



Cussler v. Crusader Entertainment

2010 | Cited 0 times | California Court of Appeal | September 8, 2010

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INTRODUCTION

Plaintiffs and appellants Clive Cussler and various affiliated entities¹ (collectively Cussler) appeal two orders granting defendant and respondent Crusader Entertainment, LLC (Crusader) attorney fees. We reverse the orders.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Underlying Judgment and the Commencement of Cussler I

This dispute arises out of a contract between Cussler and Crusader for the production of films by Crusader based on books written by Cussler. Both parties sued each other for breach of contract and other causes of action. After a 14-week trial, the jury returned a special verdict rejecting most of the causes of action asserted by both sides. The jury, however, found that Cussler breached the implied covenant of good faith and fair dealing and that Crusader incurred damages in the amount of \$5 million as a result of that breach. On May 15, 2008, the trial court entered a judgment for \$5 million in favor of Crusader. Both Cussler and Crusader appealed that judgment (Cussler I).

2. Cussler II

While Cussler I was pending, the trial court issued an order awarding Crusader \$13,949,131 in attorney fees (Fee Order). Cussler appealed the Fee Order (Cussler II). Cussler II has been fully briefed.

3. Crusader's Enforcement of the Judgment and Cussler III

On July 20 and 22, 2009, Crusader collected the sum of \$20,907,200.14 from Cussler.

On October 22, 2009, the trial court issued an order (Second Fee Order) awarding Crusader \$150,000



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in attorney fees for its post-judgment enforcement efforts. Cussler appealed the Second Fee Order (Cussler III). The parties have not yet filed their briefs in Cussler III.

4. Cussler I Opinion

On March 3, 2010, in an opinion issued in Cussler I, we reversed the judgment, and remanded the matter to the trial court to determine "whether there is a prevailing party and, if so, whether that party is Cussler or Crusador." (Clive Cussler et al. v. Crusader Entertainment, LLC (Mar. 3, 2010, B208738) [nonpub. opn.])

5. Motions for Summary Reversal

On July 6, 2010, Cussler filed a motion for summary reversal and request for restitution in Cussler II. On the same date, Cussler filed a motion for summary reversal in Cussler III.

6. Consolidation

On August 18, 2010, we issued an order on our motion consolidating Cussler II and Cussler III for disposition in one opinion.

CONTENTIONS

Cussler contends that we should summarily reverse the Fee Order and the Second Fee Order. He further requests that this court order Crusader to pay restitution to Cussler in the amount of \$14,197,581--the amount collected by Crusader pursuant to the Fee Order--plus interest.

Crusader concedes that the Fee Order and the Second Fee Order should be vacated by the trial court because those orders are void in light of the opinion in Cussler I. However, Crusader argues that rather than reversing the Fee Order and the Second Fee Order, this court should dismiss Cussler's appeals from those orders as moot.

DISCUSSION

A summary reversal of an order or judgment "is limited to situations where the proper resolution of the appeal is so obvious and without dispute that briefing would not serve any useful purpose. [Citation.] Such a remedy allows for speedy determination of the appeal." (Weinstat v. Dentsply Internat., Inc. (2010) 180 Cal.App.4th 1213, 1224; accord Melancon v. Walt Disney Productions (1954) 127 Cal.App.2d 213, 215.)

This is one of those rare situations where summary reversal is appropriate. Crusader concedes that the two orders appealed from must be vacated because they are void. The only disputes are (1)



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whether this court should reverse the Fee Order and Second Fee Order or whether it should dismiss the appeals from those orders as moot; and (2) whether this court should order that Crusader pay Cussler restitution. These two issues have been fully briefed in the motions for summary reversal and oppositions to those motions. Accordingly, waiting for the briefs in Cussler III would not serve any useful purpose.

Crusader relies on cases in which the Court of Appeal dismissed pending appeals from orders relating to attorney fees as moot. (See e.g. *Kreutzer v. City and County of San Francisco* (2008) 166 Cal.App.4th 306, 312-313 fn. 3.) We agree that this court can resolve these appeals by dismissing them as moot. However, we are not required to do so.

We believe the better course in this case is to reverse the Fee Order and the Second Fee Order. The parties have each spent millions of dollars in attorney fees and consumed considerable judicial resources vigorously litigating a great number of issues. It is therefore in the interests of justice that we provide the trial court with guidance which is as specific as possible, thereby reducing the likelihood that the parties will engage in unnecessary litigation. If we were to simply dismiss the appeals as moot, there would be no guidance from this court to the trial court with respect to the Fee Order and Second Fee Order. This might cause unnecessary litigation.

We hold that the Fee Order and the Second Fee Order are void in light of the opinion in *Cussler I*, and are therefore reversed. As we directed in *Cussler I*, the trial court must determine if there was a prevailing party in this action and, if so, who that party was. The trial court's decision regarding those issues will affect its decisions regarding the amount, if any, of attorney fees that should be awarded to Crusader or Cussler and the amount, if any, of restitution Crusader should pay to Cussler. In other words, the trial court must take a new look at these issues in light of *Cussler I*. Nothing in this opinion should be interpreted by the trial court or the parties as prejudicing one side or the other regarding the issues of prevailing party, if there is one, the amount of attorney fees awarded, if any, and the amount of restitution awarded, if any.

DISPOSITION

The motion for summary reversal and request for restitution in *Cussler II* is granted in part and denied in part. The Fee Order is reversed. However, we decline to order Crusader to pay Cussler restitution. The motion for summary reversal in *Cussler III* is granted. The Second Fee Order is reversed. Each side shall bear their own costs on appeal in both *Cussler II* and *Cussler III*.

We concur: CROSKEY, Acting P. J., ALDRICH, J.

1. The other plaintiffs and appellants are Sahara Gold, LLC, Clive Cussler Enterprises, Inc. and Sandecker, RLLLP.

