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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FRED WILLIAMS, Plaintiff and Appellant, v. THE COUNTY OF LOS ANGELES et al., Defendants and Respondents.	B234100 (Los Angeles County Super. Ct. No. BC439063)

APPEAL from a judgment of the Superior Court of Los Angeles County. Maureen Duffy-Lewis, Judge. Affirmed.

Law Offices of Helena Sunny Wise, Helena Sunny Wise for Plaintiff and Appellant.

Law Offices of David J. Weiss, David J. Weiss, Peter M. Bollinger; Greines, Martin, Stein & Richland, Martin Stein, Carolyn Oill for Defendants and Respondents County of Los Angeles and P. Michael Freeman.

Thomas and Thomas, Michael Thomas, Janet Keuper; Greines, Martin, Stein & Richland, Martin Stein, Carolyn Oill for Defendants and Respondents Los Angeles County Civil Service Commission, Lawrence D. Crocker, Carol Fox, Vange Felton, Sandy Stivers, Evelyn Martinez, Lynn Adkins, Greg Kahwajian, Michael Miller, and Jerry Ellner.

This appeal is from an award of attorney fees to prevailing defendants after their special motions to strike were granted. (Code Civ. Proc., § 425.16.)[1]

Discussion

Appellant Fred Williams sued the Los Angeles County Civil Service Commission ("Commission"); Commission Executive Director Lawrence Crocker; Crocker's assistant Sandy Stivers; Commissioners Greg Kahwajian, Evelyn Martinez, Carol Fox, Vange Felton, and Lynn Adkins; attorney Janine McMillion; hearing officers Jerry Ellner and Michael Miller; Los Angeles County Fire Chief P. Michael Freeman, and the County of Los Angeles.

The complaint brought causes of action for defamation, interference with contractual relations, interference with prospective economic advantage, intentional infliction of emotional distress, and deprivation of civil rights, citing title 42 United States Code section 1983 (hereafter U.S.C. § 1983).

Defendants brought special motions to strike, which were granted. Judgment was entered in defendants' favor. Attorney fees were awarded to one of the defendants, McMillion, the only defendant who sought a specific award with her motion.

In B229683, we affirmed the judgment and the award of fees to McMillion.

After the judgment, the remaining defendants, respondents here, filed costs memoranda. The Commission defendants (the Commission, Crocker, Stivers, Kahwajian, Martinez, Fox, Felton, Adkins, Miller and Ellner) requested, inter alia, $15,229 in attorney fees. The County defendants (Freeman and the County of Los Angeles) requested, inter alia, $25,110 in attorney fees.

Appellant responded with motions to tax costs. After further litigation, the trial court denied the motions to tax costs and awarded respondents the sums sought, finding that the sums were reasonable. This appeal followed.

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

We begin our discussion by noting that at several points in his brief, appellant contends that the special motions to strike were wrongly granted, and that our opinion in B229683 was wrong. We do not consider those contentions. B229683 is a final decision of this Court.

Concerning attorney fees, appellant first argues that this is a civil rights action, and a meritorious one, that recovery of attorney fees should not be permitted by a defendant in a meritorious civil rights action, and that the civil rights causes of action and the other causes of action are so inextricably intertwined that fees cannot be allocated.

Appellant made this argument in his challenge to the fees awarded to McMillion, and we say now what we said then: "Plaintiff next asks us to apply the rule applicable to actions under the Fair Employment and Housing Act, or under federal civil rights causes of action, and find that fees should be awarded to a prevailing defendant only when the action is 'unreasonable, frivolous, meritless or vexatious.' (*Cummings v. Benco Building Services* (1992) 11 Cal.App.4th 1383, 1387.) We decline the invitation. Section 425.16 subdivision (c)(1) provides that except as otherwise provided, 'a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs.' (§ 425.16, subd. (c)(1).) It does not include the limit plaintiff seeks, and we may not import such a limit from other statutes."

Appellant next argues that respondents failed to prove the reasonableness of their fees, but offers no specifics except to refer to "the contemporaneous docketing of Demurrers relying upon the same identical evidence and legal theories." He contends that this alone compels reversal of the fees awards.

"We review the amount of attorney fees awarded for abuse of discretion. [Citation.] A trial court's attorney fee award will not be set aside 'absent a showing that it is manifestly excessive in the circumstances.' [Citation.]" (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375, fn. omitted.) We cannot see that the fact that defendants filed demurrers in addition to special motions to strike compels a

reversal of fees. Respondents only sought, and only recovered, fees incurred in connection with the special motions to strike.

Finally, appellant relies on section 425.16, subdivision (c)(2), which provides that a prevailing defendant on a special motion to strike is not entitled to fees if the action was brought pursuant to the Brown Act, Government Code sections 54950 et seq. which obligates government agencies to meet and act in public. (*Los Angeles Times Communications v. Los Angeles County Bd. of Supervisors* (2003) 112 Cal.App.4th 1313, 1317.)

Appellant made a similar argument in his earlier appeal. We found no ground for reversal, because there was no claim under the Brown Act. In response, on this appeal, appellant contends that the factual allegations of his complaint implicate the Brown Act. However, section 425.16, subdivision (c)(2) only bars an award of fees for cases "brought pursuant" to the Brown Act. This is not such a case, because there is no cause of action pursuant to that Act. That is true even if, as appellant argues, there are factual allegations concerning secrecy and secret meetings.

Appellant next argues that he could have amended his complaint to allege a cause of action under the Brown Act. As he acknowledges, section 425.16 does not include a right to amend to avoid the effect of a special motion to strike. Instead, the motion is directed to the current complaint and a plaintiff may not avoid the consequences of the motion by filing an amended complaint. (See *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1052, 1054–1056; *Navellier v. Sletten* (2003) 106 Cal.App.4th 763, 772; *Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068, 1073–1074.)

However, without citation to authority, appellant contends if the case had been brought in federal court, the Federal Rules of Civil Procedure would have allowed him to amend. He then argues that where a plaintiff brings a cause of action under U.S.C. § 1983 in state court, a state procedural vehicle such as section 425.16 violates the

Supremacy Clause if it makes that plaintiff's task more difficult than it would have been if the plaintiff had filed in federal court.

Appellant cites in support *Felder v. Casey* (1988) 487 U.S. 131, 108 S.Ct. 2302, 101 L.Ed.2d 123. In that case, a plaintiff challenged the application of Wisconsin's notice of claim statute to title U.S.C. § 1983 claims. The Supreme Court wrote, "No one disputes the general and unassailable proposition . . . that States may establish the rules of procedure governing litigation in their own courts. By the same token, however, where state courts entertain a federally created cause of action, the 'federal right cannot be defeated by the forms of local practice.' [Citation.] The question before us today, therefore, is essentially one of pre-emption: is the application of the State's notice-of-claim provision to § 1983 actions brought in state courts consistent with the goals of the federal civil rights laws, or does the enforcement of such a requirement instead "'stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"'? [Citation.]" (*Id*. at p. 138.) The Supreme Court concluded, "[b]ecause the notice-of-claim statute at issue here conflicts in both its purpose and effects with the remedial objectives of § 1983, and because its enforcement in such actions will frequently and predictably produce different outcomes in § 1983 litigation based solely on whether the claim is asserted in state or federal court, we conclude that the state law is pre-empted when the § 1983 action is brought in a state court." (*Ibid*.)

Appellant is thus incorrect when he asserts that states may not place any burden whatsoever on a state court U.S.C. § 1983 plaintiff. "Although federal law controls the substantive aspects of plaintiffs' federal civil rights claim, state rules of evidence and procedure apply unless application of those rules would affect plaintiffs' substantive federal rights." (*County of Los Angeles v. Superior Court* (2006) 139 Cal.App.4th 8, 17.) In *County of Los Angeles,* we analyzed *Felder, supra,* and cases arising under *Felder*, and concluded that challenged state law restrictions on discovery applied to that plaintiff's U.S.C. § 1983 claim. Here, as in that case, appellant has failed to show that the challenged state law is inconsistent with the federal statute.

Disposition

The judgment is affirmed. Respondents to recover costs on appeal.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

KRIEGLER, J.