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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JAMES LIANG et al., Plaintiffs and Appellants, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents.	B202343 (Los Angeles County Super. Ct. No. BC307088)

APPEAL from an order of the Superior Court of Los Angeles County, Mary Ann Murphy, Judge. Affirmed.

Law Offices of Max C. Chiang and Max C. Chiang for Plaintiffs and Appellants.

Raymond G. Fortner, County Counsel, Richard Townsend, Assistant County Counsel, Ruben Baeza, Principal Deputy County Counsel; Pollak, Vida & Fisher and Daniel P. Barer for Defendants and Respondents.

James T. Liang and Pasadena Rose Bowl Motel, LLC (PRB), appeal an order dismissing their action against the County of Los Angeles (County) and others as a discovery sanction. As we discuss in detail below, the record in this case demonstrates a history of aggravated and sustained discovery abuse in spite of repeated and generous extensions granted by the trial court. We find substantial evidence to support the express and implied findings by the trial court of willful discovery abuse and conclude that the court did not abuse its discretion in granting the defendants' motion for a terminating sanction. We therefore will affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND[1]

Liang and his wife owned a motel in Altadena, California known as the Pasadena Rose Bowl Motel. They later formed a partnership together with Liang's brother-in-law and sister-in-law, and in 1992 transferred the ownership to a limited liability company, PRB. Liang at all times acted as the motel's general manager and resided at the motel.

The area in which the motel was located experienced both physical and economic decline in the 1980's. In 1986, the Los Angeles County Board of Supervisors approved a redevelopment plan for the area. The plan was administered by the Los Angeles County Community Development Commission (Commission), an entity separate and distinct from the County. The area was declared to be "blighted" under California law, due to serious building code violations and a high crime rate. The motel deteriorated

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[1] The substantive and procedural facts that we recite are demonstrated by the pleadings and papers filed in this case and are not disputed.

along with the area. The motel had a crime problem and multiple code violations. Liang and his wife called the County Sheriff's Department multiple times about problems at the motel.

Between 1999 and 2000, the Sheriff's Department and other agencies carried out numerous law enforcement activities and code enforcement inspections at the motel. Crime problems and code violations at the motel prompted those activities. Although plaintiffs do not deny this, they assert that Liang was working on correcting the problems. Plaintiffs allege, moreover, that these efforts started after the Commission had received a multi-million dollar redevelopment proposal from a national retail outlet for construction on the site of the motel. Eventually, in November 2000, the County denied the plaintiffs' application for a new business license.

In December 2002, while plaintiffs and the County were engaged in administrative proceedings related to the County's denial of a new business license, the Commission offered to purchase the plaintiffs' motel property "as is." After extensive negotiations, the Commission purchased the property from the plaintiffs for $1,160,000. In the sale agreement, plaintiffs released the Commission from any liability leading up to the property's acquisition.

Plaintiffs allege in this action that the County's law enforcement, code compliance, and licensing activities with respect to the motel and its operations were all part of a scheme to drive down the value of the motel property so that it could be purchased by the Commission at a lower price.

The plaintiffs filed their complaint in this action in December 2003 against the County, the Los Angeles County Business License Commission, the Los Angeles County Sheriff's Department, Leroy Baca (individually and as Sheriff of Los Angeles County), and several Los Angeles County Sheriff's Department employees. The operative pleading is the plaintiffs' second amended complaint, filed in October 2004. It alleges counts for (1) wrongful deprivation of a business license; (2) deprivation of constitutional rights; (3) fraud; (4) interference with constitutional rights; (5) just compensation for governmental taking of property; (6) wrongful interference with contracts; (7) wrongful interference with prospective economic advantage; and (8) negligence. The complaint also alleges 19 categories of damages claimed by the plaintiffs.

The County served extensive discovery requests on Liang on June 15, 2005, including form interrogatories, special interrogatories, and requests for production of documents. These discovery requests asked for the facts and evidence on which the plaintiffs based the claims alleged in their complaint. Liang never provided proper or satisfactory responses to these discovery requests despite repeated court-ordered extensions and the imposition of a monetary sanction. The following is a chronological summary of the history of his recalcitrance that led to the order of dismissal that is the subject of this appeal:

1. After the discovery requests were served on June 15, 2005, the County stipulated to extend the time to respond first to July 27, 2005, and then to August 1, 2005. Liang failed to respond to the discovery requests by August 1, 2005. Instead, he

submitted an ex-parte application to the court (the Hon. George Wu) for an extension of time to respond. The court granted the application on August 9, 2005, extended the time to respond to October 15, 2005, and continued the trial date to March 18, 2006.

2. Liang failed to respond to the discovery requests by October 15, 2005. Instead, he submitted another ex parte application for an extension of time to respond. The court granted the application, extended the time to respond to December 15, 2005, and continued the trial date to May 15, 2006.[2]

3. Liang failed to respond to the discovery requests by December 15, 2005. Instead, he submitted another ex parte application for an extension of time to respond. The court granted the application, extended the time to respond to February 15, 2006, and continued the trial date to July 17, 2006.

4. On February 7, 2006, plaintiffs' counsel sent to defendants' counsel 2800 pages of documents and a 20-page itemization of those documents. Liang, however, failed to provide a verified written response to the requests for production of documents, as required by Code of Civil Procedure sections 2031.210 to 2031.250.[3]

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[2] Defendants, throughout this process, intended to prepare and file a summary judgment motion after receipt of Liang's discovery responses. They had to allow for the statutory lead times applicable to the filing and hearing of such a motion. Thus, there was a need for an appropriate continuance of the trial date if Liang received an extension of time to respond to the discovery requests.

[3] All statutory references are to the Code of Civil Procedure unless otherwise indicated.

5. Liang failed to provide responses to the discovery requests (other than the above-described documents) by February 15, 2006. Defendants filed a motion to compel responses to the discovery. At the hearing on the motion on March 30, 2006, the court ordered Liang to respond without objection by April 21, 2006. This represented the *sixth* extension granted to Liang.

6. Plaintiffs' counsel, Peter Young, sustained a broken hip on March 26, 2006, and claims that he was unable to work from that date until early June 2006.

7. Defendants filed a motion for summary judgment on April 3, 2006.

8. Liang failed to respond to the discovery requests by April 21, 2006. Instead, he submitted another ex parte application for an extension of time to respond. The court granted the application, extended the time to respond to July 1, 2006, continued the hearing on the summary judgment motion to October 4, 2006, and continued the trial date to November 21, 2006.

9. Liang failed to respond to the discovery requests by July 1, 2006. Instead, he submitted another ex parte application for an extension of time to respond. Plaintiffs' counsel claimed that he was legally blind and intended to undergo cataract surgery in early July and therefore would not be able to work until the middle of August. Counsel also stated that he had no other physical problems that would interfere with his work and that he had no other active cases. The trial court granted the application, based on these representations. The court extended the time to respond to September 29, 2006, continued the hearing on the summary judgment motion to

January 4, 2007, and continued the trial date to February 26, 2007. This was Liang's *eighth* extension of the time to respond to the discovery requests.

10. Liang failed to respond to the discovery requests by September 29, 2006. Instead, he submitted another ex parte application for an extension of time to respond. The court granted the application, extended the time to respond to December 29, 2006, continued the hearing on the summary judgment motion to April 9, 2007, and continued the trial date to May 29, 2007.

11. Liang failed to respond to the discovery requests by December 29, 2006. On January 16, 2007, plaintiffs' counsel informed defendants' counsel that his health problems were over and that the responses would be completed in a week or so. He also stated that he had not had the services of his paralegal since October 29, 2006.

12. The County served extensive discovery requests on PRB on January 18, 2007, including form interrogatories, special interrogatories, and requests for production of documents. Sometime later, the parties agreed that plaintiffs would provide joint responses to the outstanding discovery requests.

13. On January 19, 2007, defendants filed a motion for terminating sanctions or, in the alternative, to compel responses to discovery.

14. On February 13, 2007, plaintiffs filed an ex parte application to extend the time to respond to all outstanding discovery to April 30, 2007. Plaintiffs' counsel claimed that he needed the additional time because of the loss of his paralegal and the discovery propounded to PRB. He stated, however, that his health was good and that he was able to devote all of his efforts to this case for the next few months. The trial court

granted the application and ordered plaintiffs' counsel to respond to the outstanding discovery by April 30, 2007. The court also advanced the date for hearing of the motion for terminating sanctions or to compel discovery, vacated the motion, and imposed a $500 sanction against plaintiffs' counsel payable upon the resolution of this case. The court continued the hearing on the summary judgment motion to July 18, 2007, and continued the trial date to October 9, 2007. Also on February 13, 2007, plaintiffs' counsel delivered *unverified partial* responses to the form interrogatories propounded to Liang. Plaintiffs' counsel characterized them as "draft responses."

15. At some point, apparently while the above events were taking place, Liang's partner and brother-in-law, Min Yen Wu, sued Liang over a partnership dispute concerning the Pasadena Rose Bowl Motel and two other motels. The lawsuit, *Min Yen Wu, et al. v. James T. Liang, et al.*, No. 05CC08161, was brought in Orange County Superior Court. A lawyer other than Peter Young (Terry J. Kent of Russakow, Ryan and Johnson) represented Liang in that suit. In February 2007, Liang and his wife were served with written discovery in the *Wu v. Liang* case. The responses were due in April 2007. The trial date in that case was set for April 23, 2007, but it was later continued to July 7, 2007. Liang felt that he "was under much more pressing discovery and trial deadlines in the partnership dispute case than in this case . . . . " Liang's counsel in this case, Peter Young, however, did not mention any of this in his February 13, 2007, ex-parte application. From March to June 2007, Liang spent at least 200 hours responding to discovery requests and preparing for trial in the *Wu* case. Meanwhile, on

April 30, 2007, plaintiffs and their attorney once again allowed the court-ordered discovery deadline to pass in *this* case without responses being served.

16. In the spring of 2007, the judge who had until then presided over this matter, the Honorable George Wu, was appointed to the United States District Court. This case was assigned to the Honorable Mary Ann Murphy.

17. On June 8, 2007, defendants filed a motion for terminating sanctions. As of that date, plaintiffs still had not complied with the order of February 13, 2007, compelling discovery responses by April 30, 2007. Defendants' motion for summary judgment was then scheduled for July 18, 2007. Plaintiffs failed to file a timely opposition to the summary judgment motion.

18. On July 6, 2007, plaintiffs filed an ex parte application to extend the time to respond the outstanding discovery, continue the hearing on the summary judgment motion, and continue the trial date. Plaintiffs' counsel and Liang declared that the "much more pressing discovery" in the other lawsuit had prevented them from responding to the discovery in this case and that working on the discovery in this case had prevented them from responding to the summary judgment motion. Liang also declared that he would be preparing the response to the interrogatories directed to PRB. The trial court granted the application in part by continuing the hearing on the summary judgment motion to November 8, 2007, and continuing the trial date to April 2, 2008. *The court, however, did not extend the discovery response date*. During the hearing, the court reviewed the file and the numerous prior extensions and continuances. The court also specifically addressed Liang (who was in the courtroom), and told him: "This is an

extreme situation where your trial has been continued six times. Extreme. And I'm not going to continue this pattern . . . . " The order dated July 6, 2007, stated: "This action has been pending since 12/3/03 and is 3 years and 7 months old. The trial date has been continued six times. This is a firm trial date. [¶] . . . [¶] No further continuances."

19. On July 9, 2007, plaintiffs filed an untimely opposition to the motion for terminating sanctions. It essentially consisted of the same declarations that plaintiffs had submitted with their July 6, 2007, ex parte application.

The trial court heard the defendants' motion for terminating sanctions on July 18, 2007. After reviewing the record of this case, as outlined above, the court granted the motion and dismissed the action in its entirety. Although the court acknowledged that there may have been times (in 2005 and 2006) when plaintiffs' counsel could not work on the case, the court concluded that there simply was no excuse for plaintiffs' failure to comply with the court's order of February 13, 2007, after so many prior extensions.

In her oral statement of ruling, which included factual findings, Judge Murphy stated: (1) "The discovery was propounded over two years ago. Plaintiffs have produced documents with an inadequate written response, providing incomplete responses to form interrogatories, which their counsel has characterized as being draft forms." (2) "It doesn't seem that any halfway decent responses have been propounded yet." (3) "Defense counsel has extensively met and conferred with plaintiffs' counsel without success." (4) "So defendants' case has been pretty much dead in the water since this." (5) "Plaintiff Liang may have been temporarily disabled in the latter half of '05, and plaintiffs' counsel may have been unable to work part of '05 and part of '06,

but he had months and months where he could have worked on this and didn't, for whatever reason. And still . . . [t]here isn't even a verified response to date on this." (6) "The plaintiff could have obtained new counsel during the disability. The plaintiff could associate counsel in." (7) "The plaintiff has been given every indulgence by Judge Wu in this case." (8) "Plaintiff violated the agreement he made with defense counsel to provide the answers by 4/30/07." (9) "You've been in violation of the 2/13/07 court order requiring you to produce the documents on 4/30/07 . . . for six weeks." (10) "What's your excuse between January 1, '07 and July 28, '07? You have no excuse." (11) "[T]he severely aggravating thing about this is that still no answers. This is the second time [the defendants have] had to file a motion. No verified responses." (12) "[T]his is the most aggravated case of failure to respond I have ever seen. This is the most aggravated case I've ever seen in 14 years of 17 years on the bench."

The court entered an order dismissing the action in its entirety on July 18, 2007. Plaintiffs timely appealed the order.

CONTENTIONS

Plaintiffs contend (1) defendants were not entitled to a terminating sanction against PRB because their motion was brought against Liang only, and (2) the terminating sanction against Liang was excessive and unwarranted in these circumstances.

DISCUSSION

1. *Plaintiffs' First Contention Is Waived*

Plaintiffs cite no legal authority in support of their first contention. They offer only a brief, perfunctory argument and an incomplete discussion of the facts. They do not discuss the significance of the close relationship between Liang and PRB or the fact that they had agreed to prepare joint discovery responses, and offer no reasoned argument or citation to legal authority in support of their contention. Absent reasoned argument and citation to legal authority, we conclude that the first contention is waived. (*Valov v. Department of Motor Vehicles* (2005) 132 Cal.App.4th 1113, 1132; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.)

2. *The Terminating Sanction Against Liang Was Proper*

a. *Statutory Authority*

Section 2023.010 describes various misuses of the discovery process, including, "(d) Failing to respond or to submit to an authorized method of discovery," "(f) Making an evasive response to discovery," and, "(g) Disobeying a court order to provide discovery." Section 2023.030 authorizes a court to impose sanctions for misuse of the discovery process, after notice and an opportunity for hearing, "[t]o the extent authorized by the chapter governing any particular discovery method or any other provision of this title." Section 2023.030 also specifies the types of sanctions that a court may impose, including monetary, issue, evidence, terminating, and contempt sanctions.

Sections 2030.290, subdivision (c) and 2031.300, subdivision (c) state that if a party fails to obey an order compelling responses to, respectively, interrogatories or requests for production, "the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010)."

b. *Standard of Review*

We review an order imposing discovery sanctions under the abuse of discretion standard. (*Liberty Mutual Fire Ins. Co. v. LcL Administrators, Inc.* (2008) 163 Cal.App.4th 1093, 1102 (*Liberty Mutual*).) Under this standard, an order imposing discovery sanctions is subject to reversal only for arbitrary, capricious or whimsical action. (*Ibid*.) In choosing among the various options for imposing discovery sanctions, a trial court exercises discretion subject to reversal only for manifest abuse exceeding the bounds of reason. (*Ibid*.) We review the court's express factual findings under the substantial evidence standard, and infer all findings necessary to support the order provided that substantial evidence supports the findings. (*Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1292 (*Reedy*); *Waicis v. Superior Court* (1990) 226 Cal.App.3d 283, 287.)

c. *There Was No Abuse of Discretion*

Liang failed to comply with the discovery requests despite numerous extensions of time over a period of approximately 24 months and failed to comply with the order of February 13, 2007, compelling the plaintiffs to respond to the outstanding discovery by April 30, 2007, despite the imposition of a monetary sanction. Liang does not deny

these facts in his appellate briefs. This history of extreme intransigence supports an inference that the failure to comply was willful and that lesser sanctions would be ineffective. (*Reedy*, *supra*, 148 Cal.App.4th at p. 1293; *Lang v. Hochman* (2000) 77 Cal.App.4th 1225, 1246-1247.)

In his argument on appeal, Liang simply ignores huge chunks of the record. He omits the trial court's findings that he had sufficient time to respond to the discovery despite all of the problems. He fails to mention that in the spring of 2007, Liang, with the assistance of his counsel, had the time and ability to devote 200 hours to responding to discovery and to trial preparation--and yet chose to devote those efforts to *another lawsuit*, allowing the discovery in this case to languish. Liang also fails to mention that he considered the discovery in the other case "much more pressing" and therefore chose to neglect his discovery obligations in this case, despite his multiple assurances that the responses would be served by a date certain. Nor does he mention that he did not inform the court or the defendants of that purported excuse until after the filing of the *second* motion for terminating sanctions.

Liang's deliberate choice to allocate his energies to a lawsuit he regarded as "more pressing" was what led to the violation of the court's final order compelling discovery responses. It was not his attorney's illnesses; those resolved in late 2006. It was not his attorney's loss of a paralegal; that occurred back in October 2006. It must be remembered that, even with the loss of such paralegal services, counsel still stated under oath that he could nonetheless produce the responses by April 30, 2007. These circumstances, particularly when viewed in the context of the repeated prior delays,

provide strong support for a terminating sanction. "Where, as here, the record is replete with instances of delay and failure to comply with the court's order, dismissal may be proper." (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, 489, disapproved on another point in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.) In spite of having received every possible indulgence and consideration from the trial court over a two-year period, Liang never ever complied with any discovery deadline (most of which were set at Liang's request and upon the representation that he would comply by that date). It is difficult, therefore, to conclude that his failure to comply with the February 13, 2007, order was not willful.

The record is replete with evidence of plaintiffs' bad faith. On multiple occasions, plaintiffs' counsel obtained extensions to dates certain from defendants or the court by promising to produce responses by that date, and then allowed the date he had himself selected to pass, only to provide one explanation after another *after* the fact. In addition, plaintiffs' counsel provided constantly varying representations about the status of the required discovery responses. Only July 20, 2005, plaintiffs' counsel represented in an e-mail that he expected to serve the form interrogatory responses "by the end of the week and the response to the special interrogatories and document requests sometime next week." A year later, on June 29, 2006, he estimated that he would "need three full weeks to complete discovery compliance" after he returned to work. On February 7, 2007, he declared that he had worked on the responses since October 2006, and would require until April 30, 2007, to complete the responses. There is no explanation provided in this record why discovery responses that were at most two

weeks away from completion in June 2005 required months of work from late 2006 through February 2007, and yet still were not completed. During this time, plaintiffs' counsel had no other active cases; he had stopped taking new work when he grew ill in 2005.

Liang also does not explain that while plaintiffs' counsel repeatedly raised the financial burden Liang would suffer if he were required to retain other counsel in this matter as an excuse of Liang's failure to associate in able counsel, Liang *did* in fact retain other counsel, in connection with his other, "more pressing" lawsuit. Perhaps Liang's liability insurance paid for that attorney, or perhaps Liang simply took that lawsuit more seriously because he was a defendant in that case. The record does not say.

What is clear is that the record contains no evidence of diligence. Instead, it suggests a dysfunctional pattern in which plaintiffs and their counsel effectively ignored their discovery obligations and the court's order compelling discovery, secure in their belief that they could avoid censure by supplying one excuse after another. By the time that Judge Murphy was assigned to this case, plaintiffs' dilatory tactics had gone on long enough. She certainly did not abuse her discretion in so concluding.

d. *A Lesser Sanction Was Not Required*

An appellate court reviewing a terminating sanction does not consider whether the trial court should have imposed a lesser sanction. Instead, it considers only whether the trial court abused its discretion by imposing the sanction it chose. (*Liberty Mutual, supra,* 163 Cal.App.4th at p. 1105.) The trial court should make an effort to tailor the

sanctions to "fit the crime," so that the sanctions are not merely punitive. (*Reedy*, *supra*, 148 Cal.App.4th at p. 1293.) But the trial court's discretion in fitting the sanction to the dereliction can be reversed only if it exceeds the bound of reason. (*Ibid*.)

The terminating sanction here was not an abuse of discretion. Liang repeatedly promised to provide discovery responses, yet repeatedly failed to do so, culminating in his failure to comply with the court order of February 13, 2007. The court imposed a monetary sanction at that time, to no avail. *Reedy*, *supra*, 148 Cal.App.4th 1272, involved a similar pattern of discovery abuse. *Reedy* stated, "the court could neither continue giving [the defendants] the benefit of the doubt, nor could it reasonably assume that some lesser sanction (such as additional monetary penalties) would be sufficient to curb their continued abuses." (*Id*., at p. 1292.)

In addition, the nature of the discovery propounded by the County supports the trial court's choice of terminating sanctions. Plaintiffs sued multiple defendants for multiple statutory and common law torts with multiple theories of damage recovery. The subject discovery went to the heart of plaintiffs' case. It asked for the evidence supporting their allegations and their claims for damages. The evidence defendants requested was the evidence plaintiffs would need to prove their case. It was the sort of evidence that the plaintiffs would be expected to have organized and available when

they started their case, especially after prosecuting a prior administrative mandamus action in the superior court.[4]

Moreover, there is no support in this record for plaintiffs' argument that a less severe sanction would have had any impact. Repeated extensions of time and a prior order compelling discovery and imposing a monetary sanction yielded no meaningful results. Liang does not explain just what lesser sanction would have worked. He suggests that an evidentiary sanction would have been appropriate, but does not explain how it would have been any less of a terminating sanction than the dismissal order the trial court entered. The discovery went to *all* of plaintiffs' claims. Barring plaintiffs from producing evidence on any of the claims simply would have resulted in a nonsuit at the outset of trial.

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[4] The mandamus proceeding (based on the County's refusal to renew plaintiffs' business license), which initially ended in plaintiffs' favor due to a notice technicality, led to the ultimately successful negotiations for the Commission's purchase of the motel property.

DISPOSITION

The order of dismissal dated July 18, 2007, is affirmed. Defendants shall recover their costs on appeal.

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CROSKEY, Acting P. J.

WE CONCUR:

KITCHING, J.

ALDRICH, J.