CASENOTE
BY JAMES G. RANDALL
LAWATYOURFINGERTIPS®

Filed 11/19/15 Garcia v. Jukes CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

RAMON CHARLES GARCIA, Plaintiff and Appellant, v. LORI JUKES, Defendant and Respondent.	B258349 (Los Angeles County Super. Ct. No. PC052716)

APPEAL from an order of the Superior Court of Los Angeles County. Jan A. Pluim, Judge. Affirmed.

Law Offices of Eric Bryan Seuthe & Associates and Eric Bryan Seuthe for Plaintiff and Appellant.

Slack & Associates and Chad M. Slack for Defendant and Respondent.

A jury found defendant and respondent Lori Jukes liable for damages sustained by plaintiff and appellant Ramon Charles Garcia in a car accident. But it awarded damages to Garcia in an amount that was less than Jukes' Code of Civil Procedure section 998 offer to compromise. Pursuant to that statute, the trial court awarded Garcia his preoffer costs and Jukes her postoffer costs, which resulted in a net monetary recovery by Jukes. On appeal from that order, Garcia contends Jukes' section 998 offer was invalid. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Garcia filed this negligence action in April 2012. Jukes was added as a plaintiff a short while later. On March 8, 2013, Jukes served Garcia with the following section 998 offer:

> "In full settlement of this action, Defendant Lori Jukes hereby offers to pay Plaintiff Raymond Garcia, the total sum of $50,000 in exchange for (1) entry of a request for dismissal with prejudice by Plaintiff Ramon Garcia in favor of Defendant Lori Jukes and (2) Plaintiff Ramon Garcia's execution of a full release of *all claims related to the events described in the complaint*.
> This offer is made under the provisions of Code of Civil Procedure section 998 and *includes all lien claims*, with each party to bear its own costs and attorney's fees." (Italics added.)

All future undesignated statutory references are to the Code of Civil Procedure.

Garcia objected to Jukes's offer on several grounds, including that it was "vague and ambiguous." Jukes did not respond to Garcia's objections. Finding Jukes negligent in the car accident, a jury awarded[2] Garcia $30,642.20 in damages, which was less than Jukes' $50,000 section 998 offer.

Jukes and Garcia each filed a Memorandum of Costs: Jukes sought $71,692.60 in postoffer costs and Garcia sought $19,986.24 in both pre and postoffer costs. Competing motions to tax or strike costs followed.

The gist of Garcia's motion was that Jukes was not entitled to any costs because her section 998 offer was so vague and ambiguous as to be invalid. Garcia's argument was based on two conditions in the offer: (1) the release of "*all claims related* to the events described in the complaint" and (2) the inclusion of all "lien claims."

In her motion, Jukes argued that most of the costs Garcia sought were not recoverable because, except for $1,297.25, those costs were either not statutorily recoverable or they were incurred after Jukes had served her section 998 offer. Jukes further argued it would be unfair to award Garcia costs for expert witness fees the trial court ordered Garcia to pay essentially as a sanction for his failure to timely identify the expert as a wit-

---

[2] The $30,642.20 award was comprised of $5,642.20 for medical expenses and $25,000 for pain and suffering.

ness. In his opposition to Jukes' motion, Garcia reduced his cost claim from almost $20,000 to $15,478.24.[3]

The record does not include a reporter's transcript of the May 27, 2014, hearing on the parties' motions to tax costs. In an order signed on June 11, 2014, the trial court found Jukes' section 998 offer was valid; accordingly, Garcia could recover only costs incurred prior to March 8, 2013 (the day Jukes' section 998 offer was served on Garcia), and Jukes could recover costs incurred after that date.[4] The trial court awarded Jukes the net amount of $7,746.56. Notice of Entry of Order was served on July 2, 2014. Garcia timely appealed.

DISCUSSION

Garcia's sole contention on appeal is that Jukes' section 998 offer was so vague and ambiguous as to be invalid and it was therefore error to award Jukes any costs and to limit Garcia to recovering only his preoffer costs. Garcia argues the offer's references to release of "*all claims related* to the events described in the complaint" and "all lien claims" rendered Jukes' section 998 offer fatally vague and ambiguous because the offer

---

[3] In the trial court, one of Garcia's arguments in opposition to any cost award to Jukes was that, even assuming Jukes' $50,000 section 998 offer was valid, Garcia nevertheless obtained a more favorable judgment because the $30,642.20 damage award, plus costs of $19,986.24, totaled $50,628.24. But when the reduced cost claim is included in the calculation, the total is only $46,120.44 ($30,642.20 damage award plus costs of $15,478.24). Thus, even if we were to assume for the sake of argument that all of the costs Garcia claimed were incurred before Jukes' section 998 offer and could be included in the "more favorable judgment" calculation, Garcia did not obtain a more favorable judgment than Jukes' section 998 offer.

[4] That award was calculated as follows: postoffer costs of $39,960.01 to Jukes, less Garcia's preoffer costs of $1,571.25 for a total of $38,388.76 to Jukes; less the $30,642.20 jury verdict in favor of Garcia.

did not specify who was to be released and did not define what "claims were considered 'related' to the 'events described in the complaint.' " Deficiencies, which Garcia argues, could have been cured by providing Garcia with a copy of the full release Jukes and her insurer wanted him to sign. We find no error.

We begin with the standard of review, which is de novo. This is because ascertaining whether a section 998 offer is sufficiently specific "is a question involving the interpretation of a writing. We independently interpret a writing if the interpretation does not turn on the credibility of extrinsic evidence. [Citations.]" (*Fassberg Construction Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 765 (*Fassberg*); see *Chen v. Interinsurance Exchange of the Auto Club* (2008) 164 Cal.App.4th 117, 122 (*Chen*) [appellate court independently reviews validity of § 998 offer].) We turn next to the merits of Garcia's contention.

In general, the prevailing party in any lawsuit is entitled as a matter of right to recover his or her costs. (§ 1032, subd. (b).) One exception to this general rule is set forth in section 998, which is intended to encourage pretrial settlement by shifting costs under specified circumstances. (*Fassberg, supra*, 152 Cal.App.4th at p. 764.) Relevant here is section 998, subdivision (c)(1), which provides that, if the plaintiff does not accept the defendant's written section 998 offer to settle the action and "the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her postoffer costs and shall pay the defendant's costs from the time of the offer." As occurred in this case: "If the costs awarded under this section exceed the amount of the damages awarded to the plaintiff the net amount shall be awarded to the defendant and judgment or award shall be entered accordingly." (§ 998, subd. (e).)

---

[5] Subdivision (d) of section 998 addresses the defendant's failure to accept a settlement offer made by the plaintiff. The year before Jukes made the offer at issue on appeal, Jukes rejected Garcia's section 998 offer to settle for $99,999.99 (her policy limit was $100,000).

A section 998 offer must be in writing and must "include a statement of the offer, containing the terms and conditions of the judgment or award . . . ." (§ 998, subd. (b).) It "must be sufficiently specific to allow the recipient to evaluate the worth of the offer and make a reasoned decision whether to accept the offer. [Citations.]" (*Fassberg, supra*, 152 Cal.App.4th at pp. 764-765.) It may include as a condition that the plaintiff execute a general release, or that the parties execute mutual releases. (*Chen, supra*, 164 Cal.App. 4th at p. 123, citing *Goodstein v. Bank of San Pedro* (1994) 27 Cal.App.4th 899.) But the offer must make clear what claims are being released (*Chen,* at p. 123) and who is being released. (*Fassberg,* at pp. 766-767.) To be valid, the offer may not dispose of any claims other than those at issue in the litigation. (*Chen,* at p. 121.) Garcia cites to no case, and our independent research has found none, requiring a copy of the actual release to be attached to the offer.

Several cases offer guidance on assessing the specificity of a section 998 offer. In *MacQuiddy v. Mercedes-Benz USA, LLC* (2015) 233 Cal.App.4th 1036 (*MacQuiddy*); *Chen, supra*, 164 Cal.App.4th 117; and *Valentino v. Elliott Sav–On Gas, Inc.* (1988) 201 Cal.App.3d 692 (*Valentino*), the courts of appeal found the section 998 offer at issue to be invalid. In *Linthicum v. Butterfield* (2009) 175 Cal.App.4th 259 (*Linthicum*); *Chen, supra*, 164 Cal.App.4th 117; *Fassberg, supra*, 152 Cal.App.4th 720 and *Goodstein, supra*, 27 Cal.App.4th 899, the courts of appeal found the section 998 offers at issue to be valid. We begin with the cases in which the offers were found invalid.

A. Valentino, Chen and *MacQuiddy*

In the earliest of the cases, *Valentino, supra*, 201 Cal.App.3d 692, the plaintiff sought $350,000 in damages for injuries incurred in a slip and fall at the defendant gas station. The jury returned a verdict in plaintiff's favor for $13,000, reduced by 25 percent for comparative negligence. Because this amount was less than the defendant's section 998 offer to settle for $15,000, the trial court awarded postoffer costs to the de-

fendant, which resulted in the defendant obtaining a net recovery of several thousand dollars. (*Id*. at p. 696.) The court of appeal reversed, finding the defendant's section 998 offer did not satisfy the statute's specificity requirements. The *Valentino* court explained that the offer was conditioned on the plaintiff releasing not just the defendant gas station, but also the gas station's attorney and insurance carrier from claims that were not related to the subject matter of the lawsuit. (*Id*. at pp. 694-695.) This rendered the offer uncertain because, without being able to calculate how much of the $15,000 settlement offer was attributable to settling the plaintiff's claims, as opposed to those of the non-party attorney and insurance company, it was impossible to calculate which party obtained the more favorable judgment.

In *Chen, supra*, 164 Cal.App.4th 117, the plaintiffs' two homes were damaged in two separate incidents. They sued their insurer for breach of the insurance policy and bad faith. While that action was pending, a third incident caused additional damage to one of the homes. A month after the third incident, the defendant insurance company made a section 998 offer to settle for $251,000. The offer included the following condition:

> "This offer is conditioned upon plaintiffs executing a dismissal with prejudice of the action, as well as a general release of all claims in lieu of an entry of judgment against defendants." (*Id*. at p. 120.)

Following a $150,000 jury verdict in favor of the plaintiffs, the trial court awarded $310,000 in postoffer costs to the insurance company, resulting in a net recovery to the insurance company of more than $150,000. This court reversed, reasoning that the phrase "all claims" was ambiguous because it could be interpreted to include a claim based on the third incident, which was not the subject of the lawsuit. (*Id*. at p. 122.)

In the most recent case, *MacQuiddy, supra*, 233 Cal.App.4th 1036, the plaintiff sought a refund for the car he purchased from the defendant, as well as civil penalties for violation of the Song–Beverly Consumer Warranty Act (Civ. Code, §§ 1790, et seq.) (the Act). The plaintiff rejected the defendant's section 998 offer, which included a provision that

the defendant would repurchase the car " 'in an undamaged condition, save normal wear and tear . . . .' " (*MacQuiddy*, at p. 1041.) The defendant admitted liability under the Act for failing to repurchase or replace the car and the parties stipulated to a restitution amount. A jury found the defendant did not willfully fail to comply with the Act. (*Id*. at p. 1039.) Reversing the trial court, the court of appeal found the defendant's section 998 offer was too uncertain to be valid. Specifically, the offer was made invalid by conditioning repurchase on whether the car was " 'in an undamaged condition, save normal wear and tear,' " because " 'undamaged condition' " was not defined, "nor was it clear what would happen if [the plaintiff] accepted the offer, but Mercedes–Benz subsequently concluded the car was 'damaged' beyond normal wear and tear." (*Id*. at p. 1050.) We turn next to the cases in which the defendant's section 998 offer was found certain.

B. Goodstein, Fassberg and *Linthicum*

In *Goodstein*, *supra*, 27 Cal.App.4th 899, the defendant bank obtained nonsuit against the plaintiff in the plaintiff's action for slander of title and negligence. The bank sought $116,000 in expert witness fees based on the plaintiff's rejection of the bank's following section 998 offer:

> " 'In full settlement of this action, [Bank] hereby offers to pay [Goodstein] the total sum of $150,000 in exchange for each of the following: [¶] 1. The entry of a Request for Dismissal with prejudice on behalf of the Plaintiff in favor of [Bank]; [¶] 2. The execution and transmittal of a General Release by [Goodstein] in favor of [Bank]; [¶] 3. Each party is to bear their own respective costs and attorney's fees.' " (*Goodstein*, at p. 905.)

The court of appeal rejected the plaintiff's argument that the offer was "fatally uncertain because it fails to specify whether it was an offer intended to compromise all three of the actions consolidated for trial, or just Goodstein's action against the Bank." (*Id*. at p. 907.) The *Goodstein* court found the "clear and unambiguous language of the offer" could not reasonably be construed to apply to other litigation. (*Ibid*.) "Inasmuch as the general re-

lease in the instant case pertained only to the same action before the trial court which Bank sought to have dismissed upon its payment of $150,000 to Goodstein, *Valentino* has no application to the facts of this case." (*Id*. at p. 908.)

In *Fassberg, supra*, 152 Cal.App.4th 720, the plaintiff general contractor and defendant housing authority entered into a contract pursuant to which the plaintiff agreed to build 156 low income residential units in 270 days for approximately $12 million. When the work was completed 795 days and numerous change orders later, the housing authority refused to release over $1 million in retention proceeds to the contractor and demanded a credit of more than $600,0000 for changes in the scope of work. The contractor sued the housing authority for breach of contract, breach of the covenant of good faith and fair dealing, and violation of the Public Contract Code; the housing authority cross-claimed for breach of contract, violation of the False Claims Act, intentional and negligent misrepresentation, fraudulent inducement and declaratory relief. The contractor rejected the housing authority's section 998 offer to settle the matter in exchange for a $1.1 million payment from the housing authority to the contractor and entry of mutual general releases. (*Id*. at p. 765.) Reversing the trial court, the court of appeal found the following release provision in the housing authority's section 998 offer was not uncertain:

> " 'Fassberg, for itself and on behalf of its antecedents, successors, assigns, . . . does hereby fully release, discharge, relinquish, acquit and covenant not to sue HACLA and their successors, assigns, . . . from all claims, disputes and liabilities arising from, relating or in any way pertaining to the subject matter of the Action including any actual or alleged breach of contract, any actual or potential claim and all disputes arising from or relating to (a) the Action, (b) any and all demands, executions, setoffs, debts, expenses, legal costs, attorneys' fees, interest, sums of money and/or losses of any kind whatsoever, and (c) any and all damages (including without limitation compensatory, punitive, exemplary or statutory) or any other legal or equitable relief, right or obligation existing between the Parties, now, forever and for all time . . . .' " (*Id*. at p. 765.)

The *Fassberg* court distinguished that case from *Valentino*: "Absent some indication of the existence of a valuable claim in favor of a related person or entity, independent of Fassberg's actual and potential claims arising from the subject matter of this action, that would be extinguished by the release, we conclude that the release is not overbroad or incapable of valuation." (*Id*. at p. 767.)

In *Linthicum, supra*, 175 Cal.App.4th 259, the defendants only means of access to their land was a roadway on the plaintiff's land. The plaintiff filed suit to enjoin the defendants from using the roadway; the defendants cross-claimed to quiet title and for an easement. The trial court quieted title to an equitable easement in favor of the defendants. (*Id*. at p. 202.) On appeal, the plaintiff challenged a section 998 cost award to the defendants on the ground, among others, that the offer was unenforceable because it included a demand for mutual releases. Relying on *Goodstein* and distinguishing *Valentino*, the *Linthicum* court observed that the offer in *Valentino* expressly referred to causes of action outside the scope of litigation whereas the release in *Linthicum*, like the release in *Goodstein*, did not. (*Id*. at pp. 270-271.)

We discern from the cases the principle that a section 998 offer which meets the following criteria satisfies the statutes' specificity requirement:

- It cannot reasonably be interpreted to be conditioned on release of anyone other than the parties to the litigation; and
- It cannot reasonably be interpreted to release claims outside the scope of the litigation.

Jukes' section 998 offer satisfies these criteria. Contrary to Garcia's assertion, the phrase "related to the events described in the complaint" cannot reasonably be interpreted to include claims other than Garcia's personal injury claims against Jukes that are the subject of this litigation. Unlike in *Valentino*, the section 998 offer in this case does not expressly refer to persons or entities that are not parties to the litigation. As such, the release provi-

sion cannot reasonably be understood as intended to apply to anyone other than Jukes. Like in *Goodstein* and *Linthicum*, and unlike *Chen*, there is nothing in the record to suggest Garcia has additional actual or potential claims against Jukes, other than the subject matter litigation, that would be extinguished by the release. Likewise, because there is no evidence Garcia has any lien claims against Jukes, the only reasonable interpretation of the provision that the offer "*includes all lien claims*," is that it is intended to release Jukes from liability for all lien claims against any recovery Garcia may obtain in the lawsuit (e.g., an attorney lien for costs of litigation, medical liens for treatment of the plaintiff's injuries sustained in the car accident, etc.).

DISPOSITION

The order awarding net monetary costs to Jukes is affirmed. Each side shall bear their own costs on appeal.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

OHTA, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.