Government Employees Insurance Co. v. Tower Glass

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Kalwall Corporation (Kalwall) appeals from an order awarding monetary sanctions to Government Employees Insurance Company (GEICO) and Tower Glass, Inc. (Tower Glass) based on Kalwall's failure to comply with the trial court's order compelling Kalwall to produce documents to GEICO and Tower Glass by a specific date. As we will explain, we conclude that the trial court did not abuse its discretion in awarding sanctions, and accordingly we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Kalwall is a defendant in this action filed by GEICO against various parties for alleged defects in the construction of its two-story regional headquarters building in Poway (the GEICO building). Kalwall manufactured the translucent wall panel system used in the GEICO building. GEICO alleges that the translucent wall panel system is defective in that it allows water to enter the panels, leading to premature deterioration, and that the panels emit noxious odors. Tower Glass - the subcontractor that installed the translucent wall panel system in the GEICO building - is a co-defendant with Kalwall and filed its own cross-complaint against Kalwall for breach of contract, equitable indemnity and contribution.

A. Tower Glass and GEICO Serve Requests for Production on Kalwall

In August 2006, GEICO and Tower Glass served identical requests for the production of documents on Kalwall. The documents sought by GEICO and Tower Glass included, among others, (1) those listing all projects incorporating the translucent wall panel systems that were of similar scope and type as used in the GEICO building;

(2) those concerning specific types of complaints about the translucent wall panel system;

(3) and those concerning changes to the design of the translucent wall panel system.

Many of the requests did not provide a limiting timeframe. Kalwall responded with objections to

many of the requests.

B. The Discovery Referee Recommends an Order Compelling Kalwall to Produce Documents to Tower Glass and GEICO, and Kalwall Objects to the Trial Court GEICO and Tower

Glass then filed motions to compel further responses, and Kalwall filed a motion for a protective order with the discovery referee assigned to the case. At a December 7, 2006 hearing and in a subsequent written recommendation and proposed order, the discovery referee narrowed the scope of documents that Kalwall was required to produce and limited the time frame for some of the requests to those documents dated 1996 to the present. The discovery referee recommended that Kalwall produce documents by January 4, 2007, and that any documents to which Kalwall claimed a trade secret should be produced pursuant to a protective order, which the parties should meet and confer to draft.[1]

Kalwall filed objections to the discovery referee's recommendation and proposed order with the trial court. Kalwall argued, among other things, that the discovery referee's recommendation was "overly broad, burdensome and oppressive" because a number of the requests "require[] Kalwall to either review all of its stored job files for the requested documents... or require[] Kalwall to review its stored job files for the requested documents for a ten year period of January 1, 1996 to the present." Based on a declaration submitted by Michelle MacInnis, Kalwall's manager of contracts administration, Kalwall contended that based on the fact that (1) Kalwall had performed 20,384 jobs since January 1, 1996, and (2) the files for each of these jobs would have to be reviewed, it would take 6,795 hours of document review to locate the responsive documents, or three years of one person working 40 hours per week. MacInnis claimed that because of the proprietary nature of the files, she would be required to personally review them.[2]

C. The Trial Court Adopts the Discovery Referee's Recommendation, but Reserves the Issue of the Deadline for the Document Production

After considering GEICO's and Tower Glass's responses to Kalwall's objections, the trial court issued an order on April 2, 2007, adopting the discovery referee's recommendation except for a modification of the time frame in which the document production was to be completed. The trial court ordered Kalwall to begin the document production, and it set a status conference for a few weeks in the future at which it would "hear from Kalwall regarding the timing of the production." It also stated that it wanted Kalwall to make efforts to "come up with a more creative approach" of completing the production in a timely manner.

D. Kalwall Begins a Review of a Subset of the Documents, and the Trial Court Monitors Kalwall's Progress

A status conference was held on April 26, 2007. In advance of the status conference, Kalwall

submitted a declaration from MacInnis, which stated that based on her interviews of department heads and conversations with the company's president, she concluded that "there is no system of extracting the requested information from the job files kept in storage... other than reviewing each stored file individually." MacInnis also stated that she personally had spent five hours reviewing files, and in that time she was able to review 29 files but had not located any responsive documents. At the status conference, the trial court suggested that Kalwall hire outside personnel, such as law students, to perform the review. Counsel for Kalwall stated that he would have to confer with his client about whether confidentiality concerns would foreclose that option. The court set a further status conference for May 25, 2007, at which time it expected to receive an update on the document review in order to set a deadline for completion of the production.[3]

On May 1, 2007, counsel for Kalwall sent a letter to the trial court advising that Kalwall would not be hiring outside personnel to conduct the review because (1) the documents were "extremely confidential"; (2) specialized knowledge was necessary to perform an efficient and accurate review; and (3) the documents were located in a damp, moldy, inaccessible attic space in "a remote location" and were difficult to extract from the space, subjecting outside personnel to illness or injury if they were to work there. The letter stated that Kalwall was devoting "approximately 3-5 man\woman hours a day in this endeavor as that is all Ms. MacInnis and another manager assisting her can physically tolerate at any one time."

After receiving this letter, the trial court held an ex parte hearing at the request of GEICO and Tower Glass on May 8, 2007, in advance of the already-scheduled May 25, 2007 status conference. The trial court expressed concern over "the lack of ability or maybe the lack of interest to make at least an initial attempt to move the files out to some other site." The trial court stated, "I thought I had impressed upon you enough of the urgency to get something done where you would at least have a place where you could move these to...." The trial court commented that because Kalwall has chosen to store its records in a certain manner, Kalwall would have to devote more resources to the review. Responding to the fact that Kalwall had assigned only two people to conduct the review, the trial court stated that "given the number of files that have to be gone through, it was my thought that they would consider using more resources."

E. The Trial Court Orders Kalwall to Complete Its Document Production by July 27, 2007

In advance of the May 25, 2007 status conference, Kalwall sent a letter to the trial court stating that as of the end of the day on May 17, 2007, Kalwall had expended 61 man hours and had reviewed a total of 1279 files.[4]

At the status conference, counsel for Kalwall reported that two people had been assigned to conduct the document review, and that a total of 1811 files had been reviewed. The trial court commented that it "was hoping that there would be creativity on [Kalwall's] part to solve this problem." The trial court commented, "I was frankly expecting much more creativity and much more resources devoted."

The trial court stated that "[w]hat has to happen... is there has to be more people attending to the response." It observed that with two people attending to the production, the pace was "way too slow." The trial court ordered that the production be completed by July 27, 2007, and approved the discovery referee's recommendation with the modification of the production deadline to July 27, 2007.

F. Kalwall's Petition for Writ of Mandate Is Denied

Kalwall filed a petition for a writ of mandate with this court on June 13, 2007, challenging the trial court's ruling. We summarily denied the petition. (Kalwall Corp. v. Superior Court (June 29, 2007, D051053).) G. Kalwall Starts Reviewing Documents and Requests and Extension of the Deadline, Which the Trial Court Denies

With the trial court's deadline of July 27, 2007, having passed, Kalwall appeared before the trial court on an ex parte basis on August 17, 2007, to request additional time to produce the documents.[5] Accompanying the ex parte application were the declarations of Kalwall's president, Richard Keller. Keller explained why he insisted on using Kalwall employees to perform the review,[6] and stated that only after the petition for writ of mandate was denied did Kalwall begin reviewing the files to comply with the trial court's order. Keller stated that he was personally conducting the document review, and he estimated that Kalwall would be able to produce the documents by December 31, 2007.

At the hearing, counsel for Kalwall stated that he believed Kalwall did not have an obligation "prior to an appellate review" of the trial court's order compelling discovery "to actually begin th[e] process" of responding to the request for production. Counsel for GEICO indicated that GEICO intended to seek sanctions for noncompliance with the trial court's order. The trial court refused to extend the July 27, 2007 deadline for production of the documents, and it reserved the issue of whether to impose sanctions for noncompliance with the deadline. The trial court set a hearing to be held approximately two months in the future to consider whether to impose sanctions, and the parties discussed producing the documents in phases, as they became available. The trial court directed GEICO and Tower Glass to file a notice of their motions for sanctions.

H. Tower Glass and GEICO File Motions to Impose Sanctions on Kalwall

Tower Glass then filed a motion for an award of monetary sanctions.[7] GEICO filed a motion for the imposition of issue sanctions, evidentiary sanctions, terminating sanctions and contempt sanctions, which it later amended to include a request for monetary sanctions.[8]

I. Kalwall Produces Documents Containing Redactions and Then Substantially Completes Its Production in Late December 2007

Kalwall made its first phased production of documents on August 7, 2007, and continued to produce documents in phases. In Keller's October 22, 2007 declaration filed in support of Kalwall's opposition

to the motions for sanctions, Keller stated, "in my opinion... Kalwall... has be[en] harassed by a ten year document review on what amounts to a fishing expedition.... The results of the review to date... prove that this was from the very beginning, and is today, an unwarranted intrusion into Kalwall['s] privacy and proprietary rights." Kalwall's oppositions to the motions for sanctions stated that an "IMMEDIATE CESSATION OF THE DOCUMENT REVIEW should be ordered." (Capitalization in original, emphasis deleted.)

The trial court held a hearing on the sanctions motions on November 9, 2007. Counsel for GEICO and Tower Glass brought to the trial court's attention the fact that Kalwall was redacting information from many of the documents that it produced, including the name of the owner of the project at issue in the relevant document, and the project's architect, contractor and location. Counsel for GEICO complained that "the records.. are so redacted they are useless." Counsel for Tower Glass described the documents as "totally unusable." Counsel for Kalwall represented that the redactions had been made because of "contractual provisions with several building owners" precluding Kalwall from disclosing certain information and because of "national security" issues with respect to military buildings. Counsel for Kalwall suggested that representatives from the Department of Defense or the Department of Homeland Security should appear before the court to explain the national security concerns.

The trial court questioned why Kalwall was unilaterally redacting the documents rather than producing them under the protective order. The trial court stated that it would set a hearing date to consider the redactions, review the documents in camera, and hear from any third parties who wanted to preserve the confidentiality of the documents. The trial court took the motions for sanctions under submission, setting another hearing in January 2008 to consider the matter, and stating that Kalwall should keep up the pace of production.

On December 5, 2007, Kalwall filed an ex parte application asking the trial court to modify the protective order to require all counsel to appear before the trial court prior to contacting Kalwall's past customers. At the ex parte hearing, counsel for Kalwall indicated that despite his earlier claim that the redactions to the documents were made because of pre-existing contractual provisions or national security concerns, Kalwall would be producing some, if not all, of the documents without redactions. The trial court ruled that the parties should meet and confer to try to resolve how Kalwall's past customers would be contacted, and, if necessary, Kalwall could apply again to the court for relief. Several weeks later, Kalwall brought a noticed motion for a modification of the protective order, which the trial court denied.

Kalwall continued to make phased productions of documents, including those documents that it had previously produced in redacted form,[9] and completed its production in late December 2007, except for certain litigation files concerning other lawsuits against Kalwall that it claimed to have inadvertently overlooked.[10]

J. The Trial Court Holds a Final Hearing on the Motions for Sanctions and Awards Monetary Sanctions

The trial court held a final hearing on the motions for sanctions on March 7, 2008.

At the hearing the trial court commented that "production was slow... for a time," and "I think we were dealing with a client that had a different mindset for a long time about what he thought that he should produce." The trial court identified "three things that... were evidence of an unwillingness to cooperate with the production." First, the trial court observed that even though Kalwall's objections were only to the scope of the request for production, and it must have known it would have to produce some documents, "[t]here was no stepping up to say, well, let's get that done first and let's get that done... fast." Instead, "[t]he... argument was, well, its going to take a couple of years." Second, the trial court observed that "there could have been a much more efficient review of those 20,000 files." Third, the trial court stated that "the unilateral redaction is... evidence of what I perceive to be an unwillingness to work with the way the order was crafted." The trial court took the matter under submission.

On April 29, 2008, the trial court issued a written order denying GEICO's request for issue, evidentiary, contempt and terminating sanctions, but granting GEICO's and Tower Glass's requests for monetary sanctions based on Kalwall's "failure to comply with [the] order compelling document production, dated May 25, 2007."

GEICO had submitted documentation that it expended $41,760 in fees and costs as a result of Kalwall's failure to comply with the order compelling production. The trial court cut that amount in half and awarded $20,880 to GEICO. Tower Glass had submitted documentation that it expended $35,659.50 in fees and costs as a result of Kalwall's sanctionable conduct. The trial court cut that amount in half, and awarded $17,829.75 to Tower Glass.

Pursuant to Code of Civil Procedure section 904.1, subdivision (a)(11), Kalwall filed a timely appeal from the order awarding sanctions.[11]

II DISCUSSION

A. Legal Standards Governing Imposition of Sanctions for Misuse of the Discovery Process

The trial court imposed sanctions based expressly on the fact that Kalwall failed to comply with the May 25, 2007 order compelling Kalwall to produce documents to Tower Glass and GEICO by July 27, 2007. Section 2031.300, subdivision (c) provides the authority for the trial court's imposition of sanctions on that ground. According to the statute, when the trial court makes an order compelling responses to a demand for production, "[i]f a party then fails to obey the order compelling a response, the court may make those orders that are just, including the imposition of an issue sanction, an

evidence sanction, or a terminating sanction," and "[i]n lieu of or in addition to this sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010)." (§ 2031.300, subd. (c).) Section 2023.030, subdivision (a), in turn, sets forth the guidelines for the imposition of monetary sanctions under Chapter 7.

"The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process... pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct....

If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (§ 2023.030, subd. (a).)[12]

"[S]section 2023, subdivision (b)(1), does not require a misuse of the discovery process to be willful before monetary sanctions may be imposed." (Kohan v. Cohan (1991) 229 Cal.App.3d 967, 971, italics added.) "Instead, the section allows one against whom sanctions are sought to show substantial justification to avoid the imposition of sanctions." (Ibid.)[13]

B. Standard of Review

We apply an abuse of discretion standard of review to the trial court's order imposing discovery sanctions on Kalwall. (Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants (2007) 148 Cal.App.4th 390, 401.) "Although precise definition is difficult, it is generally accepted that the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered." (In re Marriage of Connolly (1979) 23 Cal.3d 590, 598.) " ' "The term [judicial discretion] implies the absence of arbitrary determination, capricious disposition or whimsical thinking. It imports the exercise of discriminating judgment within the bounds of reason. [Par.] To exercise the power of judicial discretion all the material facts in evidence must be known and considered, together also with the legal principles essential to an informed, intelligent and just decision." [Fn. omitted.]' " (Estate of Gilkison (1998) 65 Cal.App.4th 1443, 1448, italics added, quoting In re Cortez (1971) 6 Cal.3d 78, 85-86.)

To the extent that we review the trial court's findings of fact, we apply a substantial evidence standard of review. (In re Marriage of Feldman (2007) 153 Cal.App.4th 1470, 1479.) Under this standard " ' " ' "all conflicts must be resolved in favor of the [prevailing party], and all legitimate and reasonable inferences indulged in [order] to uphold the [finding] if possible." ' " ' " (Ibid.)

C. The Trial Court Did Not Abuse Its Discretion in Imposing Monetary Sanctions

Kalwall's principal argument is that the trial court abused its discretion in imposing sanctions because it set an unrealistic deadline for Kalwall to produce the documents requested by GEICO and

Tower Glass, and then unfairly faulted Kalwall for not being able to meet that deadline. In Kalwall's view, "at no time was Kalwall trying to be difficult. Kalwall intended to complete the entire document production, and it did...," and it "certainly was not interested in knowingly and intentionally violating the court order." Kalwall states that the July 27, 2007 deadline was an "arbitrary date, that was apparently set without regard to the complexity of the task," and "[t]he time set by the trial court was completely unrealistic." Kalwall contends, "the trial court's failure to extend the time was unfair and led to the sanctions that it ultimately awarded."

Applying this argument to the applicable statutory standards, Kalwall argues that the trial court abused its discretion in imposing sanctions because Kalwall "acted with substantial justification" in not complying with the trial court's order (§ 2023.030, subd. (a)) in that compliance would have been impossible.

By deciding to impose sanctions on Kalwall for failure to comply with the June 27, 2007 deadline set forth in the May 25, 2007 order, the trial court made an implicit finding that Kalwall had not shown that it was acting with substantial justification.[14] Our inquiry is thus whether the trial court's implicit finding is supported by substantial evidence. As we will explain, we conclude it is.

As set forth above, the trial court observed repeatedly throughout the numerous hearings on this matter that Kalwall was not making sufficient efforts to gather and produce its documents in a timely and efficient manner. After impressing upon Kalwall at the May 25, 2007 hearing that "[w]hat has to happen... is there has to be more people attending to the response" and that with two people attending to the production the pace was "way too slow," the trial court then ordered Kalwall to produce the documents in approximately two months, i.e., on July 27, 2007.

During the first several weeks of those two months, Kalwall did not take any steps to move the production forward. Specifically, Kalwall admitted that it was waiting to see the results of its petition for a writ of mandate challenging the trial court's order compelling production before it took action. Only after the petition was denied on June 29, 2007, did Keller begin the task of reviewing the documents. And even then, Kalwall appears to have devoted primarily a single person to the task, i.e., Keller, despite the trial court's warning that it expected Kalwall to use more than two people to get the job done in a timely manner. Accordingly, not only did Kalwall miss the July 27, 2007 deadline, it missed it by five months.

Although Keller claimed that his concerns about confidentiality and the competence of outside personnel required him to use only Kalwall employees to review the documents, and that he alone could spare the time for the task, the trial court was entitled to discredit those claims in light of the other evidence that Kalwall was not in good faith complying with the request for production. Those other examples of a lack of good faith included (1) Kalwall's decision to unilaterally redact the documents that it produced, without being able to justify that approach and later admitting that it should not have done so, and (2) Keller's position, expressed in October 2007, long after Kalwall had

exhausted its attempts to challenge the order compelling production, that the request for production was a "fishing expedition" and "an unwarranted intrusion into Kalwall['s] privacy and proprietary rights." The trial court also was entitled to rely on its experience with Kalwall's slow response before the May 25, 2007 order to infer that the same attitude intentionally continued after the May 25, 2007 order.

In light of these facts, there was substantial evidence for the court to find that Kalwall did not act with substantial justification in failing to comply with the May 25, 2007 order to produce documents by July 27, 2007, and to find that Kalwall instead missed the deadline because of its unwillingness to comply with the trial court's order. Having determined that substantial evidence supports a finding that Kalwall did not act with substantial justification in failing to comply with the May 25, 2007 order, we conclude that the trial court was well within its discretion to impose monetary sanctions on Kalwall.[15]

D. The Trial Court Did Not Abuse Its Discretion with Respect to the Amount of Sanctions Awarded

Kalwall also argues that "the amount of money sanctioned should have been significantly lower than $38,709.75." Our inquiry is whether the trial court abused its discretion in setting the amount of the award. (Parker, supra, 149 Cal.App.4th at p. 294.)

The standards guiding the trial court's exercise of its discretion in setting the amount of the monetary sanctions award are set forth in section 2023.030, subdivision (a), which provides that a monetary sanction should be in the form of an order that the party "pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of" the discovery misuse.

In support of their motions for sanctions, Tower Glass and GEICO both submitted declarations and supporting documentation showing the attorney fees and costs they had incurred as a result of Kalwall's failure to comply with the trial court's order compelling responses to discovery. On several grounds, Kalwall objected to many of the fees claimed by Tower Glass and GEICO. The main areas of dispute were (1) whether the fees arose because of Kalwall's failure to comply with the trial court's order or were too tangentially related and (2) whether the time spent on certain tasks was excessive or whether certain tasks should not have been performed at all.

The trial court apparently credited some of Kalwall's arguments and resolved the dispute by cutting in half the amounts sought by Tower Glass and GEICO.[16] In its appellate briefing, Kalwall does not detail the reasons that it believes the trial court abused its discretion in taking this approach. Instead, Kalwall refers us to the lengthy briefing and exhibits it filed in the trial court objecting to the fees and costs claimed by Tower Glass and GEICO.[17]

We have reviewed the material contained in the record, and based on that review we conclude that the trial court reasonably responded to Kalwall's objections by cutting the fees and costs in half. (See

Parker, supra, 149 Cal.App.4th at p. 294 [concluding that the trial court was within its discretion to arrive at amount of discovery sanctions by cutting by two-thirds the amount claimed in response to the opposing party's objections].) Many of the fees claimed by Tower Glass and GEICO appear to have been incurred because of Kalwall's failure to comply with the trial court's order; however, the trial court could reasonably have concluded that some of Kalwall's objections had merit.

As the trial court was closely involved in the lengthy and numerous proceedings relating to this discovery dispute, the trial court was in the best position to determine the amount of fees and costs reasonably incurred as a result of Kalwall's unwillingness to comply with the trial court's order compelling responses to discovery. Kalwall has not established that the trial court abused is discretion in awarding sanctions in the amount of $38,709.75.

DISPOSITION

The order is affirmed.

WE CONCUR: BENKE, Acting P. J., O'ROURKE, J.

1. As directed by the discovery referee, the parties met and conferred regarding a protective order. The discovery referee recommended approval of the protective order in January 2007, and the trial court approved the protective order on April 23, 2007. The protective order permitted Kalwall to produce documents labeled "Confidential" or "Confidential - Attorney's Eye's Only."

2. Kalwall also objected on the ground that (1) the documents the discovery referee ordered to be produced were proprietary, and GEICO and Tower Glass had not shown good cause to justify their production; (2) documents pertaining to products manufactured after 1999, when the GEICO building was completed, were not relevant to the litigation; and (3) the discovery referee exceeded his authority by requiring that documents be produced in less than 30 days and without objections.

3. The parties and the trial court agreed that until it was decided how the document review was to be performed in light of Kalwall's objections, Kalwall should proceed to review the documents only for the purpose of trying to locate those files relating to other "multi-story" applications of Kalwall's translucent wall panel system, and Kalwall would not yet go forward with looking through its files for other responsive documents, such as those concerning complaints about performance of its product.

4. At this point, Kalwall was still limiting the review to a search for other multi-story projects.

5. Kalwall's ex parte application referred to a proceeding, not otherwise reflected in the record, in which "Kalwall appeared before the [trial c]court voluntarily on July 24, 2007 seeking an extension of time to respond to... December 31, 2007." According to Kalwall, the trial court "indicated that it would be appropriate to have the request for an extension of time made in writing on an ex parte basis... and ordered Kalwall to meet and confer with GEICO for a hearing date

during the week of August 13, 2007."

6. According to Keller, he did not trust outside personnel to conduct the work, even if they signed confidentiality agreements, because their "background, affiliations, intelligence, thoroughness and loyalty to Kalwall" would be "unknown," so he would not be able to rely on them to accurately review the documents.

7. Tower Glass sought monetary sanctions in the amount of $35,659.50.

8. GEICO sought monetary sanctions in the amount of $41,760.

9. Counsel for Kalwall later confirmed that Kalwall had decided to rely on the protective order rather than insisting on producing documents with redactions. Further, referring to the redactions, counsel for Kalwall later acknowledged to the trial court, "We realize now that that was not a proper way to treat those documents."

10. Keller submitted a declaration stating that he had completed his review for responsive documents and sent them to his attorney on December 21, 2007.

11. Kalwall has filed a request, opposed by GEICO, that we take judicial notice of the trial court's amendment to the case management order in this case. The document at issue dates from early 2009; the sanctions order at issue in this appeal was made in April 2008. We deny the request for judicial notice, as the amendment to the case management order is irrelevant to the sole issue in this appeal, which is whether the trial court was within its discretion to impose sanctions based on the information that was before it when it made its decision. (See Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison (1998) 18 Cal.4th 739, 748, fn. 6 [declining to take judicial notice of materials that are not "necessary, helpful, or relevant"].) All further statutory references are to the Code of Civil Procedure unless otherwise specified.

12. Further, section 2023.010, subdivision (g) defines "[d]isobeying a court order to provide discovery" as a "[m]isuse[] of the discovery process."

13. Thus, we reject any suggestion in Kalwall's briefing that the proper inquiry is whether it willfully committed a discovery abuse. Kalwall cites Vallbona v. Springer (1996) 43 Cal.App.4th 1525, 1545, to argue that a discovery misuse must be willful to justify the imposition of sanctions. However, Vallbona concerned the imposition of evidentiary sanctions, not monetary sanctions. (Ibid.) The requirement of finding willfulness exists only with respect to the imposition of non-monetary sanctions. (Biles v. Exxon Mobil Corp. (2004) 124 Cal.App.4th 1315, 1327.)

14. The trial court was not required to make a specific finding that Kalwall acted without substantial justification. (Parker v. Wolters Kluwer United States, Inc. (2007) 149 Cal.App.4th 285, 294 (Parker) ["The court need not make an explicit finding the exception [for acting with substantial justification] does not exist as this is implied in the order awarding sanctions."].)

15. Kalwall also contends that Tower Glass and GEICO suffered no prejudice from the delayed production of the documents because, among other things, trial was still many months away at the time the documents were produced, and

that the trial court thus abused its discretion in awarding sanctions. However, Kalwall cites no authority establishing that a court may award monetary sanctions only when prejudice has been shown. To the extent that a monetary sanction must be limited to "the reasonable expenses, including attorney's fees, incurred by anyone as a result of" the discovery misuse (§ 2023.030, subd. (a)), the statute could be said to require prejudice in the form of a monetary impact, but that type of prejudice is indisputably present here. In its reply brief, Kalwall attempts to establish a need to show prejudice by referring to case law stating that a sanction should be imposed only to " ' "correct the problem presented" ' " and to " ' " '["]accomplish the objects of the discovery" ' " ' " but not to impose punishment. (Quoting Parker, supra, 149 Cal.App.4th at p. 300, and Rail Services of America v. State Comp. Ins. Fund (2003) 110 Cal.App4th 323, 332 [italics omitted].) This, of course, is not the same thing as the requirement to show prejudice. Moreover, the cases cited by Kalwall, which caution against using discovery sanctions as punishment, are not applicable here because they concern the circumstances under which non-monetary sanctions - such as evidentiary and terminating sanctions - may be applied. (Parker, at p. 300; Rail Services of America,at p. 332.)

16. Kalwall complains that the trial court did not explain the basis for the amount of the sanctions award. However, we find no fault in this approach, as "the discovery statutes do not require the court's order to 'recite in detail' the circumstances justifying the award. [Citation.] Indeed, the trial court is not required to make findings at all." (Ghanooni v. Super Shuttle (1993) 20 Cal.App.4th 256, 261.)

17. Kalwall argues that the attorney fees incurred by Tower Glass and GEICO after Kalwall missed the July 27, 2007 deadline should not have been awarded because after July 27, 2007, "the entirety of the situation was between Kalwall and the court," and "[t]he other parties had no real say in the matter." This argument is specious. Tower Glass and GEICO reasonably and necessarily incurred fees after July 27, 2007, to advance their interests and obtain compliance with the May 25, 2007 order, including among activities (1) when they appeared in response to Kalwall's attempt in August 2007 to have the production deadline extended to December 31, 2007, and (2) when they advocated to obtain production of the documents that Kalwall had unreasonably redacted. Indeed, in late October 2007, Kalwall took the position that no useful documents had been discovered and that the document production should cease immediately. Kalwall's attitude clearly justified GEICO and Tower Glass's ongoing involvement.