

WEEKLY LAW RESUME™

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Civil Procedure: Award of Attorney Fees Pursuant to Civil Code section 1354 (c)

Susan J. Salehi v. Surfside III Condominium Owners' Assoc.
Court of Appeal, Second District (November 14, 2011)

This case examined who is a “prevailing party” within the meaning of Civil Code section 1354(c).

In March 2004, Susan Salehi, a licensed California attorney, purchased a condominium unit in Surfside III (“Surfside”). The condominium community is governed by the condominium’s covenants, conditions, and restrictions (“CC&Rs”) which state that the condominium association (the “Association”) “shall have the duty of maintaining, operating, and managing the Common Area of the project.”

Prior to filing the instant case, Salehi filed a separate action (the “2004 Action”) against the Association for failure to maintain and repair the common area water pipes above her unit which damaged her property and caused mold growth. In August 2005, Salehi and the Association entered into a “Settlement Agreement and Mutual Release” which included an express waiver pursuant to Civil Code section 1542.

In May 2008, Salehi, representing herself, filed a complaint alleging ten causes of action against the Association. She claimed that the Association violated the CC&Rs by failing to “appropriately maintain and repair Surfside” and to “maintain an adequate reserve fund for the replacement of the common area facilities.”

A few days before trial, Salehi dismissed without prejudice eight of the ten causes of action, because one of her experts was not available for trial due to medical reasons. Salehi thought that her expert was



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an essential witness for the eight causes of action and that the court would not grant the continuance. The trial court ultimately granted Salehi's motion to continue the trial on the remaining two causes of action.

The Association made two motions. The first motion was to recover the attorney fees incurred during its defense of the eight dismissed causes of action. The motion was made pursuant to Civil Code 1354(c). The trial court denied the Association's motion for attorney fees because it did not find the Association to have "prevailed on a practical level" under *Heather Farms Homeowner's Assn. v. Robinson* (1994) 21 Cal.App.4th 1568. The Association appealed.

The second motion was a motion in limine to exclude "all evidence of the fraud and misrepresentation which occurred prior to the signing [of] the release" in August 2005, because Salehi "released all known and unknown claims against the Association in the Settlement Agreement and Mutual Release." The trial court granted the motion in limine and denied Salehi's motion to tax costs. Salehi appealed.

The Appellate Court reversed the order denying the Association's motion for attorney fees. The Court concluded the trial court abused its discretion in its determination of who was the prevailing party. The Court noted that the record did not suggest that Salehi would have prevailed on the merits and it did not appear that she was ready to go forward procedurally and prove her case. The Court distinguished *Heather Farms*, supra, 21 Cal.App.4th 1568. In *Heather Farms*, there was not a 'prevailing party' within the meaning of section 1354 because the dismissal was part of a negotiated global settlement. Here, the dismissals were based upon Salehi's misguided reasoning. Salehi could have moved for a continuance on all causes of action, but did not. The Association "realized its litigation objectives" when Salehi dismissed the eight causes of action. *Santisas v. Goodin* (1998) 17 Cal.4th 599, 622. The Association was ready to defend the case and should not be punished for what the trial court characterized as Salehi's "poor decisions."

The Appellate Court affirmed the trial court's ruling of the motion in limine. The Court concluded that the 2005 release barred Salehi's two remaining causes of action, citing *Winet v. Price* (1992) 4 Cal.App.4th 1159. Like *Winet*, Salehi was represented by counsel during negotiation of the release. Since Salehi was an attorney, she should have understood the waiver. When Salehi signed the release, she was

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aware of possible additional claims. The Court also said “it is significant that the parties were able to, and did, fashion language memorializing their agreement to preserve identified claims from the operation of the release when such was their intention...” *Id.*, at p. 1168. Here, the release expressly did not apply to some of Salehi’s obligations.

The Appellate Court affirmed the trial court’s denial of Salehi’s motion to tax costs, reasoning that the Association was entitled to costs on the dismissed causes of action. Furthermore, Salehi failed to provide the Court with a supporting legal argument with references to the record.

COMMENT

This case demonstrates that a party who is not ready to proceed to trial and dismisses most of its causes of action rather than seek a trial continuance, might not be protected from attorney fees liability.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/B224263.PDF](http://www.courtinfo.ca.gov/opinions/documents/B224263.PDF)

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