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Court of Appeal, Second District, Division 2, California.

Yunuen CAMPOS, Plaintiff and Respondent,

v.

John M. KENNEDY et al., Defendants and Appellants.

B293745

I

Filed 3/17/2020

APPEAL from orders of the Superior Court of Los Angeles County. [Michael P. Linfield](#), Judge. Affirmed in part and reversed in part. (Los Angeles County Super. Ct. No. BC518446)

Attorneys and Law Firms

LA Superlawyers Inc. and [William W. Bloch](#) for Defendants and Appellants.

Magnanimo & Dean, [Lauren A. Dean](#) and [Frank A. Magnanimo](#) for Plaintiff and Respondent.

Opinion

[ASHMANN-GERST](#), J.

*1 This is the second appeal involving these parties. As set forth in our first opinion (*Campos v. Kennedy* (Feb. 13, 2018, B266663) [nonpub. opn.] (*Campos I*)), plaintiff and respondent Yunuen Campos (Campos) brought an action against defendants and appellants John M. Kennedy, M.D. (Dr. Kennedy) and John M. Kennedy, M.D., Inc. (collectively the Kennedy defendants) and Kindred Healthcare Operating, Inc. and KND Development 53, LLC, doing business as Kindred Hospital South Bay (collectively Kindred) after Dr. Kennedy sexually assaulted her at work. Prior to trial, Campos entered into a good faith settlement with Kindred for \$247,500. Following trial, the jury found in favor of Campos

and awarded her \$200,000. The trial court then awarded Campos attorney fees.

In *Campos I*, we affirmed the judgment, but remanded the matter for further proceedings related to the attorney fee award. (*Campos I*, *supra*, B266663, at p. 18.)

Following remand, the trial court again awarded Campos attorney fees, and the Kennedy defendants again appeal, challenging four trial court orders relating to the award of attorney fees to Campos. The gravamen of their claim is that they are entitled to an offset, pursuant to [Code of Civil Procedure section 877](#),¹ for the settlement reached between Campos and Kindred. Once that offset is applied, Campos recovered nothing from the Kennedy defendants. Because she recovered nothing, she is not the prevailing party and is not entitled to attorney fees. Separately, they argue that the trial court erroneously awarded Campos attorney fees associated with the prior appeal.

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

The Kennedy defendants have not shown that they are entitled to an offset. Accordingly, Campos is the prevailing party and entitled to attorney fees from them. It follows that we affirm the trial court orders granting Campos's motion for an award of attorney fees with a multiplier and denying the Kennedy defendants' motion to strike and motion for an offset.

However, Campos was not entitled to recoup attorney fees incurred in the prior appeal. Accordingly, we reverse the trial court order awarding Campos attorney fees after the appeal in *Campos I*.

FACTUAL AND PROCEDURAL BACKGROUND

Prior Appeal

"On April 10, 2013, Campos, a cardiac stenographer, was assigned to work at Kindred Hospital South Bay, where she had only worked three times. [Dr.] Kennedy was working there as a cardiologist." (*Campos I*, *supra*, B266663, at p. 2.) After Campos performed an imaging test on one of defendants' critically ill patients, Dr. Kennedy sexually assaulted Campos. (*Ibid.*)

“Campos sued [the Kennedy defendants and Kindred].” (*Campos I, supra*, B266663, at p. 3.) Her second amended complaint (SAC), the operative pleading, alleged: (1) claims for common law battery, common law assault, and sexual battery against the Kennedy defendants; (2) claims for negligent supervision and retention against Kindred; (3) violations of the Ralph Civil Rights Act and the Tom Bane Civil Rights Act against Kindred and John M. Kennedy, M.D., Inc.; and (4) gender violence and intentional infliction of emotional distress against all defendants. (*Campos I, supra*, B266663, at p. 3, fn. 2.)

*2 Campos and Kindred settled for \$247,500, and on January 12, 2015, Kindred filed a motion for good faith settlement. On February 23, 2015, the trial court granted Kindred's motion for good faith settlement.

Trial began on April 20, 2015. That jury deadlocked, and the trial court declared a mistrial. A second trial commenced in June 2015. The jury found in favor of Campos and against the Kennedy defendants on the three causes of action it was asked to decide—sexual battery, violation of the Ralph Civil Rights Act (Civ. Code, § 51.7), and gender violence (Civ. Code, § 52.4). The jury awarded Campos \$200,000 damages, to which the trial court added a \$25,000 statutory penalty pursuant to Civil Code section 52, subdivision (b)(2). (*Campos I, supra*, B266663, at p. 3.)

Judgment was entered on July 8, 2015.

On August 28, 2015, Campos moved for attorney fees pursuant to Civil Code sections 52, subdivision (b)(3), and 52.4, subdivision (a).

On September 4, 2015, the Kennedy defendants filed a notice of appeal from the judgment.

On September 22, 2015, Dr. Kennedy filed an opposition to Campos's request for attorney fees. In that opposition, Dr. Kennedy, for the first time, raised the issue of an offset pursuant to section 877.

On October 28, 2015, the trial court granted Campos's request for attorney fees, awarding her \$2,924,830. (*Campos I, supra*, B266663, at p. 2.) An amended judgment was filed that same date, adding the attorney fees and costs. The Kennedy

defendants filed a notice of appeal from the trial court order and amended judgment on December 4, 2015.

On February 13, 2018, we affirmed the judgment in favor of Campos, but reversed the attorney fee order and remanded “the matter to the trial court with directions to conduct further proceedings to determine whether a multiplier should be used to enhance the lodestar amount of fees.” (*Campos I, supra*, B266663, at p. 2.) In so ruling, we did not determine whether defendants were entitled to an offset; rather, we only held that the trial court did not have jurisdiction to reduce the judgment to zero because an appeal was pending. (*Campos I, supra*, B266663, at pp. 13–14.) We also held that the parties were to bear their own costs on appeal. (*Campos I, supra*, B266663, at p. 18.)

Instant Appeal

Following our decision in *Campos I*, Campos filed two motions for attorney fees: (1) Motion for attorney's fees following appeal; and (2) Motion for an Award of a Multiplier Following Remittitur. Dr. Kennedy filed both an opposition to Campos's motion for attorney fees following appeal and a motion to strike her supplemental motion for attorney fees. And the Kennedy defendants filed a motion to compel acknowledgement of satisfaction of judgment by way of offset.

After entertaining oral argument on all four related motions, the trial court granted Campos's two motions and denied the Kennedy defendants' motion and Dr. Kennedy's motion. In so ruling, the trial court awarded Campos attorney fees in the amount of \$2,412,984.75 for work relating to the underlying action. Regarding Campos's request for attorney fees associated with *Campos I*, the trial court awarded Campos \$125,473.60. The trial court denied the Kennedy defendants' motion to compel acknowledgment of satisfaction of the judgment by way of offset.

*3 A second amended judgment was entered, and the Kennedy defendants' timely appeal ensued.

DISCUSSION

I. Whether the Kennedy defendants are entitled to an offset

The Kennedy defendants argue that the trial court committed reversible error when it found that they were not entitled to an offset pursuant to [section 877](#). According to the Kennedy defendants, they were entitled to an offset for the settlement reached between Campos and Kindred. Once that offset is applied, Campos recovered nothing from the Kennedy defendants. Because she recovered nothing, she is not the prevailing party and is not entitled to attorney fees.

A. The issue of offset was not decided in *Campos I*

The parties dispute whether we decided this issue in *Campos I*. We did not. While the issue of offset was raised in *Campos I*, we made no finding as to whether the Kennedy defendants were entitled to an offset for the settlement between Campos and Kindred. All we noted was that the trial court had no authority to grant the Kennedy defendants an offset while their appeal was pending. (*Campos I*, *supra*, B266663, at p. 14.) Because we did not make any decision regarding the propriety of an offset in *Campos I*, we reach the merits of the Kennedy defendants' argument here.

B. Standard of review

A defendant seeking offset has the burden of proving the offset. (*Textron Financial Corp. v. National Union Fire Ins. Co.* (2004) 118 Cal.App.4th 1061, 1077, overruled on other grounds in *Zhang v. Superior Court* (2013) 57 Cal.4th 364, 382.) "We generally review a ruling granting or denying a [section 877](#) settlement credit under the deferential abuse of discretion standard." (*Wade v. Schrader* (2008) 168 Cal.App.4th 1039, 1044 (*Wade*)). "To the extent that we must decide whether the trial court's ruling was consistent with statutory requirements, we apply the independent standard of review." (*Ibid.*)

C. Relevant law

[Section 877](#) provides, in relevant part, that "a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment" that is "given in good faith before verdict or judgment [as to] one or more of a number of tortfeasors claimed to be liable for the same tort, or to one or more other co-obligors mutually subject to contribution rights" shall "reduce the claims against the others in the amount stipulated by the release, the dismissal or the

covenant, or in the amount of the consideration paid for it whichever is the greater." ([§ 877, subd. \(a\).](#))

Thus, [section 877, subdivision \(a\)](#), governs offsets for pretrial settlements reached with either joint tortfeasors who are allegedly liable for the same tort, or with co-obligors who are mutually subject to contribution rights. (*Ehret v. Congoleum Corp.* (1999) 73 Cal.App.4th 1308, 1318.) "[T]he relevant language of [section 877](#)[, subdivision] (a) ... presupposes the existence of multiple defendants jointly liable for the same damages." (*Hoch v. Allied-Signal, Inc.* (1994) 24 Cal.App.4th 48, 63.)

Regardless of the theory of liability, [section 877](#) applies where the plaintiff suffers one indivisible injury. (*Kohn v. Superior Court* (1983) 142 Cal.App.3d 323, 329 (*Kohn*)). That is because the fundamental purpose of [section 877, subdivision \(a\)](#), is to "preclude a double recovery arising out of the same wrong and encourage settlements." (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 517.) "[N]onsettling defendants are entitled, as a matter of right, to reduce their liability to a plaintiff in the amount of the credit provided by [section 877](#)." (*Wade, supra*, 168 Cal.App.4th at p. 1046.) "[I]f a plaintiff's settlement completely offsets a damage award against a nonsettling joint tortfeasor or co-obligor, 'it reduces the judgment to zero by operation of law.' " (*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1333.)

*4 Notably, our Supreme Court has recognized that the drafters of [section 877](#) "did not use the narrow term 'joint tortfeasors,' they used the broad term 'tortfeasors claimed to be liable for the same tort.' " (*Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 302.) But, [section 877.6](#), which governs hearings on the issue of a good faith settlement, does use the term "joint tortfeasors." Therefore, courts have construed the reference to "joint tortfeasors" in [section 877](#) quite broadly. (See, e.g., *Gackstetter v. Frawley* (2006) 135 Cal.App.4th 1257, 1272.)

D. Analysis

Applying these legal principles, we conclude that the trial court did not err when it determined that the Kennedy defendants were not entitled to an offset for Kindred's settlement with Campos.² There were separate and distinct wrongs committed by the Kennedy defendants and Kindred. Campos's claims against the Kennedy defendants stemmed

from Dr. Kennedy's intentional sexual assault upon her; her claims against Kindred, however, were based upon Kindred's negligent supervision and retention. In fact, Campos sought damages against Kindred based upon its failure to conduct an adequate investigation of Campos's complaint and its retaliatory failure to return Campos to work following her complaint about Dr. Kennedy. Notably, Campos did not seek economic damages from the Kennedy defendants, damages that would have been recoverable against Kindred for refusing to return her to work.

2 We reach this result without deciding whether the Kennedy defendants are barred from raising this issue.

The Kennedy defendants' reliance upon *Kohn, supra*, 142 Cal.App.3d 323 is misplaced. In that case, during escrow, the defendant real estate broker ordered a termite inspection. After escrow closed, the plaintiffs discovered moisture problems, which led to the discovery that there had been a fire and repairs made several months before the sale, which had not been disclosed. The plaintiffs sued the real estate broker for fraud, the construction company that repaired the damage after the fire for negligence, the company that prepared the termite report for negligence, and all of the defendants for conspiracy to conceal the fire damage. (*Kohn, supra*, at pp. 325–326.) Prior to trial, the plaintiffs settled with the construction company and the termite inspection company. The real estate broker challenged dismissal of its cross-complaints for indemnity against the two settling defendants, arguing that section 877, subdivision (b), did not apply because the broker and the settling defendants were not “ ‘claimed to be liable for the same tort’ ” inasmuch as the broker was sued for fraud whereas the construction company and pest control company were sued for negligence. (*Kohn*, at p. 328.) The court concluded that section 877 applied because “there was but one injury, purchase of a house which was worth less than plaintiffs believed. [Citation.] The alleged tortious activities by the contractor, pest control inspector and seller were not independent, but combined to create one indivisible injury which took place when the sale was consummated.” (*Kohn*, at p. 329.)

Here, by contrast, as set forth above, there were separate injuries, not one. And while everything can be traced back to Dr. Kennedy's sexual assault of Campos, that does not compel

the conclusion that the Kennedy defendants are entitled to an offset for Kindred's settlement with Campos.

*5 It follows that the trial court rightly determined that Campos was the prevailing party and therefore entitled to recoup attorney fees from the Kennedy defendants.

II. The trial court erroneously granted Campos attorney fees in connection with the appeal in *Campos I*

Defendants argue that the trial court erred in awarding Campos attorney fees associated with the appeal in *Campos I*. After all, we reversed the original attorney fee award. And, we expressly held that the parties were to bear their own costs on appeal.

We agree. In *Campos I*, we expressly held that that the parties were to bear their own costs on appeal. And we did so because Campos did not prevail on appeal—while we did hold that Campos was the prevailing party in the underlying litigation against the Kennedy defendants and that she was entitled to attorney fees, we also reversed the attorney fee award and remanded the matter for further proceedings. Under these circumstances, Campos was not entitled to recoup attorney fees associated with the appeal in *Campos I*.

It follows that the trial court's order granting Campos's motion for attorney fees after appeal is reversed.

DISPOSITION

The trial court's order granting Campos's motion for attorney fees and a multiplier is affirmed. The trial court's order denying the Kennedy defendants' motion to strike Campos's motion for an award of a multiplier is affirmed. The trial court's order denying the Kennedy defendants' motion for an offset is affirmed. The trial court's order awarding Campos attorney fees after the appeal in *Campos I* is reversed. Parties to bear their own costs on appeal.

We concur:

LUI, P. J.

CHAVEZ, J.

[REDACTED]

Campos v. Kennedy, Not Reported in Cal.Rptr. (2020)

All Citations

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