v. Canyon View Estates, Inc.* (2007) 148 Cal.App.4th 663. The court interpreted Civil Code section 798.85, a statute authorizing attorney’s fees under the Mobilehome Residency Law (MRL) (*id.*, § 798 et seq.). Civil Code section 798.85 provides: “In any action *arising out of the provisions of this chapter* [i.e., the MRL] the prevailing party shall be entitled to reasonable attorney’s fees and costs. A party shall be deemed a prevailing party for the purposes of this section if the judgment is rendered in his or her favor or where the litigation is dismissed in his or her favor prior to or during the trial, unless the parties otherwise agree in the settlement or compromise.” (Italics added.)

The *SC Manufactured Homes* court stated the issue as follows: “Is this action ‘*arising out of the provisions*’ of the MRL?” (*SC Manufactured Homes, Inc. v. Canyon View Estates, Inc.*, *supra*, 148 Cal.App.4th at p. 675, italics added.) The court held that, to be entitled to attorney’s fees under the statute, “the underlying case must arise in the context of those relationships and claims addressed by” the statutory scheme of which it was a part, i.e., the MRL, and not merely because the case “‘relates to’” the statutory

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<sup>2</sup> In addition to referring to a landlord who violates “this section” in the other part of subdivision (b), other provisions of Civil Code section 1942.4 expressly refer to actions “under this section” (*id.*, subds. (c), (d) & (e)) and the remedy provided “by this section” (*id.*, subd. (f)).

scheme. (*Ibid.*) The court relied, in part, on the conclusion in *MHC Financing Limited Partnership Two v. City of Santee* (2005) 125 Cal.App.4th 1372, that “the phrase ‘any action arising out of the provisions of [the MRL]’ in Civil Code section 798.85 encompasses only those actions directly involving the application of MRL provisions in specific factual contexts addressed by the MRL, such as actions by mobilehome park residents against management for failing to maintain physical improvements in common facilities in good working order. [Citation.]” (*MHC Financing Limited Partnership Two, supra*, at p. 1398.) Similarly, in the instant case, Rong Sheng’s allegations did not directly involve the application of the tenants’ rights statutes in any specific factual context addressed by the statutes.

The *SC Manufactured Homes* court acknowledged, however, that “[a] case may ‘arise’ under the MRL even if a complaint does not allege a specific cause of action under the MRL, as long as the dispute is one within the scope of the MRL. . . . [T]he foundation of the case must be grounded in the MRL.” (*SC Manufactured Homes, Inc. v. Canyon View Estates, Inc., supra*, 148 Cal.App.4th at p. 676.) Applying a similar principle to the instant action, we acknowledge that the fact that Rong Sheng did not allege any cause of action specific to the tenants’ rights statutes is not necessarily determinative of whether his lawsuit was brought under the tenants’ rights statutes. Rong Sheng’s allegations, however, are not grounded in the statutes and do not involve specific factual contexts addressed by the statutes. (See *id.* at p. 677; *MHC Financing Limited Partnership Two v. City of Santee, supra*, 125 Cal.App.4th at p. 1398.) In our view, there is no basis for extending Li’s entitlement to attorney’s fees and costs under the tenants’ rights statutes in the prior case to the instant case.

The questions that remain are whether Li is entitled to his costs under section 1032, subdivision (b), and whether he is entitled to an attorney’s fees award under section 1033.5, subdivision (a)(10), on any basis other than the tenants’ rights statutes. Li claimed filing fees, an allowable items of costs, in his notice of motion for attorney’s fees and costs. (§ 1033.5, subd. (a)(1).) Li complied with the requirements that he submit a

memorandum of costs listing the filing fees and a declaration by his attorney verifying the necessity of incurring the filing fees. (Cal. Rules of Court, rule 3.1700(a)(1).)

It is undisputed that Li was a party in whose favor Rong Sheng caused a dismissal with prejudice to be entered and, therefore, was a prevailing party under section 1032, subdivision (a)(4). (See *Santisas v. Goodin* (1998) 17 Cal.4th 599, 606.) As such, he is “entitled as a matter of right to recover costs” unless another statute expressly provides otherwise. (§ 1032, subd. (b); *Santisas, supra*, at p. 606; *Vons Cos., Inc. v. Lyle Parks Jr., Inc.* (2009) 177 Cal.App.4th 823, 832.) “Indeed, absent statutory authority, ‘the court has no discretion to deny costs to the prevailing party.’ [Citation.]” (*Vons Cos., Inc., supra*, at p. 832.) We have not been made aware of any statute precluding Li’s right to recover costs. Accordingly, Li was entitled to recover the claimed filing fees as costs. (§ 1032, subd. (b); *Santisas, supra*, at p. 606.) The trial court abused its discretion in denying Li’s motion as to award of his costs for filing fees.

On the right to recover attorney’s fees as costs under section 1033.5, subdivision (a)(10), Li appears to argue that he is entitled to attorney’s fees by contract. His argument is inextricably tied, however, to his contention that he is entitled to statutory attorney’s fees under the tenants’ rights statutes. He is not entitled to such statutory attorney’s fees. The result is that his contentions related to contractual rights to attorney’s fees also are without merit. The trial court determined that the settlement agreement did not include a general provision for attorney’s fees.

Li argues that, under *Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668, he is entitled to attorney’s fees by contract even though the settlement agreement being litigated did not make an express general provision on attorney’s fees. The issue in *Folsom* was whether a settlement agreement silent as to costs and attorney’s fees deprived the trial court of jurisdiction to award costs and statutory attorney’s fees under section 1032 and Code of Civil Procedure section 1021.5 (section 1021.5).<sup>3</sup>

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<sup>3</sup> The *Folsom* plaintiffs were county resident taxpayers who claimed to be public-transit dependent. (*Folsom v. Butte County Assn. of Governments, supra*, 32 Cal.3d at

Section 1021.5 is the codification of the “private attorney general’ attorney-fee doctrine” and establishes the right to attorney’s fees for a successful party to an action for “enforcement of an important right affecting the public interest” as specified by statute. (*Folsom, supra*, at pp. 671, 682.) The *Folsom* court concluded that the agreement’s silence as to attorney’s fees did not constitute an implied waiver of the statutory attorney’s fees. (*Id.* at pp. 678-679.) The court held that the agreement did not create a bar to either a cost bill or a motion for attorney’s fees pursuant to section 1021.5. (*Folsom, supra*, at p. 671.) Thus, the *Folsom* court upheld the right of the litigant to statutory attorney’s fees. *Folsom* does not support Li’s claim, in that Li was not entitled to the statutory attorney’s fees he claimed.

Li mistakenly relies on *Chinn v. KMR Property Management* (2008) 166 Cal.App.4th 175 as support for his contention that the trial court was required to conduct a pragmatic assessment of the extent to which he and Rong Sheng realized their objectives through the settlement to decide that mandatory statutory attorney’s fees should be awarded in this subsequent litigation. In *Chinn*, however, the basis for the attorney’s fee award was a contract—the attorney’s fees provision in a lease between the parties which was related to the litigation that was resolved by a settlement agreement silent as to attorney’s fees. The court acknowledged that the trial court could properly award attorney’s fees to a prevailing party by contract, in that, even though the settlement agreement reached in the lawsuit was silent on attorney’s fees, the underlying lease agreement had an attorney’s fees provision. (*Id.* at p. 193.) There is no such contract here.

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p. 671.) They challenged county allocations to road projects of funds collected under a California transport development act. As part of the settlement agreement, the county agreed to establish four transit systems.

## **DISPOSITION**

The order as to attorney's fees and costs is modified to award \$1,265 as costs to Li. As modified, the order is affirmed. The parties shall bear their own costs on appeal.

JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.