

Persolve v. Szanto

S231036

Supreme Court of California

November 30, 2015

Reporter

2015 CA S. Ct. Briefs LEXIS 2877

Persolve, LLC, Plaintiff, Counter-Defendant and Respondent vs. Peter Szanto, Counter-Plaintiff, Defendant and Appellant

Type: Petition for Appeal

Prior History: Court of Appeal # G 052 515 Orange County Superior Court. # 30-2013-00626119.

Counsel

[*1] PETER SZANTO, 949 887 2369, Irvine CA.

Title

Petition for Review

Text

May it please this Honorable Court sitting in review of the controversy herein.

Comes now appellant, petitioning for California Supreme Court review.

Appellant is currently before this Court in case S226726. In that pending case, the issue is whether a defendant previously declared a vexatious litigant and subject to a pre-filing order (CCP § 391.7, subd. (a)) need obtain leave of the presiding judge or justice before filing an appeal from an adverse judgment?

In the instant case, the issue is nearly identical. **Whether, appellant, a person deemed a vexatious¹ litigant can proceed on appeal from denial of his right to proceed on mandatory cross-claim.**

[*2]

An essential accompanying issue also seeks review. The second issue is whether the vexatious litigant law can, *sua sponte*, be expanded by the trial court and the Court of Appeal to include the summary vacating of a defendant's **fundamental right** completely to defend herself / himself through a compulsory cross complaint / counter claim.

As will be fully demonstrated on complete briefing, appellant's fundamental right which has been **summarily erased** (with neither notice, right to be heard nor essential open court hearing) in this case is the essential right to perfect, as the law requires, a compulsory counter claim.

¹ A very significant aspect of this case is that the 9th Circuit Court of Appeals has reviewed the vexatious litigant decision against appellant and has determined appellant not to be a vexatious litigant. [EXHIBIT A]. Every California Superior court judge who has been offered this evidentiary proof of appellant's non-vexatiousness, has NOT been persuaded by the mandate of Federal supremacy.

1. Fundamental Facts and Issues in this Case

Plaintiff, Persolve is a highly secretive, nearly clandestine, (iemob-like) likely racketeer influenced criminal organization which is able to perpetrate its nefarious illegal activities by hiring attorneys to bring improper collection actions in the limited-jurisdiction division of California Superior Court.

The underlying improper action herein was commenced by Persolve on 1/24/2013. Prior to that, throughout the length of Persolve's collection process (which was non-compliant [*3] with 15 USC § 1601 - the Fair Credit Practice Law), appellant told (and retold) Persolve, many times that he no longer lived in California, but was then a citizen of Nevada.

Regardless of having full and complete knowledge that appellant was neither a citizen of, nor resided in, California, Persolve nevertheless commenced an action in the California forum it knew to be improper.

In conscious and intentional disregard of the truth, a few days after filing its original claim, Persolve parlayed its claim, and doubled it, by filing a second, nearly identical claim in California against appellant. ²

Here, the truth of appellant's criminality accusation can be quickly seen. Both of Persolve's claims arise [*4] from alleged events in 2009. There is no logical reason for one plaintiff to bring two claims against the same defendant one week apart based on claims which are nevertheless time barred - except, impermissibly, to squeeze beneath the jurisdictional minimum of the Superior Court's Unlimited Jurisdiction division. ³

For reasons unrelated to any dispute with Persolve, appellant, a citizen of Nevada (at the time Persolve's action was initiated), sought Bankruptcy protection in Nevada. Persolve perfected its two identical California claims in Nevada Bankruptcy Court. Persolve's claims show good and proper service to appellant's [*5] Nevada residence. Appellant responded pursuant to Bankruptcy law and was preparing for trial in Nevada.

The California action appealed herein, should have been dismissed, because Persolve had submitted to jurisdiction in Nevada. In Nevada Bankruptcy Court, Persolve failed to respond to appellant's discovery requests and did not prosecute its claims.

After the reorganization which appellant sought was complete, Persolve intentionally perpetrated fraud upon the California Superior Court by representing to the Orange County trial judge that appellant (a citizen of Nevada at the time service by publication was requested) was amendable to service by publication in a local, limited circulation, legal publication, which is circulated only in Orange County, California.

Having been deemed served, [EXHIBIT B] appellant perfected the mandatory cross-complaint required by law, CCP § 428.50.

Because appellant is on the vexatious litigant list, the clerk of the Superior Court - **not any judicial officer** - ordered appellant to request permission to file his cross-complaint. Appellant promptly obeyed that order. On 2-5-2015, appellant explained the merit of his claims and also sought [*6] to strike the clerk's order to seek permission on the basis that he was not initiating litigation.

More than five months later, on 7-10-2015 the trial court tersely denied appellant's ability to go forward on his cross-claims]. [EXHIBIT C]. That is, the trial judge was unconcerned about facts, the claims or merit - and focused merely on the erroneous notion that persons deemed to be vexatious litigants could not file **any** litigation.

² *Persolve's modus operandi is to duplicate claims which it anticipates to be sure winners. That is, when Persolve knows that it is suing an out-of-state defendant, Persolve will duplicate its claims in anticipation of victory by default (as it did here) - on both claims.*

³ *Persolve's second modus operandi is to bring only claims which can be brought in limited jurisdiction Superior Court. Here, even though both nearly identical claims were brought one-week apart, Persolve simply disregarded the requirement of bringing them as one action. When added together the two claims are greater than the \$ 25,000 unlimited jurisdiction of the Sup.Ct.*

Appeal to the Court of Appeal followed and was likewise dismissed based on denial of appellant's right to cross-complain [EXHIBIT D].

2. Issue to Review

The essential and fundamental legal right to be vindicated herein derives from CCP § 391 (the vexatious litigant law). The first essential question is whether CCP § 391 also operates summarily to strip certain citizens of all of their rights to defend themselves ?? ⁴

[*7]

In this case, appellant was sued in a forum outside his state of citizenship. Persolve came to appellant's home state, filed its claims there and so submitted to jurisdiction there. Persolve never prosecuted any of its claims in the correct forum. Thereafter, in the worst of bad faith, Persolve returned to California with the intent of abusing process by knowingly defrauding the trial court as to where appellant could properly be served. Persolve did this in total and knowing contravention of the fact that appellant had already been properly served in Nevada!

Appellant, **in compliance** with CCP § 428.50's mandatory cross-claim instruction, perfected a cross-complaint. The clerk of the trial court, **not a judicial officer**, [EXHIBIT E] determined that appellant was required to obtain permission to maintain his cross-claim. ONLY after 5 months lapse, did the trial judge - **without** making the requisite CCP § 391 ruling that appellant's claim was merit-less, a delaying tactic or a waste of time, deny appellant's right to perfect and prosecute his compulsory cross-complaint.

a. Vexatious Litigant Law's Focus is On 'New' Litigation

CCP § 391.7(a), [*8] (Vexatious litigant; Prefiling order prohibiting filing of new litigation) provides in pertinent part:

"In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any **new** litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed."

Neither the clerk of the Superior court nor the trial judge nor the Court of Appeal recognized that their decisions were contrary to law. CCP § 391.7 requires appellant **only** to seek permission to file his cross-claim - **only** if he were initiating **new** litigation.

In this action, however, the Superior Court clerk, the trial judge and the Court of Appeal all, independently, usurped the role of the legislature to create new law. New law was created by the vacating of appellant's right to file a cross-claim under CCP § 428.50. This occurred by appending (ie, effectively re-writing) - without any rightful legislative authority (and without input from [*9] the People of California) - the CCP § 391, et seq. law. The Orange County legal expansion was based on the erroneous notion that a cross-complaint is new litigation. **In fact, however, a cross claim merely facilitates the resolution of already existing litigation.**

The legislature never intended to expand the vexatious litigant law so as to thwart a defendant's ability to cross-claim. The CCP § 391 law does not constrain (nor equivocate) the vexatious litigant's right completely to defend himself. If CCP § 391 were written otherwise, the mandate of CCP § 428.50 would be nullified. No such retraining legislation exists and so the Superior Court clerk, the trial judge and the Court of Appeal all erred by creating and enforcing upon appellant non-existent law!

⁴ *The vexatious litigant law's intent is to create a separate and inferior segment of society (ie, people who cannot afford counsel who lose too many cases) through intentional disparity of treatment. Focused and intentional judicial execution of disparity of treatment should be evident from this case. The trial judge could not be bothered stating a reason beyond the vexatious litigant label for denial[EX C]. The appellate justice made one conclusory decision: the vexatious litigant law vacated CCP § 428's mandate! [EX D]*

As a matter of fact and law, appellant was not initiating any new litigation, but rather, was carrying forward the mandate of CCP § 428.50 by bringing his mandatory cross-claims into an already pre-existing action. (An action which appellant did not commence!! And an action which is before the Courts of California **only** because of the appalling falsifications and perjury of Persolve's counsel regarding appellant's [*10] Nevada citizenship.)

In summary then, the fundamental right this Court is asked to vindicate is that **all litigants - even unequally-treated persons deemed vexatious litigants - have a fundamental right completely to defend themselves.** Ultimately, even if the defense through cross-claim seems ill-advised, stupid or un-meritorious, the jury or judge deciding the case will recognize that.

Nevertheless, the right to present a complete defense is an essential and foundational Constitutional right. No 6th Amendment right to a fair trial (with the ability to put on a complete defense) is abrogated when the matter before the court is civil in nature. Likewise the 14th Amendment's guarantees of due process and equal protection (apropos to presenting a cross-claim to sustain a defense) cannot be constrained just because -on some other occasion, in some other case, the defendant was unsuccessful and is required to seek a pre-filing order before initiating his own new claims.

The issue of the right completely to defend oneself has been decided:

Every civil litigant "has the right to seek affirmative relief by cross-complaint and to assert all available defenses."

Karz v. [11] Mecham (1981) 120 Cal. App. 3rd Supp. 1, 5

b. Denial of Right to Proceed on Appeal was Error

The basis upon which CCP 391(a) defines litigation and applies CCP § 391.7 to appellate proceedings was analyzed in [*Mahdavi v. Superior Court* \(2008\) 166 Cal. App. 4th 32](#). *Mahdavi* decided that a person who has been determined to be a vexatious litigant in prior litigation **cannot be required to seek leave of court before filing an appeal** in a case in which he or she was the defendant. (*Ibid.* 37):

"We hold that a court may not require a person who has been determined to be a vexatious litigant in prior litigation to seek leave of the court before he may file an appeal in a case in which he is the defendant."

Also, the *Mahdavi* court explained, "A defendant who appeals an adverse ruling is not filing 'new' litigation or 'maintaining' litigation, but rather, is attempting to 'undo' the results of litigation that has been instituted against him or her." (*Ibid.* 41)

This statement also comports and precisely fits into the denial of appellant's ability to proceed on cross-complaint which is at issue here: the cross-claim is not [*12] seeking to initiate new litigation, **"but rather, is attempting to 'undo' the results of litigation that has been instituted against him or her."** (*Ibid.* 41) To reiterate, appellant is not seeking any other right than completely to defend himself against a corrupt collection agency.

The *Mahdavi* court concluded further that the purpose of CCP § 391.7 would not be served by imposing its limitations on a defendant, even though that individual had previously brought frivolous claims against others. (*Mahdavi*, at p. 42)

"even if the defendant has abused the judicial system in the past as a plaintiff, the defendant must be permitted to defend himself as any other defendant would."(*ibid*)

Upon these grounds established by *Mahdavi* - appellant prays to proceed on appeal before this Honorable Court - so as to obtain leave to pursue his valid defenses against Persolve and the others who stole and abused his identity and created debts in his name.

c. Great Significance to the People of California

The reality of the vexatious litigant law is that just the mere insinuation of it distracts from all merit based resolution of any case whenever [*13] **it is raised to smear a litigant's efforts to proceed upon the facts and law.** This is

demonstrated in the non-chalant way both the trial court and the Court of Appeal disregarded appellant's right to defend himself [EXHIBITS C, D]. (IE, without even a reasonable analysis of why - or by what rule - appellant should be deprived the fundamental 6th and 14th Amendment rights to protect his money and property through his right to cross-claim in an action which he did not initiate.)

Regardless of appellant's vexatious litigant status, his right to protect his rights and property must never be impaired. To impair a party's right to defend herself or himself completely is a summary deprivation of fundamental rights, without recourse, which blatantly deprives all such similarly situated defendants of Constitutionally protected rights as articulated in both the 6th and 14th Amendments to the U.S. Constitution.

This honorable Court has the opportunity to rectify this improper and incorrect application of the law as has occurred in this case. (and to reflect the inherent inequality of the vexatious litigant law - constraining the poor (who cannot afford counsel) and the under educated [*14] (who cannot win cases) BUT emboldens wealthy attorneys and well educated judges to deny and vacate rights without explanation!!).

d. Judicial Disdain for those Deemed Vexatious

In reality, the vexatious litigant law allows judicial officers and the Court of Appeal to make improper decisions with impunity. This occurs because those deemed vexatious are deprived of all recourse fully to articulate their grievances (ie, if the lone judicial officer reviewing the application to proceed doesn't feel like applying the law [EXHIBIT D], then the ability to proceed dies without any explanation or further appeal).

The truth is even more unpleasant and is fraught with judicial disdain for those deemed vexatious. That judicial hatred and disregard for persons deemed vexatious is very readily seen in numerous appellate decisions. An example from many:

From [*Luckett v. Panos \(2008\) 161 Cal.App.4th 77, 91.*](#)

"To be sure, of course, many vexatious litigants probably do suffer from some sort of mental disorder, a fact that trial court staff around the state would appear to have first hand knowledge."

Here, the justice writing that remark demonstrates (likely [*15] without any medical training) his amateur analytic psychiatric skills - as well as -knowledge based on hearsay psychological assessments made by unknown anonymous court staff (likewise, court staff are not persons who are known to possess extensive psychiatric training). Such haughty **judicial arrogance** towards persons whose only actually demonstrated impairment is lack of lawyers' skills (and / or lack of funds to wear Gucci or Armani to court) is the **absurd reality** which stems from - and currently defines - the vexatious litigant law.

Ultimately, courts are charged with establishing substantial justice between the parties - irrespective of their mental capabilities or legal expertise. The vexatious litigant law merely compromises and defeats this goal of fairness.

Appellant suggests that this case is a proper example of an opportunity for this Honorable Court to rectify the improper use of the vexatious litigant law to constrain rights based solely on the vexatious litigant status which is inapplicable to defendants / respondents.

The statewide importance is to create uniformity in the application of the vexatious litigant rules, such that persons are not deprived [*16] of the remedy of protecting their rights and property by all available means. (*Karz*)

d. Conclusion

The vexatious litigant law need be reviewed, because it no longer fulfills its purpose of curtailing unmeritorious litigation. Instead, the vexatious litigant law has become an unconscionable weapon in attorney and judges' arsenals to waste un-represented litigants' effort, so as to deflect focus from the actual and meritorious substance of an action.

Appellant would pray further opportunity fully to brief these issues and further to provide evidence of the reality of irrational judicial disdain which impairs this appellant's ability effectively to protect his rights and property.

Verification

I declare under penalty of perjury, under the laws of the State of California, that the facts related here are true of my own personal knowledge. Signed at Pendleton OR.

Respectfully,

Dated November 30, 2015 /signed electronically/ Peter Szanto

WORD COUNT

The number of words in this petition is 3178 as counted automatically by the Microsoft Word Program which was used to compose it.

PROOF of SERVICE

1. My name is Susan Bier, [*17] I am over 18 years and not a party to this action.
2. My business address is P. O. Box 10451, Newport Beach, California 92658.
3. On the date indicated below, I placed the within of Petition for Review into an envelope addressed to:

 Persolve, LLC - 9301 Corbin Avenue, Suite 1600
 Northridge, CA 91324
4. On the date indicated below, I placed the within of Petition for Review into an envelope addressed to: Court of Appeal, **4th District Div 3**, 601 W. Santa Ana Blvd. Santa Ana, California 92701
5. On the date indicated below, I placed the within of Petition for Review into an envelope addressed to
Superior Court in Orange County
700 Civic Center Drive West, Santa Ana, CA 92701
6. On the date indicated below, I placed the within of Petition for Review into an envelope addressed to the Office of the Attorney General - 1300 "I" Street
Sacramento, CA 95814
7. I sealed those envelopes and affixed thereto sufficient first class postage to assure delivery.
8. I then entrusted said envelopes to a uniformed member of the United States Postal Service.
9. Said mailing was accomplished in Orange County CA, where I am employed.
10. [*18] I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Signed at Irvine, California

November 30, 2015 /signed electronically/**Susan Bier**

[SEE EXHIBIT A IN ORIGINAL]

[SEE EXHIBIT A IN ORIGINAL]

[SEE EXHIBIT B IN ORIGINAL]

[SEE EXHIBIT C IN ORIGINAL]

[SEE EXHIBIT D IN ORIGINAL]

[SEE EXHIBIT E IN ORIGINAL]