

C E R T I F I C A T E O F M A I L I N G

L.A. Superior Court Central

Civil Division

CYRUS M SANAI

VS.

HARVEY A SALTZ

BC235671

Sanai, Cyrus M.  
*Plaintiff & Plaintiff In Pro Per*  
1021 Lincoln Blvd.  
#219  
Santa Monica CA 90403

Jacobson, Russell, Saltz & Fingerman, LLP  
*Attorney for Deft/Respnt*  
Saltz, Michael J., Esq.  
10866 Wilshire Blvd., Suite 1550  
Los Angeles CA 90024

Enenstein, Russell & Saltz, L.L.P.  
*Attorney for Deft/Respnt*  
6746 Valjean Avenue  
Second Floor  
Van Nuys CA 91406

RE: *Sarai v. Saltz*, BC235671

TYPE OF MOTION: Motion for Attorneys' Fees

HEARING DATE: August 17, 2007

Defendants move for an award of attorneys' fees pursuant to 15 U.S.C. §1681n and 15 U.S.C. §1681o.

15 U.S.C. §1681n, in relevant part, provides:

§1681n. Civil liability for willful noncompliance.

- (a) In general. Any person who willfully fails to comply with any Requirement imposed under this title (15 U.S.C. §1681 et seq.) with respect to any consumer is liable to that consumer in an amount equal to the sum of ...
  
- (c) Attorney's fees. Upon a finding by the Court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the Court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion or other paper.

Further, 15 U.S.C. §1681o provides similar civil liability for negligent noncompliance.

Each and every pleading Plaintiff filed in this action included a cause of action for violation of 15 U.S.C. § 1681s-2, under the federal Fair Credit Reporting Act ("FCRA"), or state law causes of action which were controlled by and/or subservient to FCRA. In his Opposition, Plaintiff does not deny this.

Plaintiff presents only two arguments in opposition to the motion for fees. Neither has any merit.

First, Plaintiff erroneously contends that the motion violates CCP §1008. Plaintiff's argument is based on a theory that Defendants previously moved for attorneys' fees before Judge Grimes. That motion, however, was brought under CCP 1785.31, not 15 U.S.C. Section 1681n and o, so CCP Sec 1008 is not implicated.

Regardless, on June 28, 2005, the Court of Appeal (Second Dist., Division 7) issued a decision which held that all proceedings in this case after January 16, 2001 were void, and the case was remanded to the trial court "based on the state of the pleadings as of

January 16, 2001.” Judge Grimes’ ruling came after January 16, 2001, and was therefore a void proceeding. In essence, it is as if that motion and the ruling thereon never took place.

Plaintiff also argues that §§1681n and 1681o are inapplicable, because Plaintiff brought his claims under §1681s-2. Plaintiff is wrong on this point.

Section 1681n is the statute that provides a cause of action for violations for willful noncompliance “under this section,” referring to 15 U.S.C. §1681 et seq. Thus, while Plaintiff might have been alleging a violation of §1681s-2, there is no private cause of action under those sections; the statutes giving him permission to file claims are §§1681n and 1681o.

Plaintiff argues that the primary cause of action in this case arose under Civil Code §1785, and that §1785.31 contains an “asymmetrical” attorneys fees clause in favor of plaintiffs only. Pursuant to Wood v. Santa Monica, 151 CA 4<sup>th</sup> 1186 (2007) and Carver v. Chevron USA, Inc., 119 CA 4<sup>th</sup> 498 (2004), Plaintiff contends that Defendants are only entitled to attorney’s fees for “the sliver of work performed that was uniquely devoted to issues under the federal statute.” Supplemental Briefing, paragraph 1 (16-17). Plaintiff further contends that this is so because “federal law dictates that state law concerning allocation of attorney’s fees be followed.” Id. p2 (12-13). MRO Comm. v. American Tel. and Tel. Co., (9<sup>th</sup> Cir. 1999) 197 F.3d, 1276.

In this context, federal law does not dictate that state law concerning attorney’s fees be followed. Alyeska Pipeline Service Co. v. Wilderness Society et al, 421 U.S. 240 (1975), and MRO Comm. v. American Tel & Tel, *supra*, relied upon by Plaintiffs, deal with situations of diversity jurisdiction and/or where there is no underlying substantive federal statute authorizing fees. In Alyeska Pipeline Service, *supra*, the Supreme Court disapproved of the Court of Appeals creating a judicial exception to the “American rule” that the prevailing party may not, in the absence of statutory authority, recover attorney’s fees. The specific quote cited by Plaintiff is clearly not designed for a situation where, like here, a federal statute expresses the substantive policy determination that bad faith litigation conduct result in an award of attorney’s fees. The full text of the quote partially cited by Plaintiff, reads as follows:

“In an ordinary diversity case where the state law does not run counter to a valid federal statute or rule of court, and usually it will not, state law denying the right to attorney’s fees or giving a right thereto, which reflects a substantive policy of the state, should be followed.” (Emphasis added) Id.

Likewise, in MRO Comm. v. American Tel & Tel, *supra*, there was no specific “underlying substantive federal statute applicable in determining whether AT&T is entitled to attorneys’ fees incurred in defending MRO’s state law claim.” Id, at 1280.

Neither Wood v. Santa Monica nor Carrier v. Chevron USA, Inc. both *supras*, dealt with conflicting federal and state statutes regarding attorneys’ fees. Applying the “state

rule" to limit an award of fees made pursuant to 15 U.S.C. Sections 1681n and o would absolutely frustrate the legitimate substantive federal statutory policy of punishing bad faith conduct made in connection with actions under Section 1681.

It is Defendants' position that Plaintiff's entire action had no legitimate purpose, and was filed merely for purposes of harassment, and in bad faith. That much is apparent. Keep in mind, this entire case started out because Plaintiff's landlord sent a letter purporting to (lawfully) raise his rent. It contained an obvious typographical error inasmuch as it proposed a rent lower than the amount Plaintiff had been paying, even while apologizing for raising the rent. Plaintiff tried to hold Defendants to that. A dispute over rent owed led to unlawful detainer proceedings, and ultimately this lawsuit, wherein Plaintiff claimed wrongful conduct in filing the UD action against him and tarnishing his credit.

Plaintiff has been litigating this case for about seven years, all because he attempted to seize on this obvious typographical error.

This court specifically finds that this entire action has been prosecuted and maintained in bad faith and for the purpose of harassment.

Plaintiff knew at the outset that there was no merit to any of his claims. He has admitted to such in deposition. No reasonable person would have thought he had a valid lease agreement under the circumstances. Plaintiff knew he had no reasonable belief that his rent had been lowered. Thus, he has always known that he owed a legitimate debt, because he knowingly and deliberately underpaid his rent. The debt that was reported to the credit agencies was indisputably valid. Therefore, Plaintiff's action was frivolous and without merit.

Further, Plaintiff's prosecution of this matter has been malicious, as evidenced by, among other things, the altering of documents presented to the Clerk's office and the recording of illegal judgment liens with malice, and then refusing to remove them despite being ordered by the Court to do so.

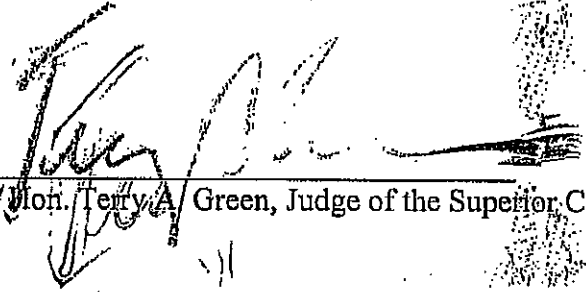
Several other Courts have bluntly noted and condemned Plaintiff's litigation tactics. It is now this Court's turn.

When this case was first assigned to Department 14, it was this Court's goal to wipe the slate clean of the prior acrimony and proceed in a civilized manner to fairly adjudicate the claims of all parties. This Court went to extreme lengths to ensure Plaintiff always had adequate time to present his claims. Every possible courtesy was provided to Plaintiff in the hopes that he would respond in kind. Instead, he has repeatedly treated opposing counsel with contempt. He has filed pleadings in bad faith with the intent to harm any and everyone who opposed him. In the 35 years this Court has been actively engaged in litigation, 20 as an attorney and 15 as a Judge, this Court has never seen such an abuse of process as the prosecution by Plaintiff of this lawsuit.

This Court specifically finds that all unsuccessful pleadings, motions, and papers filed by Plaintiff in this lawsuit were done so in connection with an action under 15 USC Section 1681, and further that these pleadings, motions and papers were filed in bad faith and with the purpose of harassment.

The Court awards attorney's fees in the amount of \$1,003,426.25.

Date: 9/6/07

  
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Hon. Terry A. Green, Judge of the Superior Court