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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SOUTHERN COUNTIES OIL CO.,

Plaintiff, Cross-defendant and  
Respondent,

v.

FAMU CORPORATION et al.,

Defendants, Cross-complainants and  
Appellants.

G045782

(Super. Ct. No. 30-2010-00358932)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Kazuharu Makino, Judge. Affirmed.

Law Offices of Amy Ghosh and Joanna Ghosh for Defendants, Cross-complainants and Appellants.

Cummins & White, Larry M. Arnold and Annabelle M. Harris for Plaintiff, Cross-defendant and Respondent.

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Defendants and Cross-complainants FAMU Corporation and So Young Nam appeal from a judgment in favor of Plaintiff and Cross-defendant Southern Counties Oil Co. According to defendants' opening brief, the judgment was based upon plaintiff allegedly having delivered fuel to a gasoline station operated by FAMU; Nam allegedly guaranteed the debt. Unfortunately for defendants the scanty record they designated does not even substantiate this contention. Defendants complain about the denial of a motion to continue the trial and reopen discovery. Although they did not furnish us with copies of any motion to continue or evidence filed in support of such a motion, they did provide a reporter's transcript of a hearing where a motion to continue the trial was discussed. We will therefore address this contention but conclude there is no showing the trial court abused its discretion and thus affirm the judgment.

Defendants raise four additional grounds for reversal of the judgment. None of these contentions are supported by the limited records supplied to us. We therefore cannot consider these issues.

## DISCUSSION

### *1. Denial of Motion to Continue the Trial and Reopen Discovery*

According to the register of actions, a copy of which was supplied by defendants, this action commenced on April 1, 2010 when plaintiff filed its complaint. Six weeks later, defendants filed their answer and a cross-complaint. None of these documents are in the record. On October 25, the court scheduled a trial for April 4, 2011. On January 24, 2011, the court scheduled a mandatory settlement conference for March 11. On March 14, the court denied defendants' motions to be relieved as counsel. On March 18, the trial was continued to May 2. On April 21, defendants filed an ex parte

application to continue the trial. Four days later the court continued the trial to May 31. Again, none of those documents are in the record. Defendants supplied us only with the register of actions from which we derived this information.

We now come to May 31, the date to which the trial had been continued. We do have a reporter's transcript of arguments and discussions between the court and counsel that preceded the trial. Plaintiff characterizes them as "disjointed[]." We have some difficulty making any sense out of the disorganized presentation.

This is the best we could do: Counsel for defendants asked Judge Moberly to trail the trial for three days to permit further settlement discussions, stating she had just supplied "some documents" to plaintiff's counsel. Counsel for plaintiff stated "the numbers are so far apart" and settlement discussions would take minutes instead of days. Counsel for defendants then indicated "there are some witness issues": an officer of defendant corporation "has a criminal case and he has a couple of other issues going on as well." The court then stated it would put the case on a trailing calendar with a two-day estimate and ordered counsel to stay in the building.

Later that day, counsel again appeared before Judge Moberly, after the case had been assigned to Judge Makino. Judge Makino apparently had sent the case back to Judge Moberly to rehear the motion to continue the trial. Counsel for defendants now stated that defendant Nam learned that her mother had breast cancer and her grandmother was also very ill so that she would have to go to Korea. In addition the officer of defendant corporation had a criminal trial date the next day. Nam was identified as the owner of the real property and "the guarantor of the credit application." This motion was made on a Tuesday and counsel stated that Nam would leave for Korea "this weekend." Defendants' attorney confirmed to the court that the trial was expected to last only two days. Counsel then argued that the fact she had only recently supplied certain

unspecified documents to plaintiff should be the basis for continuing the trial to the beginning of August. She noted that “we haven’t done discovery” and asked for “six to eight weeks time.” The court stated that Nam could testify because the case would finish before the weekend and the corporate officer could testify on the second day of trial. It also pointed out that the trial had previously been continued. Then there was a lengthy discussion about unidentified documents and the court noted it did not even know what these documents were. Finally, the court denied the request for continuance and returned the case to Judge Makino.

California Rules of Court, rule 3.1332(a) provides that “[a]ll parties and their counsel must regard the date set for trial as certain.” Rule (b) states that “[a] party seeking a continuance of the date set for trial . . . must make the request for a continuance by a noticed motion or an ex parte application . . . with supporting declarations. The party must make the motion or application as soon as reasonably practical once the necessity for the continuance is discovered.” The rule also notes that continuances are disfavored and that the court may only “grant a continuance . . . on an affirmative showing of good cause.” (Cal. Rules of Court, rule 3.1332(c).) The rule then lists seven circumstances that may indicate good cause. None of these circumstances were present here. Nor does it appear that defendants filed the required noticed motion or supporting declarations.

The grounds urged as the bases of the motion also fail. The fact that one of the defendants was leaving for Korea was demonstrated not to be a problem because the trial would be completed before she was leaving. The argument the trial should be continued because of delay caused by defendants having supplied records to plaintiff only shortly before the trial might have supported a motion by plaintiff but defendants should

hardly be permitted to rely on their own delay. Finally defendants' belief they needed more discovery also fails because adequate time for discovery had been available since the action was commenced and during the prior periods of continuances.

Whether to grant or deny a motion to continue rests within the sound discretion of the court. (*Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1126.) Given the facts of this case we could hardly find such an abuse of discretion, all the more in light of the two prior continuances the court had granted.

## 2. *The Remaining Contentions*

Defendants raises four other contentions: (1) the court should have granted a dismissal of the cross-complaint; (2) the court erred in admitting plaintiff's evidence; (3) the credit application's finance charge and attorney fee provisions are not enforceable; and (4) the award of attorney fees in the amount of \$37,391 was improper. Unfortunately defendants failed to provide us with a single record reference supporting these allegations. The absence of such references is understandable because there is no record. We were supplied only with the reporter's transcript relating to the motion to continue the trial, which we discussed earlier, and a clerk's transcript consisting of the register of actions, the judgment, the notice of appeal, defendants' notice designating the record on appeal, and the notice of entry of judgment. None of this gives us a clue as to what happened in the trial court with respect to the four issues. We are thus unable to consider these contentions. (See *Foust v. San Jose Construction Co.* (2011) 198 Cal.App.4th 181, 186-187.)

DISPOSTION

The judgment is affirmed. Respondent shall recover its costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

IKOLA, J.