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Appellate Reports

CONTINGENCY FEES AFTER CLIENT TERMINATION; ALSO, THE CONSTRUCTION-RELATED ACCESSIBILITY STANDARDS COMPLIANCE ACT AND PROHIBITED RETALIATION AGAINST WHISTLE BLOWERS

Contingency fees after client termination; ratification decided on summary judgment; economic duress

Chong v. Mardirossian Akaragian LLP
(2026) __ Cal.App.5th __ (Second Dist., Div. 5)

Chong retained Mardirossian to represent him in a difficult personal-injury action, after Chong suffered catastrophic injuries sustained while under the influence of drugs; he parked his car in traffic lanes on the 134 Freeway at 4:20 a.m., fell asleep, and was rear-ended.

After a failed mediation, Mardirossian continued to negotiate with the defendant, who ultimately agreed to tender its \$6 million liability coverage, and a settlement for \$6,015,000 was reached. A final settlement agreement was then prepared for Chong's signature by May 26, 2022.

Chong's stepfather then brought in attorney Eric George to evaluate the settlement. On June 13, 2022, George advised Mardirossian that plaintiff's family "cannot justify going forward" with the settlement because, after the payment of outstanding liens and the firm's contingency fee, the residual amount left for plaintiff "does precious little" for him "as a practical matter." George reiterated the stepfather's directive that the insurance liens be negotiated down to lower amounts before any settlement agreement would be signed.

Throughout the rest of June 2022, Mardirossian sent George several missives explaining its view that taking the case to trial would likely result in a defense verdict or a small verdict with a large comparative fault allocation to Chong, and it was accordingly in his best interests to accept the settlement and allow the firm to negotiate the liens downward (which it agreed to do.)

On July 20, 2022, George advised

Mardirossian that Chong was terminating him. Chong signed a substitution of counsel on August 19, 2022, identifying George as his new attorney in the personal-injury case.

On August 9, 2022, the defendant filed a motion to either enforce the settlement agreement or to continue the trial to allow the defendant to file a cross-complaint for specific performance and a motion for summary judgment on that claim. The motion was set to be heard on October 4, 2022.

On August 19, 2022, Chong and George accepted the settlement agreement. Mardirossian's fee was put into a blocked account, pending resolution of the firm's claim to a contingency fee.

On April 4, 2023, Chong (represented by George), filed a declaratory relief action seeking a judicial determination of how much he had to pay Mardirossian on a quantum meruit theory. Mardirossian filed a cross-complaint seeking the full contingency fee. While the action was pending, George obtained significant reductions from the lienholders.

On January 9, 2024, Mardirossian moved for summary judgment, arguing that it was entitled to the full contingency fee because Chong had ratified the settlement effective on the date the settlement was reached, which meant that Mardirossian had been discharged after the settlement was reached and the contingency matured.

Chong opposed, arguing that his ratification was not "truly voluntary" because he lacked no real choice but to approve the settlement. The trial court granted the motion and awarded Mardirossian its full contingency fee plus pre-judgment interest. Chong appealed. Affirmed.

The attorney-client relationship, insofar as it concerns the authority of the attorney to bind his client by agreement

or stipulation, is governed by the principles of agency. Just as a principal can ratify an agent's unauthorized act by approving that act after the fact, so too can a client-principal ratify an attorney-agent's unauthorized settlement by approving that settlement after the fact. An agent ratifies his principal's prior, unauthorized act by adopting that act in some manner, which has the effect of retroactively treating the agent's unauthorized act as if it had been originally authorized by the principal.

An intent to adopt an agent's prior act will be inferred – and ratification will be implied – when a principal "voluntarily accepts the benefits of the unauthorized transaction"; critically, the principal's acceptance of *any* benefit of the prior act constitutes an implied ratification because any other rule would allow the principal to impermissibly "have his cake and eat it too" by taking the benefits of the agent's prior unauthorized act while simultaneously disclaiming the burdens.

A principal's ratification of his agent's prior, unauthorized act not only binds the principal to the legal consequences of that act vis-à-vis third parties who relied on the agent's act, but can also exonerate the agent from liability *to the principal* for the agent's breach of duty in engaging in the unauthorized act in the first place. But ratification exonerates the agent from liability only when that ratification is "truly voluntary" – that is, when the principal, having complete knowledge of the transaction and the power to rescind, nevertheless fails to rescind and thereby fully accepts the prior act as his own.

Ratification is not "truly voluntary" if the principal is required to accept the unauthorized act to minimize losses caused by the agent's act, or because of the agent's misrepresentation or duress.

Here, Chong claimed his ratification was not truly voluntary and that he was under “duress” because the firm’s unauthorized settlement agreement did not address the outstanding liens and because the firm’s insistence that it was still owed its contingency fee “prevented [Chong] from securing new counsel” to represent him at the upcoming trial. But this argument does not apply the legal test for “economic duress,” which holds that it is not economic duress “to threaten nonperformance of a contract, to threaten to withhold a legal right for the enforcement of which a person has an adequate legal remedy, or to forego legal remedies for business reasons.”

Chong’s claim that there are triable issues of fact as to whether Mardirossian performed its obligations under the retainer and on the reasonable value of the legal services the firm provided under a quantum meruit theory of recovery is misplaced. “Because the undisputed facts establish that plaintiff ratified the settlement agreement, that ratification relates back to the May 2022 date the settlement agreement was reached – such that there is no need to assess the reasonable value of the firm’s services because the firm is entitled to its full contingency fee, as it had obtained a settlement while still representing plaintiff.”

The Construction-Related Accessibility Standards Compliance Act; whether disclosure of attorney’s fees claimed is subject to the attorney-client privilege:

Johnson v. Rubylin, Inc. (2025) _ Cal. App.5th __ (Sixth Dist.)

The Construction-Related Accessibility Standards Compliance Act (Act), Civil Code sections 55.51–55.545, entitles certain defendants in construction-related accessibility suits to a stay and an “early evaluation conference” (hereafter, “early evaluation conference” or “conference”). (§ 55.54, subd. (b)(1).) If a qualified defendant so requests, the trial court must grant a 90-day stay of the proceedings (*id.*, subd. (d)(1)), schedule a conference

(*id.*, subd. (d)(2)), and direct the plaintiff to file with the court and serve on the defendant a statement that includes the amount of damages claimed and “[t]he amount of attorney’s fees and costs incurred to date, if any, that are being claimed” (§ 55.54, subd. (d)(7)).)

Scott Johnson filed a complaint against Rubylin, Inc. (Rubylin), which owns a restaurant in Milpitas, alleging the presence of accessibility barriers. Rubylin requested that the trial court schedule an early evaluation conference. The court stayed the proceedings, scheduled the conference, and ordered Johnson to serve and file a statement containing the information required by section 55.54(d)(7). Johnson filed a statement under the statute but objected to disclosure of any information about the attorney fees and costs he had incurred. He did not include this information in his statement.

Rubylin sought sanctions against Johnson for his noncompliant statement. After a hearing, the trial court sanctioned Johnson under section 55.54, subdivision (e)(1). The court instructed Johnson to elect between sanctions in the form of either a ruling that the matter could proceed but attorney fees would not be recoverable or dismissal of the suit with prejudice. Johnson chose dismissal of the suit, and the court dismissed his suit with prejudice. Affirmed.

Johnson argues that his refusal to disclose the amount of attorney fees was justified because the information is protected by the attorney-client privilege, as articulated by the California Supreme Court in *Los Angeles County Board of Supervisors v. Superior Court* (2016) 2 Cal.5th 282 (*LACBS*).

In *LACBS*, the Supreme Court considered “whether invoices for work on currently pending litigation sent to the County of Los Angeles by an outside law firm are within the scope of the attorney-client privilege, and therefore exempt from disclosure under the California Public Records Act (PRA).

The Supreme Court decided that, while “the attorney-client privilege does not categorically shield everything in

a billing invoice from PRA disclosure,” “[t]he privilege ... protects the confidentiality of invoices for work in pending and active legal matters.” Nevertheless, the Court cautioned that “the contents of an invoice are privileged only if they either communicate information for the purpose of legal consultation or risk exposing information that was communicated for such a purpose.”

Unlike the PRA, which “expressly mak[es an] exception[] to disclosure for privileged communications” the Act at issue here contains no similar language. Indeed, section 55.54(d)(7) plainly directs the plaintiff to disclose to the defendant the claimed amount of attorney fees and costs incurred. Neither section 55.54(d)(7) nor the remainder of the Act includes any privilege-based exception to the disclosure obligation.

The Act contains no indication that the Legislature intended the attorney-client privilege to apply to the early evaluation conference. To the contrary, the Legislature expressly provided for the conference to allow the parties to engage in settlement discussions and to facilitate resolution of the dispute. As part of those procedures, it required plaintiffs to disclose the amount of claimed attorney fees and costs.

Not only does the statute lack a textual basis for application of the attorney-client privilege, doing so would frustrate the legislative purpose of promoting settlement of these disputes. Given the critical differences between the PRA and the act with respect to the attorney-client privilege, the discussion in *LACBS* on which Johnson relies lacks relevance to his claim here. The trial court properly rejected Johnson’s claim that the attorney-client privilege excused his failure to comply with the statutory directive of section 55.54(d)(7) that he disclose in advance his claimed attorney fees and costs.

Prohibited retaliation against whistleblowers

Labor Code 1102.5; effect of plaintiff's mistake in claiming the employer violated the law

Contereras v. Green Thumb Produce, Inc. (2025) _ Cal.App.5th __ (Fourth Dist., Div. 1.)

In 2020, Manuel Contreras mistakenly determined his former employer, Green Thumb Produce, Inc. (Green Thumb), was violating the Equal Pay Act (EPA; Lab. Code, § 1197.5) by paying him less than other coworkers performing similar duties. Contreras did not, however, believe that Green Thumb was paying him less because of his gender, race, or ethnicity. But the EPA does not prohibit variations in wages; it prohibits discriminatory variations in wages. This meant the EPA did not protect Contreras from the wage difference of which he complained. When Contreras, relying on the EPA, described to supervisors his dissatisfaction with being paid less than others who did the same work, Green Thumb terminated his employment.

In turn, Contreras sued Green Thumb, asserting three causes of action for wrongful termination. His second cause of action was based on section 1102.5, subdivision (b), which prohibits employers from retaliating against employees who report legal violations.

At trial, the jury found in Contreras's favor on all three of his causes of action. Green Thumb filed a motion for partial judgment notwithstanding the verdict (JNOV) claiming the verdict on the whistleblower cause of action was unsupported because Contreras misunderstood the EPA, and his misunderstanding of the law could not provide a proper basis for liability under section 1102.5(b). The trial court agreed, granted the motion, and entered an amended judgment.

On appeal, Contreras challenged the JNOV ruling asserting the evidence at trial adequately supported the jury's verdict on his whistleblower cause of action. The Court agreed, finding substantial

evidence supported the jury's conclusion that Contreras had reasonable cause to believe Green Thumb violated the EPA, notwithstanding his misinterpretation of that law. It therefore reversed the JNOV ruling and directed the trial court to amend the judgment consistent with the jury's verdict.

Labor Code section 1102.5 is California's general whistleblower statute. It prohibits an employer from retaliating "against an employee for disclosing information ... to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance ... if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute."

[T]he protections of section 1102.5(b) apply only where the disclosing employee has reasonable cause to believe that the information discloses a [legal] violation. Accordingly, the relevant inquiry is not whether the conduct actually violated any specific statute or regulation, but whether the plaintiff *reasonably believed* that there was a violation.

This is not a case where Contreras claimed a violation of some unnamed statute, rule, or regulation. Instead, Contreras pointed to some legal foundation for his suspicion; namely, the EPA. Further, Contreras's misinterpretation of the law does not necessarily undermine his section 1102.5(b) claim. Section 1102.5(b) only requires an employee to have "reasonable cause" to believe that a law has been violated. There is no requirement that the employee prove an actual violation.

The test for "reasonable cause" under section 1102.5 is an objective one. While a lay employee's incorrect legal interpretation may be unreasonable under some circumstances, we see no basis to find that it will always be unreasonable. Rather, reasonableness is generally a question of fact to be resolved by a jury. Accordingly, Contreras's incorrect legal analysis does not necessarily bar his section 1102.5 claim.

Based on his discussion with a deputy labor commissioner, and his reading of the FAQ, Contreras believed Green Thumb violated the EPA. Although the deputy labor commissioner did not make a definitive determination, stating only that Green Thumb might have violated the law, it is reasonable for a lay person to give that assessment credit. After all, the Labor Commissioner enforces California's labor laws.

Contreras also told the jury that his beliefs were based on question 9 of the Labor Commissioner's "FAQs" about the EPA, which states that an employee may "file a claim if the person who earns more ... has a different job title ... [b]ecause the Equal Pay Act compares jobs that are 'substantially similar.'" Again, this question does not refer to protected classes and is therefore potentially misleading regarding the required elements of an EPA claim. Similarly, more than half of the questions in the FAQ omit sex, race, or ethnicity. The EPA's name also increases the potential for confusion, merely referencing equal pay with no mention of protected classes.

"We acknowledge that as judges with years of legal education and experience, our reading of the entire FAQ correctly reflects that the EPA only prohibits discriminatory wage variations based on sex, race, or ethnicity. But a lay person with no formal legal training could easily misinterpret the FAQ similarly to Contreras, especially when told by a deputy labor commissioner that there was a potential violation."

Since the jury could reasonably find that Contreras's belief was a reasonable, albeit a mistaken one, it was error to grant the JNOV. ♦

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