Appellate Review

Can duress induced by a party's own counsel void a settlement agreement?

By Jeffrey I. Ehrlich

Duress as basis to void a settlement agreement; attorneys

Fettig v. Hilton Garden Inns Management LLC (2022) _ Cal.App.5th __ (Second Dist., Div. 8.)

Fettig sued Hilton for personal injuries she claimed to have suffered when struck by a hotel shuttle bus. The case went to trial in February 2020. Fettig rested and, after a lunch recess, the trial lawyers announced a settlement: Hilton would pay $85,000 for Fettig's release. On the record, the trial court asked Fettig if she agreed. Fettig equivocated. The back-and-forth continued for 10 pages of transcript, including two recesses for Fettig to confer with her lawyer, Jared Gross.

After the second recess, Fettig said she did not need more time. The court asked if she was sure and said, "Would you like [to] wait overnight to think about it? Not a problem." Fettig replied, "No, I don't need overnight, your Honor." Fettig acquiesced in the $85,000 settlement. The court excused the jury.

Months later, lawyers other than Gross brought a motion to set aside the settlement. They asserted Gross failed to prepare Fettig's case for trial. The motion accused Gross of subjecting Fettig to duress to accept the settlement. Fettig declared, "Mr. Gross point blank threatened me at the counsel table by saying 'the defense will take your house for costs and I will not remain on the case any further.' Mr. Gross further told me that if I did not settle the case 'he would not be coming back to trial tomorrow.'"

Fettig's motion contended Gross's duress meant the court should rescind the settlement agreement under Civil Code section 1689, which authorizes rescission for duress, and under Code of Civil Procedure section 473, which provides for relief in cases of mistake, inadvertence, surprise, or excusable neglect. The trial court denied the motion. Affirmed.

California follows the rule stated in the Restatement Second of Contracts, § 175: "If a party's manifestation of assent is induced by one who is not a party to the transaction, the contract is voidable by the victim *unless the other party to the transaction in good faith and without reason to know of the duress either gives value or relies materially on the transaction*. (Italics added.)

In her briefing, Fettig ignored the Restatement rule as well as the California case adopting it, *Chan v. Lund* (2010) 188 Cal.App.4th 1159, 1174. "By avoiding mention of *Chan*, Fettig effectively concedes its controlling force."

Jury-trial waiver; failure to follow local rules

Amato v. Downs (2022) _ Cal.App.5th _ (Fourth Dist., Div. 2.)

Amato sued his real estate broker for selling his house for far less than it was worth. On the day of the trial, the trial judge found that Amato had waived his right to a jury trial by failing to comply with the local rule concerning preparation of joint trial documents. Reversed.

While a trial court may sanction a party for failing to comply with local rules, the California Constitution provides that in civil matters the "inviolate right" of trial by jury "may be waived by the consent of the parties expressed *as prescribed by statute*." (Cal. Const., Art. I, § 16 (italics added).) The statute governing civil jury waivers is section 631, subdivision (f), which states: "A party waives trial by jury in any of the following ways: [¶] (1) By failing to appear at the trial. [¶] (2) By written consent filed with the clerk or judge. [¶] (3) By oral consent, in open court, entered in the minutes. [¶] (4) By failing to announce that a jury is required, at the time the cause is first set for trial, if it is set upon notice or stipulation. [¶] (5) By failing to timely pay the fee described in subdivision (b) unless another party on the same side of the case has paid that fee. [¶] (6) By failing to deposit with the clerk or judge, at the beginning of the second and each succeeding day's session, [jury fees]." The methods of waiver specified in section 631 are "exclusive."

Because a failure to prepare trial documents in accordance with local rules does not fall within any of the means of waiver specified in section 631, the trial court erred in imposing a jury-trial waiver as a sanction for violating the local rules.

Right to discovery of personal information of parties and witnesses in personal-injury and wrongful-death cases involving traffic accidents

State v. Superior Court (Paniagua) _ Cal.App.5th _ (Second Dist., Div. 6.)

On October 12, 2018, Moises Paniagua was driving northbound on Walnut Canyon Road approaching a left curve in the roadway at Broadway Road. Lisa Kinsey was traveling eastbound on Broadway Road approaching Walnut Canyon Road. Kinsey allegedly failed to keep her vehicle in her lane of travel and struck Paniagua's vehicle, killing him. Paniagua's wife and children filed a wrongful-death action against Kinsey and public entities, including the State, for a dangerous condition on public property. They alleged that there had been other similar accidents at the same location and that the location involved a dangerous curve.

During discovery, the State produced three traffic accident reports concerning accidents that occurred at or near the site of the October 12, 2018 accident. The names and contact information of the parties involved and witnesses to the prior traffic accidents were redacted from the reports. Plaintiffs propounded special interrogatories, set two, Nos. 118 through 123 (special interrogatories) that sought the names, addresses, and telephone numbers for all persons identified as parties or witnesses to the traffic accidents reported in the three redacted reports previously produced (accidents on December 28, 2010, March 31, 2014, and September 8, 2015).

The State objected to the special interrogatories arguing, "The information

requested is protected from disclosure by California Vehicle Code section 20012." Plaintiffs filed a motion to compel further responses on the ground that they have a "proper interest" in the contents of the related traffic accident reports, pursuant to Vehicle Code section 20012. The trial court granted the motion. The State took a writ. The Court of Appeal agreed to hear the matter and ultimately denied the writ, ordering the State to produce the requested information.

Plaintiffs argue that under section 20012 they have a proper interest in the disclosure of unredacted police reports, including "the names and addresses of persons involved or injured in, or witnesses to, an accident." They are parties to a civil lawsuit alleging defective road design. Discovery into similar crashes is, therefore, likely to lead to the discovery of admissible evidence, e.g., to prove that the State had notice of the dangers associated with its roadway.

Plaintiffs have shown the accidents are similar in nature and the evidence of the reported accidents "either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Code Civ. Proc., § 2017.010.) There was no dispute in the superior court that the prior traffic accidents occurred in the same location, under similar circumstances, and similarly resulted in serious injuries or death. This is sufficient to demonstrate that Plaintiffs are persons with a "proper interest" in obtaining the unredacted accident reports they seek.

Negligence; duty; independent contractors; special relationship; contracts as limiting duty

Hassaine v. Club Demonstration Services, Inc. (2022) 77 Cal.App.5th 843 (Fourth Dist. Div. 1.)

While shopping at a Costco in San Diego, Hassaine slipped and fell on a slippery substance that she believed was liquid soap. She sued Costco and Club Demonstration Services (CDS), an independent contractor who provided food samples in the store.

The trial court granted summary judgment for CDS, concluding that it owed Hassaine no duty of care. In the court's view, it was dispositive that CDS's contract with Costco limited its maintenance obligations to a 12-foot perimeter around each sample table, and that Hassaine's fall occurred outside that boundary. Reversed.

The incident was captured on Costco's surveillance video. It showed that Hassaine entered the aisle where she would later fall, walking beside her sister-in-law, who pushed a shopping cart. No foreign substance appeared on the floor. The two women stayed in the aisle for about a minute and a half, pulling out various grocery items from the refrigerated display case as they conversed. After they moved on, a dark spot can be seen near where the cart had been located. Hassaine believed that liquid soap had leaked out of a two-pack of soap in her cart.

Over the next several minutes various people proceeded to walk through the aisle and past the dark spot, including an aproned CDS employee and a Costco employee wearing a baseball cap. Less than seven minutes after leaving the aisle, Hassaine and her sister-in-law returned. The sister-in-law pushed the shopping cart past the spill, as Hassaine walked behind her with items in her hands. As Hassaine stepped near the spill, she fell flat on her back.

The trial court erred in concluding that CDS's contract with Costco delineated the scope of its duty of care to business invitees under general principles of tort law. Businesses have a common law duty of ordinary care to their customers that extends to every area of the store in which they are likely to shop. While the CDS-Costco agreement may allocate responsibility and liability as a matter of contract between those parties, it does not limit the scope of CDS's common law duty to customers. Although CDS protests that this outcome would impose an unreasonable duty covering the entire Costco warehouse, its argument conflates the legal question of duty and the (generally) factual question of whether that duty was breached. Despite having a duty of ordinary care, CDS would have no liability so long as its conduct was reasonable under the circumstances, which include the distance between CDS personnel and the hazard.

In short, CDS owed Hassaine the usual duty of ordinary care codified in Civil Code section 1714. Breach and causation present triable factual issues here, precluding summary judgment on those grounds.

Americans with Disabilities Act; temporal limits on impairment

Shields v. Credit One Bank, N.A. (9th Cir. 2022) 32 F.4th 1218.

Shields began work in the HR department of the bank in November 2017. She underwent invasive bone biopsy surgery on her right arm in January 2018. This was a significant procedure that required a three-day hospital stay. The substantial physical impact of the surgery prevented Shields from returning to work for several months. Specifically, her postsurgical injuries prevented her from, *inter alia*, fully using her right arm, shoulder, and hand to lift, pull, push, type, write, tie her shoes, or use a hair dryer. Her doctor estimated she could return to work on June 20, 2018. But as that date approached, Shields still lacked full use of her right shoulder, arm, and hand.

Her doctor provided a note stating that Shields's next appointment was on July 10, and they would discuss a return-to-work date then. The note said that Shields could not work until the appointment.

After receiving the note, the bank advised Shields that her position had been eliminated and she was being terminated. She sued under the ADA. The district court granted the bank's motion to dismiss, finding that Shields had no permanent disability and therefore failed to state a claim under the ADA. Reversed.

Section 3, paragraph (1), of the ADA defines the term "disability" as follows: The term "disability means, with respect to an individual – (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in paragraph (3)).

Current EEOC regulations expressly address the question of whether a temporary impairment can count as a "disability" within the meaning of the ADA. As amended in 2011, the EEOC regulation that defines the phrase "substantially limits" now contains a subsection stating that "[t]he effects of an impairment lasting or expected to last fewer than six months can be substantially limiting." (29 C.F.R. § 1630.2(j)(1)(ix) (emphasis added).) By its plain terms,

the regulation thus explicitly rejects the sort of categorical rule applied by the district court here, under which a "disability" would require a showing of "permanent or long-term effects."

Because the ADA and its implementing EEOC regulations make clear that the actual-impairment prong of the definition of "disability" in section 3(1)(A) of the ADA is not subject to any categorical temporal limitation, the district court committed legal error in holding, based on superseded regulations, that a claim of such an actual "impairment" requires a showing of long-term effects.


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