

Calvert Fire Ins. Co. v. Cropper

Court of Appeal of California, First Appellate District, Division One

April 15, 1983

Civ. No. 53676

Reporter

141 Cal. App. 3d 901 *; 190 Cal. Rptr. 593 **; 1983 Cal. App. LEXIS 1583 ***

CALVERT FIRE INSURANCE COMPANY,
Plaintiff and Appellant, v. HAL CROPPER et al.,
Defendants and Respondents

Prior History: [***1] Superior Court of Santa Clara County, No. 393577, Bruce F. Allen and George W. Bonney, Judges.

Disposition: The judgments are affirmed.

Core Terms

discovery, sanctions, discovery request, wilful, vacate an order, contends, initiate, imposition of sanctions, wrongful death action, failure to comply, motion to dismiss, properly verified, trial court, per person, interrogatories, circumstances, noncompliance, declaration, requesting, documents, judgments, coverage, coparty, insured, argues, joined, obey

Case Summary

Procedural Posture

Appellant insurer sought review of a decision from the Superior Court of Santa Clara County (California), which dismissed its complaint in a declaratory judgment action as a sanction for wilful failure to obey a discovery order under Cal. Civ. Proc. Code § 2034.

Overview

Respondent insured submitted a claim under its policy with appellant insurer. Appellant filed a declaratory action, contending that it was not obligated to provide coverage. Respondent filed discovery requests, and the trial court granted

several extensions to appellant. At the end of the final extension period, respondent filed a motion to compel and appellant failed to comply. Respondent then filed a motion to dismiss the complaint for failure to comply with discovery. The trial court granted the motion, and appellant sought review, arguing that the sanctions were inappropriate. The court affirmed and found that the trial court did not abuse its discretion because both prerequisites for sanctions were present. Appellant failed to comply, and its failure was wilful. The court further found that good faith efforts of counsel did not ameliorate the obviously wilful behavior of the party. Moreover, respondent could benefit from the order imposing sanctions even though he was not the party initiating the discovery.

Outcome

The court affirmed the judgment dismissing appellant insurer's complaint, finding that the trial court did not abuse its discretion where appellant had wilfully refused to obey a discovery order. Respondent insured could benefit from the sanctions even though he did not initiate the discovery.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Discovery & Disclosure > General Overview

Civil Procedure > Discovery &
Disclosure > Discovery > Misconduct During
Discovery

HN1[[↓](#)] Standards of Review, Abuse of Discretion

The power to impose discovery sanctions is a broad discretion subject to reversal only for arbitrary, capricious, or whimsical action. Pursuant to Cal. Civ. Proc. Code § 2034(d), only two facts are absolutely prerequisite to imposition of the sanction: there must be a failure to comply, and the failure must be wilful.

Civil Procedure > Attorneys > General
Overview

Civil Procedure > Discovery &
Disclosure > Discovery > Misconduct During
Discovery

HN2[[↓](#)] Civil Procedure, Attorneys

Cal. Civ. Proc. Code § 2034 addresses the party's conduct, not that of counsel.

Civil Procedure > Discovery &
Disclosure > Discovery > Misconduct During
Discovery

Civil Procedure > Discovery &
Disclosure > General Overview

HN3[[↓](#)] Discovery, Misconduct During Discovery

On the face of Cal. Civ. Proc. Code § 2034(b) and (d), there is no limitation of the potential beneficiaries of the sanction. Those subdivisions authorize the court to dismiss the action or proceeding or any part thereof. The plain implication is that an opposing party who did not initiate the discovery may benefit from the sanction without even requesting relief.

Civil Procedure > Discovery &
Disclosure > Discovery > Misconduct During
Discovery

HN4[[↓](#)] Discovery, Misconduct During Discovery

Sanctions imposed under Cal. Civ. Proc. Code § 2034(b) and (d) may operate to the benefit of a party who did not initiate discovery.

Headnotes/Summary

Summary CALIFORNIA OFFICIAL REPORTS SUMMARY

An aircraft liability insurer brought a declaratory judgment action against its local agent and the heirs of a person who was killed when the insured's airplane crashed, contending that coverage under the policy was limited to \$ 100,000 per person and, in the alternative, that the agent's negligence required him to indemnify it. The agent served the insurer with interrogatories and a request for production of documents, and granted 4 extensions of time to respond to the discovery requests for a total of 71 days. Twenty days after the end of the extension period, the agent filed a motion to compel (Code Civ. Proc., § 2034, subd. (a)). By stipulation, the insurer obtained an order granting it an additional 20 days to answer the requests, and by virtue of that order plaintiff was required to comply by a date more than 6 months from the service of the discovery requests. After waiting almost two more months, the agent filed a motion to dismiss the complaint for failure to comply with the order (Code Civ. Proc., § 2034, subds. (b) and (d)). The heirs, who had not initiated discovery, joined in the agent's motion. The motion to dismiss the complaint was granted as to both defendants. (Superior Court of Santa Clara County, No. 393577, Bruce F. Allen and George W. Bonney, Judges.)

The Court of Appeal affirmed. The court held that sanctions imposed under Code Civ. Proc., § 2034, subds. (b) and (d), may operate to benefit a party who did not initiate discovery. In so holding, the court noted that a contrary result would unduly restrict the statutory language and would foster needless filings of discovery pleadings, and that Code Civ. Proc., § 2034, subds. (b) and (d), empowers the court to sanction a party who refuses to obey or who wilfully fails to comply, without any limitation as to who may request the sanction. The court also held the sanction of dismissal was properly imposed, since plaintiff conceded it had not complied and offered no explanation for its lack of cooperation, and since the trial court found the essential fact of wilfulness, which finding was entitled to deference on appeal. Finally, the court held the good faith efforts of counsel did not ameliorate plaintiff's wilful behavior, since § 2034 addresses a party's conduct, not that of counsel. (Opinion by Breiner, J., * with Newsom, Acting P. J., and Holmdahl, J., concurring.)

Headnotes

CA(1)[🔗] (1)

Discovery and Depositions § 31—Enforcement of Right to Discovery—Sanctions of Trial Court—Trial Court Discretion.

--The power to impose discovery sanctions is a broad discretion, subject to reversal only for arbitrary, capricious, or whimsical action. Only two facts are absolutely prerequisite to the imposition of a sanction. There must be a failure to comply, and the failure must be wilful (Code Civ. Proc., § 2034, subd. (d)). Thus, in a declaratory relief action brought by an aircraft liability insurer, the sanction of dismissal was not an abuse of discretion, where plaintiff conceded it had not complied with defendant's discovery requests, despite numerous extensions of time, resulting in an order requiring it

to comply by a date more than six months from service of the discovery requests, where it offered no explanation for its lack of cooperation, and where the trial court found the essential fact of wilfulness, which finding was entitled to deference on appeal. The good faith efforts of counsel did not ameliorate the wilful behavior of the party, since § 2034 addresses a party's conduct, not that of counsel.

CA(2)[🔗] (2)

Discovery and Depositions § 32—Enforcement of Right to Discovery—Sanctions of Trial Court—Striking Pleadings, Dismissal or Default—Dismissal in Favor of Defendant Not Initiating Discovery.

--Code Civ. Proc., § 2034, subds. (b) and (d), empowers the trial court to sanction a party who refuses to obey or who wilfully fails to comply with a discovery order, without any limitation as to who may request the sanction. The plain implication is that an opposing party who did not initiate the discovery may benefit from the sanction without requesting relief. Thus, in an action for declaratory relief brought by an aircraft liability insurer, in which one defendant moved to dismiss the complaint under Code Civ. Proc., § 2034, subds. (b) and (d), and in which codefendants who had not initiated the discovery at issue joined in the motion, the trial court did not abuse its discretion in ordering dismissal as to both defendants. A contrary result would unduly restrict the statutory language and would foster needless filings of discovery pleadings. Moreover, to require a coparty, whose interest is identical, to engage in a formal ritual simply duplicating the original party's discovery request merely to perfect the coparty's right to sanctions upon noncompliance would actually threaten litigants with a proliferation of identical discovery requests. Such an exercise would serve no legitimate discovery purpose, and nothing in the language of § 2034, or in reason supported such a strained rationale.

* Assigned by the Chairperson of the Judicial Council.

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Counsel: Bullen, McKone, McKinley, Gay & Keitges and Joseph J. DeHope, Jr., for Plaintiff and Appellant.

Ropers, Majeski, Kohn, Bentley, Wagner & Kane, Michael J. Brady, Mark G. Bonino, Abramson & Bianco and Bennett M. Cohen for Defendants and Respondents.

Judges: Opinion by Breiner, J., * with Newsom, Acting P. J., and Holmdahl, J., concurring.

Opinion by: BREINER

Opinion

[*903] [**593] Plaintiff appeals from two judgments dismissing its complaint, as sanctions for its wilful failure to obey a discovery order (Code Civ. Proc., § 2034). We affirm.

Appellant insurer issued a policy of aircraft liability insurance to Hoehnle through its local agent, Cropper. During the policy period, Hoehnle's airplane crashed, resulting in the death of Lange and a subsequent wrongful death action filed by Lange's heirs (hereafter, Lange) against the insured.

Calvert filed the instant action seeking declaratory relief, reformation, and indemnity, contending that the coverage [***2] was limited to \$ 100,000 per person, and in the alternative, that Cropper's negligence requires him to indemnify plaintiff. Respondents (Cropper and Lange) contended that the coverage was \$ 1 million per person; the wrongful death action was settled by means of a stipulated judgment against Hoehnle for \$ 275,000, a covenant not to execute against the insured's personal assets, and an assignment to Lange of any rights he may have against appellant.


In April 1979, defendant Cropper served appellant with interrogatories (Code Civ. Proc., § 2030) and a request for production of documents (Code Civ.

Proc., § 2031), seeking to determine the identity of witnesses and the nature of appellant's contentions.

At appellant's request, Cropper granted it four extensions of time to respond to the discovery requests, totalling seventy-one days. Twenty days after the end of the extension period, Cropper filed a motion to compel (Code Civ. Proc., § 2034, subd. (a)), noticing the motion for a date twenty-seven days later. By stipulation, appellant obtained an order [**594] granting it an additional twenty [***3] days to answer the requests; by virtue of that order, appellant was required to comply by November 4, 1979, a date more than six months from the service of the discovery requests.

[*904] On January 3, 1980, after waiting almost two more months, Cropper filed a motion to dismiss the complaint for failure to comply with the order (Code Civ. Proc., § 2034, subds. (b) and (d)). On the date of the hearing, appellant still had not complied, but rather filed written opposition in which its attorney admitted the default and his inability to explain why appellant had not cooperated with its attorney in providing the discovery that had been requested and ordered. Prior to the hearing, Lange, who had not initiated the discovery, joined in Cropper's motion. The motion to dismiss the complaint was granted as to both respondents.

Subsequently, appellant moved to vacate the order of dismissal; that motion was granted as to Lange and denied as to Cropper. The order vacating the dismissal as to Lange was based upon the fact that the declaration of Lange's attorney by which he joined in Cropper's original motion to dismiss was not properly verified. Shortly thereafter, [***4] Lange filed a motion (accompanied by a properly verified declaration) to vacate the order which had vacated the first dismissal; that motion was granted, resulting in the second judgment from which appellant has appealed.

CA(I)[ (1) Appellant raises two issues. The first, applying to both dismissals generally, is whether that sanction is appropriate.

* Assigned by the Chairwoman of the Judicial Council

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The facts shown in this case amply support the appropriateness of the actions taken by the trial court. **HN1** [↑] The power to impose discovery sanctions is a broad discretion subject to reversal only for arbitrary, capricious, or whimsical action. (*Kahn v. Kahn* (1977) 68 Cal.App.3d 372, 380 [137 Cal.Rptr. 332]; see also *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796-797 [149 Cal.Rptr. 499]; *Petersen v. City of Vallejo* (1968) 259 Cal.App.2d 757, 782 [66 Cal.Rptr. 776].) Only two facts are absolutely prerequisite to imposition of the sanction: (1) there must be a failure to comply, conceded here by appellant; and (2) the failure must be wilful (Code Civ. Proc., § 2034, subd. (d)). Here, the trial court found the essential fact of wilfulness, [***5] and such finding is entitled to deference on appeal. (*Flynn v. Superior Court* (1979) 89 Cal.App.3d 491, 496 [152 Cal.Rptr. 796]; *Cornwall v. Santa Monica Dairy Co.* (1977) 66 Cal.App.3d 250, 252-253 [135 Cal.Rptr. 761].) Moreover, appellant does not seriously dispute the finding itself, but contends rather that the good faith efforts of *counsel* should ameliorate the obviously wilful behavior of the *party*. However, **HN2** [↑] section 2034 addresses the *party's* conduct, not that of counsel.

Under these circumstances, we cannot conclude that the sanction of dismissal constituted an abuse of discretion. (*Deyo v. Kilbourne*, *supra*, 84 Cal.App.3d at pp. 796-797; *Cornwall v. Santa Monica Dairy Co.*, *supra*, 66 Cal.App.3d 250; *Williams v. Travelers Ins. Co.* (1975) 49 Cal.App.3d 805 [123 Cal.Rptr. 83]; *Housing Authority v. Gomez* (1972) 26 Cal.App.3d 366 [102 Cal.Rptr. *905] 657; *Scherrer v. Plaza Marina Coml. Corp.* (1971) 16 Cal.App.3d 520 [94 Cal.Rptr. 85].)

CA(2) [↑] (2) [***6] Appellant next argues that Lange, who was not a party to the original request for discovery, is not entitled to the benefit of sanctions for noncompliance. There is no case authority on point, but a holding in appellant's favor would unduly restrict the statutory language and

in court dockets that are already overburdened.

In particular, appellant argues that since Lange did not propound the interrogatories or request the documents, he may not move for sanctions under subdivision (a) of section 2034. However, that argument is not relevant, because the sanction at issue was imposed under subdivisions (b) and (d). Subdivision (a) does, as appellant contends, provide that the "proponent" of the discovery may move for sanctions; but subdivisions (b) and (d) empower the court to sanction the "party [who] refuses to obey" or the "party [who] wilfully fails" to comply, [**595] respectively, without any limitation as to who may request the sanction.

HN3 [↑] On the face of subdivisions (b) and (d), there is no limitation of the potential beneficiaries of the sanction. Those subdivisions authorize the court to dismiss the "action [***7] or proceeding" or "any" part thereof. The plain implication is that an opposing party who did not initiate the discovery may benefit from the sanction without even requesting relief.

Moreover, appellant's interpretation would increase the circulation of paper in litigation, to no useful purpose. In the circumstances shown, to require a coparty, whose interest is identical, to engage in a formal ritual simply duplicating the original party's discovery request merely to perfect the coparty's right to sanctions upon noncompliance would actually threaten litigants similarly situated to appellant with a proliferation of identical discovery requests. Such an exercise would serve no legitimate discovery purpose, and there is nothing in the language of section 2034 or in reason which would support such a strained rationale.

We hold that **HN4** [↑] sanctions imposed under subdivisions (b) and (d) of section 2034 may operate to the benefit of a party who did not initiate discovery.

The judgments are affirmed.

