

J.B.B. Investments Partners LTD. et al., v. R. Thomas Fair et al. (2019) 37 Cal. App. 5th 1

The court upheld the validity of a settlement agreement and found Defendants' appeal of the trial court's ruling to be frivolous. Thus, the court found Defendants and Defendants' counsel jointly and severally liable for sanctions.

FACTS/PROCEDURE

This case arises out of a contract dispute. Plaintiffs invested into limited liability companies managed by Defendant Thomas Fair. Fair is an attorney and an inactive member of the California State Bar. Plaintiffs asserted that Defendants had made several fraudulent representations and omissions, and the parties attempted to negotiate a settlement to resolve their dispute. On July 4, 2013, Plaintiffs' attorney emailed Fair a final settlement offer. After receiving no response regarding the settlement offer, Plaintiffs filed a lawsuit on July 5. Later the same day, Fair responded to the email, stating that he agreed to settle the matter. Fair repeated his acceptance of the settlement offer to Plaintiffs' attorneys via email, voicemail, and text messages. On July 11, Plaintiffs' attorney sent a draft of the final settlement agreement but Fair never signed it.

This instant action is a consolidation of Defendants' appeal of the granting of Plaintiffs' summary adjudication and Plaintiffs' appeal for attorney fees. Plaintiffs filed their first amended complaint alleging causes of action for securities fraud in violation of the California Corporations Code, fraud, breach of fiduciary duty, constructive fraud, breach of contract, breach of the implied covenant of good faith and fair dealing, declaratory relief, promissory estoppel, rescission for fraud in the inducement, and legal malpractice. They filed a motion for summary adjudication for breach of contract and the trial court granted it. The court found that Fair on behalf of himself and the three entity defendants, entered into a binding settlement agreement with Plaintiffs. Defendants thereafter breached the agreement by refusing to recognize and comply with the terms of the settlement. In regards to the sanctions appeal, Plaintiffs contend the trial court should have awarded them attorney fees for appeals (separate from this instant appeal) due to Civil Code section 1717's mutuality requirement and public policy, or at a minimum, for being prevailing parties against Defendants' failed motions to compel arbitration and the related appeal.

HOLDING/DISCUSSION

The Court of Appeal for the First District affirmed the trial court's holding that Fair entered into a contract then subsequently breached the contract by failing to sign the settlement agreement. A settlement agreement is a contract and based on that principle, Plaintiffs must show that a breach of contract occurred by first demonstrating that a contract existed. Defendants contend that a contract was not formed because there was no mutual consent to the agreement. However, the court pointed to the undisputed evidence of Fair agreeing to the contract multiple times through emails, voicemails, and text messages to Plaintiffs' counsel. The court did not find Defendant's argument convincing that the July 4 settlement agreement was invalid because Plaintiff offered a formal written agreement one week after Fair's acquiescence to the original agreement. The court found that the formal written agreement contained additional terms, but they did not materially change the specific terms of the July 4 agreement. Defendants attempted to transform the Appellate Court's language in their opinion on a previous appeal regarding whether Fair's typed name constituted a signature for the settlement agreement, and suggested that the court had previously determined that the July 4 settlement agreement was not binding. The court found Defendants'

partial quotation from the opinion of the previous appeal to be misleading and emphasized that the opinion was limited to the validity of the signature and not on the merit of the settlement agreement.

Finally, on their own accord, the Appellate court considered and imposed sanctions on the Defendants and their counsel for this instant appeal. Sanctions may be imposed when it appears as though the appeal was frivolous or taken solely for delay. To determine whether an appeal has no merit, California cases have applied a subjective and objective standard. The subjective standard assesses the motives of the appealing party and their attorney, while the objective standard reviews the merit of the appeal from a reasonable person's perspective. Here, the court looked to the procedural history of this six-year lawsuit, including the genesis of this action where Fair, an attorney, agreed to the settlement offer in writing, six times. The court also looked to prior tardy or meritless actions presented by the Defendants and the misleading, partial quotes from the court's prior opinion that the Defendants proffered in this appeal. Accordingly, the court found there to be clear and convincing evidence that this appeal was frivolous and awarded Plaintiffs almost \$45,000 in attorneys' fees and costs as sanctions. The court found Defendants and their counsel jointly and severally liable for the sanctions, and they forwarded the judgment to the California State Bar.

The Appellate Court also affirmed the trial court's judgment in denying to impose sanctions from a separate appeal. A party may only recover attorneys' fees when it is expressly authorized by statute or contract. Plaintiffs point to Civ. Code section 1717 which provides that when a contract specifically provides for attorneys' fees and costs to be awarded to the prevailing party in an action to enforce the contract, then the prevailing party should receive fees and costs, regardless if they are not a party specified in the contract. However, the court found that the only contracts Plaintiffs sought to enforce were investment agreements, which were not operating agreements and the July 4, 2013 settlement agreement, which did not have an attorney fee provision. Therefore, Plaintiffs were not entitled to recover for previous appeals.