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IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

SHAHROUZ JAHANSNAHI, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent.	B318244 (Super. Ct. [App. Div.] No. BV032981) (Super. Ct. No. 15K09197)
JEAN ROSENFIELD et al., Real Parties in Interest.	<u>ORDER</u> (Filed Feb. 16, 2022)

THE COURT:

The petition for writ of prohibition received on transfer from the Supreme Court on February 10, 2022 has been read and considered. The petition is denied. (*Hagan v. Superior Court* (1962) 57 Cal.2d 767.)

/s/ Perluss /s/ Segal /s/ Feuer
PERLUSS, P. J. SEGAL, J. FEUER, J.

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S272350

IN THE SUPREME COURT OF CALIFORNIA

SHAHROUZ JAHANSHAHI, Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent;

JEAN ROSENFELD et al., Real Parties in Interest.

(Filed Feb. 10, 2022)

The above-entitled matter is transferred to the Court of Appeal, Second Appellate District, for consideration in light of *Hagan v. Superior Court* (1962) 57 Cal.2d 767. In the event the Court of Appeal determines that this petition is substantially identical to a prior petition, the repetitious petition must be denied.

CANTIL-SAKAUYE
Chief Justice

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IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

SHAHROUZ JAHANSHAHI,	B316725
Appellant,	(Super. Ct. [App. Div.]
v.	No. BV032981)
JEAN ROSENFIELD et al.,	(Super. Ct. No.
Respondents.	15K09197)
<u>ORDER</u>	
(Filed Dec. 8, 2021)	

THE COURT:

The court has read and considered the petition for writ of mandate filed by appellant on December 3, 2021. The petition is deemed a petition seeking transfer of his case from the Appellate Division of the Los Angeles County Superior Court to this court. (Cal. Rules of Court, rule 8.1006.) This court has determined that transfer under rule 8.1002 of the California Rules of Court is not necessary to secure uniformity of decision or settle an important question of law. The petition is denied.

/s/ Perluss /s/ Segal /s/ Ibarra
PERLUSS, P. J. SEGAL, J. IBARRA, J. (Assigned)

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APPELLATE DIVISION OF THE SUPERIOR COURT
STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

JEAN ROSENFIELD,) No. BV 032981
Plaintiff and Respondent,) Santa Monica
v.) Trial Court
SHAHROUZ JAHANSNAHI,) No. 15K09197
Defendant and Appellant.) **OPINION**
) (Filed Aug. 13, 2021)

This action is a continuation of the litigation between plaintiffs and former tenants Jean Rosenfeld and Howard Rosenfeld and defendant and former landlord Shahrouz Jahanshahi, following the severance of their landlord/tenant relationship. This court previously affirmed the judgment entered in favor of plaintiffs for partial return of their security deposit and ordered that plaintiffs recover their costs on appeal. The trial court awarded plaintiffs \$25,762.50 in attorney fees incurred as costs on appeal, and thereafter imposed a monetary sanction against defendant for violating an order to cease disparaging the morals or integrity of plaintiffs' counsel. Defendant appeals from the order awarding attorney fees, which we reverse, and from the order imposing monetary sanctions, which we affirm.

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BACKGROUND¹

In July 2015, plaintiffs filed a complaint alleging a cause of action against defendant for improper retention of their security deposit arising out of a 2012 lease agreement of a condominium located on Wellesley Avenue. In April 2015, plaintiffs decided to move to another state and gave notice to defendant of their intention to terminate the tenancy. On June 18, 2015, defendant inspected the premises with Jean Rosenfeld and provided to plaintiffs a list of items to repair. Plaintiffs cleaned the property and made certain repairs. Defendant then claimed plaintiffs were responsible for additional repairs. The following month, defendant notified plaintiffs that he intended to retain the entire \$4,000 security deposit and demanded an additional payment of \$676.55. Plaintiffs conceded they owed \$150 to replace a garage remote along with \$800 for damage to a bathroom cabinet, but plaintiffs alleged defendant improperly withheld the remaining balance of \$3,050 in bad faith.

Defendant filed an answer and a cross-complaint seeking damages for plaintiffs' failure to restore the property to its original state, less wear and tear. After adjudicating several unmeritorious pretrial motions, on March 2, 2016, the court issued an order advising defendant to "reorient" his approach and further ordered both parties to comply with the Superior Court

¹ A portion of the facts relating to the underlying action are derived from our prior appellate opinion in *Rosenfeld v. Jahanshahi* (Dec. 9, 2019, BV032721) [nonpub. opn].

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of Los Angeles County, Local Rules, rule 3.26 (hereinafter “Local Rule 3.26”), which governs civility in litigation. The court also warned the parties, but particularly defendant, that they would be subject to monetary sanctions in the future if they continued to misuse court procedures. (Code Civ. Proc., § 177.5.)²

Subsequently, defendant was ordered to pay monetary sanctions for a discovery violation on June 13, 2016, and for engaging in a pattern of conduct constituting frivolous actions designed to cause unnecessary delay on February 14, 2017.

The cause proceeded to a jury trial. The jury issued a special verdict, finding that defendant improperly withheld \$3,050 in plaintiffs’ security deposit. Judgment was entered in favor of plaintiffs and against defendant. Defendant appealed from the judgment. This court affirmed the judgment and ordered that plaintiffs were entitled to recover their costs on appeal. A remittitur was issued on February 7, 2020.

On March 6, 2020, plaintiffs filed a motion seeking attorney fees as an element of its costs incurred in defending the prior appeal.³ On March 24, 2020, defendant

² Undesignated statutory references are to the Code of Civil Procedure.

³ A file-stamped copy of the motion is not included in the record on appeal. However, the case summary reflects the date of filing, and a purported copy of the unfiled motion can be found in volume 8 of the clerk’s transcript.

According to the case summary included in the clerk’s transcript, the first memorandum of costs was filed on March 9, 2020, a corrected version was filed later that same date, a third

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filed an opposition to plaintiffs' motion. The trial court issued an order to show cause on June 22, 2020 as to why defendant should not be sanctioned, pursuant to section 177.5, for failure to obey the March 2, 2016 order to comply with Local Rule 3.26. Defendant submitted an opposition to the order to show cause.

Meanwhile, on June 25, 2020, the trial court convened a hearing on plaintiffs' request for attorney fees incurred on appeal. The court heard additional argument and granted plaintiffs' motion as follows:

"Plaintiffs' memorandum of costs was filed within the statutory time. [Citation.] The fact that the wrong form was used is an irrelevant clerical error. That error was corrected, again within the required time frame." The court continued: "Defendant claims that the court's denial of attorney's fees at trial applies to the request for such fees after appeal. One has nothing to do with the other. Defendant fails to address the specific issue of plaintiffs' entitlement to attorney's fees on appeal. The issue was waived. [¶] Assuming there was no waiver, plaintiffs are still entitled to attorney's fees. [Citation.] Defendant mischaracterizes this court's denial of attorney's fees posttrial by stating, '[p]laintiffs abused the process. . . . There was no abuse. [¶] The declaration filed by attorney Rosenfeld conforms to CCP section 2015.5." The court determined that an hourly rate of \$450 was reasonable for 57.25 billable hours expended in the prior appeal and this motion.

memorandum was filed on April 1, 2020, and a final memorandum was filed on June 12, 2020.

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Accordingly, plaintiffs were awarded \$25,762.50 for attorney fees incurred as costs on appeal.⁴

Following a July 29, 2020 hearing on the order to show cause,⁵ the court struck certain allegations from the order to show cause, but it found true the remaining allegations and that defendant failed to obey a prior court order in that respect. The court imposed monetary sanctions against defendant in the amount of \$750. Defendant timely appeals the July 14, 2020 order awarding attorney fees incurred on appeal, along with the July 29, 2020 order imposing sanctions.

DISCUSSION

Attorney fees

Defendant advances multiple challenges to the validity of order of attorney fees incurred as costs on appeal. As explained, we conclude the indemnity clause in the lease agreement did not support an award of attorney fees in the instant action.⁶

⁴ The proposed order awarding attorney fees in favor of plaintiffs was signed by the court and filed on July 14, 2020. It appears the court forgot to strike the word “proposed” upon signing the order.

⁵ The record on appeal includes an official electronic recording of this proceeding.

⁶ Upon this court’s review of the record, it was discovered the indemnity clause in the lease agreement may not extend the right to recover attorney fees to actions seeking enforcement of the lease agreement itself. Ordinarily, defendant’s failure to raise this argument in his briefs would be deemed a forfeiture of the issue. (*Alki Partners, LP v. DB Fund Services, LLC* (2016) 4 Cal.App.5th

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California follows the “American rule,” under which each party will ordinarily bear its own attorney fees. (*Musaelian v. Adams* (2009) 45 Cal.4th 512, 516.) An exception to the “American Rule” exists where the parties have agreed to “the measure and mode of compensation of attorneys. . . .” (§ 1021.) Attorney fees authorized by contract are recoverable as an element of costs. (§ 1033.5, subd. (a)(10)(A); *Carr Business Enterprises, Inc. v. City of Chowchilla* (2008) 166 Cal.App.4th 14, 19 (*Carr*).) Where a contract authorizes the prevailing party to recover attorney fees in an action on that contract, that party is entitled to attorney fees incurred at trial *and* on appeal. (*Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.* (2012) 211 Cal.App.4th 230, 250.)

The propriety or amount of an attorney fees award is reviewed for abuse of discretion, whereas a determination concerning the legal basis for attorney fees is a question of law subject to independent review. (*Jaffe v. Pacelli* (2008) 165 Cal.App.4th 927, 934.) We ascertain the mutual intention of the parties using the clear and explicit language of the contract. (*Alki, supra*, 4 Cal.App.5th at p. 600.)

574, 599 (*Alki*).) However, the determination of whether an award of attorney fees is supported by the underlying contract is an issue fairly raised by the appellate court so long as the parties are provided a fair opportunity to present their positions. (*Id.* at pp. 599-600.) On May 26, 2021, we provided to the parties an opportunity to file supplemental letter briefs addressing whether the award of attorney fees was supported by the lease agreement. (Gov. Code, § 68081.) Both parties’ supplemental briefs have been read and considered.

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An indemnity is defined as an obligation of one party to pay or satisfy the loss or damage incurred by another party. (*Rideau v. Stewart Title of California, Inc.* (2015) 235 Cal.App.4th 1286, 1294 (*Rideau*).) An indemnity clause may be drafted to cover claims between the contracting parties, or to cover claims asserted by third parties. (*Ibid.*)

Where a contract provides for attorney fees in an action to enforce the agreement, the attorney fees provision is made applicable to the entire contract by operation of Civil Code section 1717. (*Carr, supra*, 166 Cal.App.4th at p. 19.) However, Civil Code section 1717 creates a reciprocal right to recover attorney fees based on an indemnity clause only if the contract expressly provides for attorney fees in an action to enforce the contract itself. (*Meininger v. Larwin-Northern California, Inc.* (1976) 63 Cal.App.3d 82, 84-85 (*Meininger*).) The case law is universal in this regard. (*Alki, supra*, 4 Cal.App.5th at pp. 600-606; *Rideau, supra*. 235 Cal.App.4th 1286 at pp. 1298-1299; *Carr, supra*, at pp. 19-23, and cases cited.)

In *Meininger*, the pertinent portion of the contract was entitled “Subcontractor’s Liability Insurance, Indemnity,” and it required the subcontractor to “indemnify and hold and save [contractor] harmless from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage or expense of whatsoever kind and nature, including counsel or attorneys’ fees, . . . which [contractor] shall or may at any time sustain or incur by reason or in consequence of any injury or damage to person or property which may arise

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directly or indirectly from the performance of this Contract by the Subcontractor, . . ." (*Meininger, supra*, 63 Cal.App.3d at p. 84, italics omitted.) The Court of Appeal affirmed the denial of attorney fees because a plain reading of the clause, in addition to the heading of the clause, evince that "it does not specifically provide for attorneys' fees in an action on the contract as is required to trigger operation of section 1717 of the Civil Code." (*Id.* at p. 85, italics omitted.)

Myers Building Industries, Ltd. v. Interface Technology, Inc. (1993) 13 Cal.App.4th 949 (*Myers*), involved an action for breach of a construction contract. The contract contained a clause requiring a builder to "indemnify and hold harmless" the owner and its agents from any claims or losses expended, including attorney's fees, arising out of or resulting from the performance a building contract. (*Id.* at pp. 963-964.) Adopting the analysis of *Meininger*, the court struck the attorney fees award, explaining "[t]he very essence of an indemnity agreement is that one party hold the other harmless from losses resulting from certain specified circumstances. The provisions of Civil Code section 1717 were never intended to inflict upon the indemnitee the obligation to indemnify his indemnitor in similar circumstances. Indemnification agreements are intended to be unilateral agreements. The Legislature has indicated no intent to make them reciprocal by operation of law." (*Id.* at pp. 972-973.)

In contrast, the court in *Baldwin Builders v. Coast Plastering Corp.* (2005) 125 Cal.App.4th 1339 (*Baldwin*) concluded the prevailing party was entitled to

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recover attorney fees based on an indemnity clause stating, “Subcontractor shall pay all costs, including attorney’s fees, incurred in enforcing this indemnity agreement.” (*Id.* at pp. 1342, 1345.) This clause “unambiguously contemplate[d] an action between the parties to enforce the indemnity agreements . . . and thus [Civil Code] section 1717(a) would appear to be applicable. [Citation.]” (*Id.* at p. 1345, italics omitted.)

In *Carr*, the Court of Appeal reversed an order granting defendants’ motion for a new trial and remanded the case with directions to enter a new judgment in favor of plaintiff. (*Carr, supra*, 166 Cal.App.4th at p. 17.) Upon remand, the court denied plaintiff’s request for attorney fees incurred on appeal based on its determination that the indemnity clause did not expressly authorize attorney fees for an action on the contract. (*Id.* at pp. 18-19.) The appellate court affirmed the denial of attorney fees, noting the clause mirrored the language in *Myers* and *Meininger*, and was distinguishable from other cases including *Baldwin* in which there was express contractual language authorizing recovery of fees in an action to enforce the contract. (*Id.* at pp. 22-23.) “[T]he language authorizes fees as an expense of litigation that [plaintiff] agreed to pay in any action brought by another person arising out of the performance of the contract. The intent was to ensure that [defendant] did not suffer any damages if, . . . it became embroiled in litigation with a third party. We agree that, because ‘an indemnity agreement is intended by the parties to unilaterally benefit the indemnitee, holding it harmless against liabilities and

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expenses incurred in defending against third party tort claims [citation], application of reciprocity principles would defeat the very purpose of the agreement.’ [Citations.]” (*Id.* at p. 23.)

The same conclusion was reached in *Rideau*: “We do not think this indemnity language was meant to provide for the recovery of attorney fees, on a reciprocal basis, in this action directly between the . . . principals, and the escrow holder . . . , to enforce the terms of the general escrow instructions. . . . The . . . principals were not acting to enforce the indemnity clause in the Instructions, but rather they were claiming rights under the previous disbursement portion of the Instructions, which was independent of an indemnity situation.” (*Rideau, supra*, 235 Cal.App.4th at p. 1301.)

Similarly, *Alki* involved a breach of contract action in which the court awarded contractual attorney fees to the prevailing defendant. (*Alki, supra*, 4 Cal.App.5th at p. 577.) The provision at issue provided that defendant was to be indemnified for losses, including reasonable attorney fees resulting from the performance or non-performance of defendant’s duties hereunder. (*Ibid.*) Citing *Carr* and *Myers*, the *Alki* court reversed the award of attorney fees “because the contractual language relied upon is a third-party indemnity provision that does not create a right to prevailing party attorney fees in litigation between the parties to the contract. [Citation.]” (*Id.* at p. 577-578.) Courts will not infer the parties intended an indemnification clause to cover attorney fees between the parties if the provision does not expressly say so. (*Id.* at p. 604.) If the parties

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intended to provide a right to attorney fees in an action for breach of contract “there could hardly be a more obtuse way of doing so than the language [in the clause at issue].” (*Ibid.*)

In the case *sub judice*, the pertinent clause of the lease agreement provides in full: “INDEMNITY REGARDING USE OF PREMISES. To the extent permitted by law, tenant agrees to indemnify, hold harmless, and defend landlord from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which landlord may suffer or incur in connection with tenant’s possession, use or misuse of the premises, except landlord’s act or negligence. Tenant hereby expressly releases landlord and/or agent from any and all liability for loss or damage to tenants [sic] property or effects whether in the premises, garage, storerooms or any other location in or about the premises, arising out of any cause whatsoever, including but not limited to rain, plumbing leakage, fire or theft, except in the case that such damage has been adjudged to be the result of the gross negligence of landlord, landlords [sic] employees, heirs, successors, assignees and/or agents.” (Certain capitalization omitted.)

We first note that the heading of the clause at issue expressly refers to indemnity, which suggests that the parties intended the clause to relate to indemnity, not attorney fees in an action on the contract. (*Carr, supra*, 166 Cal.App.4th at p. 22; *Meininger, supra*, 63 Cal.App.3d at pp. 84-85.) In addition, the first sentence of the clause refers to plaintiffs’ obligation to

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“indemnify”, “hold harmless” and “defend” defendant from any losses, claims or expenses suffered or incurred by defendant from plaintiffs’ “possession, use or misuse of the premises, except [defendant’s] act or negligence.” Reference to the words “indemnify”, “indemnification” or “hold harmless” tend to show an obligation by the indemnitor to reimburse the indemnitee for any damages the indemnitee becomes obligated to pay third party claimants, not attorney fees incurred in a breach of contract action between the parties to the contract. (*Alki, supra*, 4 Cal.App.3d at pp. 600-602; *Carr, supra*, at p. 20; *Myers, supra*, 13 Cal.App.4th at p. 969.) In addition, the clause releases plaintiff from liability for losses or damage to the property arising out of certain natural and unnatural causes, such as rain, fire or theft, with no clear intention that the parties were to pay attorney fees for any action on the lease agreement itself.

Plaintiffs argue in their supplemental brief that, unlike *Alki*, the language in the clause at issue is not an ordinary indemnity provision, but rather it was “a fee shifting provision within the ambit of Civil Code § 1717(a) which explicitly applies to the contractual relations between the contracting parties themselves, . . .” We do not agree with this interpretation of the lease agreement. As explained by the *Alki* court, “[i]t would have been simple for the parties to provide: If any action is commenced to enforce or interpret the terms of this agreement, the prevailing party shall be entitled to recover reasonable attorney fees. But [the clause] does not even contain the phrase ‘prevailing

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party' or refer to an action between the parties for breach of the agreement. Courts will not infer the parties intended an indemnification provision to cover attorney fees between the parties if the provision 'does not specifically provide for attorney's fees in an action on the contract. . . .'" [Citation.]" (*Alki, supra*, 4 Cal.App.5th at p. 604, quoting *Myers, supra*, 13 Cal.App.4th at p. 970; accord, *Rideau, supra*, 235 Cal.App.4th at p. 1298.)

Like *Meininger*, *Myers*, *Carr*, *Rideau* and *Alki*, there is nothing in the indemnity clause of the lease agreement that infers an intent to provide a right to recover attorney fees incurred in connection with a breach of contract action between the parties. In contrast to *Baldwin*, the clause does not unambiguously contemplate an action between the parties to enforce the lease agreement. Accordingly, we conclude the "American rule" applies and it was error to award prevailing party attorney fees to plaintiffs as an element of costs incurred on appeal.⁷

⁷ Plaintiffs' supplemental brief relies upon *Hot Rods, LLC v. Northrop Grumman Systems Corp.* (2015) 242 Cal.App.4th 1166 (*Hot Rods*). *Hot Rods* involved a contract with a clause that purported to indemnify the plaintiff from any claims, damages and attorney fees demanded by "any person for any alleged liabilities, whether based in contract, tort, . . . or otherwise." (*Id.* at p. 1181.) The court concluded that the attorney fees provision in the clause expressly applied to both first- and third-party claims based on the broad definition of a claim by any person for any alleged liabilities, and covers both first and third party claims. (*Id.* at pp. 1181-1182.) Unlike *Hot Rods*, the lease agreement in the instant case does not evince an intent by the parties to authorize attorney fees to a party prevailing in an action on the lease agreement. It

Sanctions

Defendant here claims the imposition of monetary sanctions for violation of a court order deprived him of due process and equal protection, and was an abuse of the court's discretion. It is defendant's view that he was merely engaging in zealous advocacy and the sanctions order was not lawful. We do not agree.

Trial courts retain inherent power to control all proceedings connected with litigation pending in that court. (§ 128, subd. (8); *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1351.) To ensure compliance with its orders, courts are authorized to impose monetary sanctions against a party for a violation of a lawful order, without good cause. (§ 177.5; *People v. Ward* (2009) 173 Cal.App.4th 1518, 1527.) In particular, section 177.5 provides: "A judicial officer shall have the power to impose reasonable money sanctions, not to exceed fifteen hundred dollars (\$1,500), notwithstanding any other provision of law, payable to the court, for any violation of a lawful court order by a person, done without good

is clear from the entirety of the clause that defendant's primary concern was to be indemnified and held harmless from any claims filed by a third party based on plaintiffs' use of the premises. *Hot Rod* does not support plaintiffs' position.

During oral argument, plaintiffs emphasized that defendant sought attorney fees during the trial court proceedings in addition to the current appellate proceeding in reliance on the same indemnity clause. Defendant's demand is irrelevant to and does not supplant the absence of any legal basis for prevailing party, attorney fees.

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cause or substantial justification. This power shall not apply to advocacy of counsel before the court.”

An order imposing monetary sanctions lies within the sound discretion of the trial court. (*Moyal v. Lanphear* (1989) 208 Cal.App.3d 491, 501.) “That discretion must be exercised in a reasonable manner with one of the statutorily authorized purposes in mind and must be guided by existing legal standards as adapted to current circumstances.” (*Ibid.*) A court abuses its exercise of discretion if its decision exceeds the bounds of reason, or it fails to follow the appropriate procedures; however, reversal is unwarranted merely because of a difference of opinion between the appellate tribunal and the trial court. (*Conservatorship of Becerra* (2009) 175 Cal.App.4th 1474, 1482.) Where a party challenges the factual underpinnings of a trial court’s ruling on sanctions, the reviewing court assesses the record for substantial evidence. (*Id.* at pp. 1481-1482.) We turn to the pertinent trial court proceedings in this case.

Defendant was represented by counsel during some of the trial court proceedings, and he acted as a self-represented litigant in other proceedings. On March 2, 2016, the court convened a hearing on defendant’s motion to compel plaintiffs to post an undertaking and request for sanctions against plaintiffs. The court denied both requests, and also denied plaintiffs’ counter request for sanctions against defendant, without prejudice. The court found “that the defendant’s actions in connection with these motions only, were with substantial justification.” However, the court cautioned that “Defendant needs to reorient the manner

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in which he is approaching this action. Defendant and Plaintiffs [sic] counsel are ordered to comply with Local Rule 3.26 in its entirety,⁸ which rule is now made mandatory in this action by this order. This court will not hesitate to issue monetary sanctions in the future if the parties, especially defendant, continue to misuse the court[']s resources and procedures. CC[P] § 177.5.'"

On June 13, 2016, the court found that defendant misused the discovery process and ordered monetary sanctions of \$560 against defendant. The court reminded defendant to comply with the March 2, 2016 order to comply with Local Rule 3.26 and warned that any future violations of this order may result in sanctions. On February 14, 2017, the court heard plaintiff's motion for sanctions against defendant. The court found "defendant had 'engaged in a pattern of conduct constituting frivolous actions designed solely to cause unnecessary delay.'"⁹

⁸ As explained in more detail *post*, Local Rule 3.26 adopts the guidelines for civility in litigation as established by the Los Angeles County Bar Association. (Super. Ct. L.A. County, Local Rules, rule 3.26, appen. 3.A(c)(2).)

⁹ These orders are not included in the record on appeal, but they were noted in the trial court's oral recitation of facts in its July 29, 2020 written order along with this court's prior opinion in *Rosenfeld v. Jahanshahi*, *supra*, BV032721.

The conduct at issue included: defendant's motion to transfer the cause to the small claims division; a June 13, 2016 sanction for a discovery violation, and admonishment to comply with the rules of civility; the denial of defendant's motion for sanctions against plaintiff; the denial of defendant's discovery motion "as moot and unnecessary"; defendant's filing a second amended cross complaint without obtaining leave of court; and "defendant's

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The pleading at issue was an opposition filed by defendant on March 24, 2020.¹⁰ On June 22, 2020, the trial court issued an order to show cause as to why defendant should not be sanctioned, pursuant to section 177.5, for failure to obey the March 2, 2016 order to comply with Local Rule 3.26. The order to show cause detailed the purportedly sanctionable conduct as follows:

“It is alleged that [defendant] failed to obey the court order in the Introduction in paragraphs 1 and 3, on page one of the brief, by stating that opposing counsel was ‘hitting below the belt,’ made ‘untruthful statements’ and that the motion was ‘frivolous’ and ‘nothing but farce and sham’.

“It is alleged that [defendant] failed to obey the court order by use of the following language in describing opposing counsel’s conduct:

“Page 1, line 25, . . . attempt to sneak in attorney fees . . . ”;

failure to comply with ‘the court’s directive to abide by LASC Rule 3.26,’ as demonstrated by his ‘disrespectful and insulting comments towards [plaintiffs’] counsel.’

¹⁰ The opposition was not identified in defendant’s notice designating the record on appeal. (Cal. Rules of Court, rule 8.831(b)(2)(B).) On March 19, 2021, defendant sought to augment the record with various documents, including the March 24, 2020 motion. On April 28, 2021, the motion was denied based on defendant’s failure to comply with the applicable court rules. We rely on the trial court’s recitation of the contents of the opposition, as defendant does not challenge its accuracy.

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“Page 5, lines 27-28, ‘frivolous, . . . is not made in good faith, and is intended to harass, annoy, abuse the process, and add costs to the litigation . . .’;

“Page 6, lines 24-17 [sic], ‘Plaintiffs’ counsel . . . has resorted to smear campaign . . . as that is the only way he could get an upper hand as an officer of the court . . . “[Milting below the belt” as he has done so in many other proceedings involving this matter’;

“Page 7, lines 2-4, . . . Capriciously has resorted to smear campaign, . . . to win at all costs where, he was and is well-aware of the fact his bringing this litigation in the limited jurisdiction was an abuse of process’;

“Page 7, lines 25-26, . . . gamesmanship and dishonesty to avoid perjury by an invalid declaration’;

“Page 9, lines 4-7, . . . conduct that is “frivolous” – committed with an improper motive, such as to harass or manipulate opposing counsel or the court—i.e., committed in subjective bad faith’ – and which results in an opponent incurring additional cost. In short, a lawyer whose dereliction in duty is ‘blatant’ and who has ‘personally misused the judicial system’.”

Defendant filed a response to the order to show cause, arguing in part “the words and phrases used were justified based upon the facts of this case and the evidence presented. And in no way, shape or form [defendant] has disobeyed the court order or it could be considered as *ad hominem* based on the facts and evidence of this case.” Defendant also asserted that plaintiffs’ counsel conducted himself in a similar fashion.

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A hearing on the order to show cause convened on July 29, 2020. At the hearing, defendant proclaimed he was being subject to discrimination based on his status as a self-represented litigant, plaintiffs were engaging in a smear campaign against him, his opposition merely described the state of the case, and plaintiffs' counsel should be equally sanctioned. The court struck the allegations concerning defendant's use of the word "frivolous" as appropriate argument. The court found the remaining allegations to be true and issued a monetary sanction against defendant in the amount of \$750.

Defendant challenges the validity of the order imposing sanctions on several fronts. One such contention is that the trial court violated defendant's due process and equal protection rights "by singling [him] out . . . on charges that cannot stand." This argument is not persuasive. An order imposing monetary sanctions must be preceded by notice and an opportunity to be heard, and the order shall be in writing and shall recite in detail the circumstances justifying the order. (§ 177.5.) The June 22, 2020 order to show cause gave defendant adequate notice as to what acts formed the basis for the proposed sanctions. (*People v. Whitus* (2012) 209 Cal.App.4th Supp. 1, 6; *People v. Hundal* (2008) 168 Cal.App.4th 965, 970.) Thereafter, defendant submitted a lengthy opposition, including a declaration setting forth his version of the events leading up to the order to show cause. At the July 29, 2020 hearing, the court granted defendant's request for judicial notice of various documentation and

afforded defendant ample opportunity to present additional argument. Defendant was provided fair warning and ample opportunity to respond before the sanction was imposed. There was no due process violation. (*Caldwell v. Samuels Jewelers* (1990) 222 Cal.App.3d 970, 976-977.)

Defendant also claims the sanctions order violated his constitutional right to equal protection. This contention is not developed. Established appellate practice dictates that an appealed judgment or order is presumed correct, and the appellant must affirmatively demonstrate error through reasoned argument, citation to the appellate record and discussion of relevant legal authority. (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685.) This burden “requires more than simply stating a bare assertion that the judgment, or part of it, is erroneous and leaving it to the appellate court to figure out why; it is not the appellate court’s role to construct theories or arguments that would undermine the [order], . . . [Citation.]” (*Lee v. Kim* (2019) 41 Cal.App.5th 705, 721.) Defendant has forfeited his equal protection argument. Even if we overlooked the forfeiture, defendant fails to allege, let alone demonstrate a disparate treatment between two or more similarly situated classes of persons—the first prerequisite to a meritorious claim under the equal protection clause. (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.)

With respect to the allegation of judicial bias, defendant has presented no supporting evidence. This approach is not sufficient (*People v. Whitus, supra*, 209

Cal.App.4th at p. Supp. 11), and our independent review of the record reveals no such bias. (*Scott C. Moody, Inc. v. Staar Surgical Co.* (2011) 195 Cal.App.4th 1043, 1049.)

Next, defendant posits that the sanction order was not supported by the evidence because his statements against plaintiffs and their counsel fell under the advocacy exception to the power to sanction. Defendant is incorrect. The power to sanction under section 177.5 “shall not apply to advocacy of counsel before the court.” “Advocacy” has been defined as “the act of pleading, arguing, supporting or recommending a particular position or idea.” (*People v. Ward, supra*, 173 Cal.App.4th at p. 1529.) However, “advocacy of counsel is not merely any argument but is proper argument on behalf of a party in favor of a particular position.” (*Ibid.*)

As noted, on March 2, 2016, the court ordered both parties, but defendant in particular, to “reorient” his litigation approach and to comply with Local Rule 3.26. This rule provides: “The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.” (Local Rule 3.26.) The cited appendix states, “[n]either written submissions nor oral presentations should disparage the intelligence, ethics, morals, integrity or personal behavior of one’s adversaries, unless such things are directly and necessarily in issue.” (Local Rule, appen. 3.A(c)(2).) This local rule is valid and binding unless it is inconsistent with state law or the statewide court rules. (Gov. Code, § 68070, subd. (a); *Los Angeles*

County Dept. of Children and Family Services v. Superior Court (1996) 51 Cal.App.4th 1257, 1267.) No such claim is advanced here.

As summarized by the trial court, defendant's March 24, 2020 opposition to plaintiffs' motion seeking attorney fees included the following allegations against plaintiffs' counsel: he has engaged in "gamesmanship and dishonesty to avoid perjury"; he has "'resorted to [a] smear campaign,'" "'hitting below the belt' as he has done so in many other proceedings"; he "'capriciously has resorted to smear campaign'" in order "'to win at all costs where, he was and is well-aware of the fact his bringing this litigation . . . was an abuse of process"'; and that he has engaged in a "'blatant'" "'dereliction in duty' and has 'personally misused the judicial system.'"

While the essence of advocacy will often involve attacking the case and argument of your adversary, proper advocacy does not include gratuitous attacks against the opposing party or counsel. (*People v. Ward, supra*, 173 Cal.App.4th at pp. 1529-1530.) Zealous advocacy does not equate with "'attack dog'" or "'scorched earth'" tactics; nor does it mean lack of civility. (*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1537.) Defendant's statements plainly disparaged the ethics and integrity of plaintiffs' counsel, and such attacks were not directly and necessarily at issue. Defendant was repeatedly warned to comply with Local Rule 3.26, and he was previously sanctioned for similar conduct, but he nevertheless continued to engage in ad hominem attacks against

opposing counsel. These arguments did not support defendant's position in opposing the request for attorney fees. At that point, defendant "was no longer engaged in advocacy" and his comments "could not further his . . . case. It was a gratuitous and deliberate violation of a lawful court order. Sanctions under section 177.5 for this conduct therefore were appropriate." (*People v. Ward, supra*, at p. 1530.) Defendant's status as a self-represented litigant does not exempt him from these rules. (*Stover v. Bruntz* (2017) 12 Cal.App.5th 19, 31.) The imposition of sanctions did not constitute an abuse of the court's discretion.¹¹

DISPOSITION

The July 14, 2020 order awarding attorney fees is reversed, and the cause is remanded to the trial court with directions to deny plaintiffs' claim for attorney's fees and to redetermine the amount of costs recoverable by plaintiffs against defendant in a manner that is consistent with the views expressed in this opinion. The July 29, 2020 order imposing sanctions is affirmed. Each party is to bear its own costs, including attorney fees, incurred on this appeal. (Cal. Rules of Court, rule 8.891(a)(3); see *People ex rel. Cooper v. Mitchell*

¹¹ "The notice of appeal was filed on August 10, 2020. That same date, defendant filed an ex parte application for an order to show cause re contempt against plaintiffs' counsel. Defendant seeks to challenge the subsequent denial of his request for sanctions, which was adjudicated on August 18, 2020—eight days after the filing of the notice of appeal. A notice of appeal does not encompass an order made after the notice. (*Silver v. Pacific American Fish Co., Inc.* (2010) 190 Cal.App.4th 688, 691-694.)

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Brothers' Santa Ana Theater (1985) 165 Cal.App.3d
378, 383-384, 391.)

/s/ P. McKay
P. McKay, P. J.

We concur:

/s/ [Illegible] Ricciardulli /s/ [Illegible] Richardson
Ricciardulli, J. Richardson, J.

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

SHAHROUZ JAHANSHAHI, v. JEAN ROSENFIELD et al.,	B310558 (Super. Ct. [App. Div.] No. BV032981) (Super. Ct. No. 15K09197)
Appellant, Respondents.	<u>ORDER</u> (Filed Mar. 3, 2021)

THE COURT:

The court has read and considered the petition filed by appellant on February 23, 2021 seeking transfer of his case from the Appellate Division of the Los Angeles County Superior Court to this court. (Cal. Rules of Court, rule 8.1006.) This court has determined that transfer under rule 8.1002 of the California Rules of Court is not necessary to secure uniformity of decision or settle an important question of law. The petition is denied.

/s/ Perluss /s/ Segal /s/ Feuer
PERLUSS, P. J. SEGAL, J. FEUER, J.

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**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES
Civil Division**

West District, Santa Monica Courthouse,
Department J

15K09197

July 29, 2020

**ROSENFELD, JEAN vs
JAHANSHAHI, SHAHROUZ**

8:30 AM

Judge: Honorable Norman P. Tarle CSR: electronically
Judicial Assistant: E. Goldstein recorded
Courtroom Assistant: None ERM: None
Deputy Sheriff:
M. Ruiz

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): Shahrouz Jahanshahi

NATURE OF PROCEEDINGS: Order to Show Cause
Re: Sanctions For Failure to Obey Court Order

The matter is called for hearing.

Defendant's Request for Judicial Notice is granted.
The Court has read and considered the court file, mi-
nute orders and Defendant's brief.

The Order to Show Cause is argued by Defendant.

The Court's Order to Show Cause why monetary sanc-
tions should not be imposed. pursuant to Code of Civil
Procedure section 177.5, is granted.

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Defendant, Shahrouz Jahanshahi is sanctioned in the amount of \$750.00, for a violation of Code of Civil Procedure section 177.5.

Proof of payment is to be delivered to the clerk in Department J on or before 4:00 p.m. on August 3, 2020.

Defendant is personally served with the Order Imposing Sanctions in open court, by the deputy sheriff.

Certificate of Mailing is attached.

BEN ROSENFELD (Cal State Bar # 203845)

ATTORNEY AT LAW

115 1/2 Bartlett Street

San Francisco, CA 94110

Tel: (415) 285-8091

Fax: 415) 285-8092

ben.rosenfeld@comcast.net

Attorney for Plaintiffs

Jean Rosenfeld and Howard Rosenfeld

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

JEAN ROSENFELD, *et al.*,) Case No. 15K09197
Plaintiffs,) [PROPOSED] ORDER
v.) GRANTING PLAINTIFFS' MOTION FOR
SHAHROUZ JAHANSHAHI,) ATTORNEYS' FEES
et al.,) ON APPEAL AND
Defendants.) PLAINTIFFS' MEMORANDUM OF COSTS
) ON APPEAL
) (Filed Jul. 14, 2020)
) Date: June 25, 2020
) Time: 8:30 am
) Dept: J (Santa Monica)
) Judge: Honorable
) Norman P. Tarle

These matters came on for hearing on June 25, 2020 in Department J (Santa Monica) of the Superior Court of California for the County of Los Angeles.

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Having read and considered Plaintiffs' Motion for Attorney's Fees on Appeal filed on March 6, 2020 and Plaintiffs' Memorandum of Costs on Appeal filed on March 9, 2020, both regarding Defendant Shahrouz Jahanshahi's appeal to the Superior Court Appellate Division (Appeal No. BV032721), together with Defendants' Opposition, Plaintiffs' Reply, and the parties' papers other filed in support thereof, and for GOOD CAUSE SHOWN, the Court hereby Orders:

1. Plaintiffs are awarded their costs on appeal of \$72.05; these costs are to be paid by the defendant to plaintiffs' attorney, Ben Rosenfeld;
2. Plaintiffs are awarded \$25,762.50 in attorney's fees on appeal; these attorney's fees are to be paid by the defendant to plaintiffs' attorney, Ben Rosenfeld;
3. Plaintiffs are awarded \$99.45 in costs related to their motion for attorney's fees on appeal; these costs are to be paid by the defendant to plaintiffs' attorney, Ben Rosenfeld; and,
4. Plaintiffs are entitled to, and defendant owes and shall pay plaintiffs' attorney Ben Rosenfeld, interest on the total principal sum of costs plus attorney's fees itemized in Nos. 1-3 above, calculated at the rate of 10% (ten percent) per annum (.0002739726 per day) on any unpaid portion of this total \$25,934 principal sum, running from the date of entry of this order forward, in accordance with Cal. Code of Civ. Proc. § 685.010(a), or otherwise in accordance with Cal. Code of Civ. Proc. § 685.010(b), until the total amounts owed in principal plus interest have been fully paid. *See also*,

Khazan v. Biwnin (2012) 206 Cal.App.4th 796, 813, 815 (“interest begins to run upon entry of the order setting the amount of fees awarded,” and “the trial court correctly ordered interest to run from the time of the fee award it made on remand” from appeal).

IT IS SO ORDERED.

07/14/2020 /s/ [SEAL] Norman P. Tarle/Judge
Date HONORABLE
NORMAN P. TARLE
SUPERIOR COURT JUDGE

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**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES
Civil Division**

West District, Santa Monica Courthouse,
Department J

15K09197

June 25, 2020

**ROSENFELD, JEAN vs
JAHANSHAHI, SHAHROUZ**

8:30 AM

Judge: Honorable Norman P. Tarle	CSR: Electronically
Judicial Assistant: Michael Lee	Recorded
Courtroom Assistant: None	ERM: None
	Deputy Sheriff: S. Cernas

APPEARANCES:

For Plaintiff(s): Benjamin Tarn Rosenfeld (Telephonic)
For Defendant(s): Shahrouz Jahanshahi

NATURE OF PROCEEDINGS: Hearing on Motion
for Attorney Fees on Appeal; Order to Show Cause Re:
Sanctions For Failure to Obey Court Order

The matters are called for hearing.

Plaintiffs' attorney Ben Rosenfeld appears via Court-
Call.

Defendant Shahrouz Jahanshahi in pro per is present
in court.

Defendant's Request for Court Reporting Services by
a Party with Fee Waiver is denied because defendant

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cannot apply a fee waiver from a different case 13C644230 and because all limited civil cases are recorded as a matter of course. A copy of the court's recording may be requested from the court's website.

Pursuant to the request of defendant, the Order to Show Cause Re: Sanctions For Failure to Obey Court Order scheduled for 06/25/2020 is continued to 07/27/2020 at 08:30 AM in Department J at Santa Monica Court-house in order to provide more time for defendant to prepare.

Court declines to look and consider at the supporting documents submitted by Mr. Jahanshahi, by e-mail, to the clerk regarding the Motion for Attorney's Fees on Appeal for the following reasons: 1) documents submitted were not forwarded to plaintiffs; and 2) the court found the nature of documents as described by the defendant to be irrelevant.

Both parties have read the court's tentative ruling regarding plaintiffs' Motion for Attorney's Fees on Appeal,

The court after reading and considering the moving papers, opposition and reply, and hearing the arguments makes the following ruling:

The court's tentative ruling becomes the order of the court this date as follows:

Ruling Re: Plaintiffs' Motion for Attorney's Fees on Appeal

Costs

Plaintiffs' Memorandum of Costs was filed within the statutory time. CRC rule 8.891(c)(1). The fact that the wrong form was used is an irrelevant clerical error. That error was corrected, again within the required time frame.

The plaintiffs are entitled to costs on appeal. CRC rule 8.891(a)(1).

Plaintiffs are awarded the costs on appeal of 572.05, as well as the costs related to this motion of \$99.45. These costs are to be paid by the defendant to plaintiffs' attorney, Ben Rosenfeld.

Attorney's Fees

Defendant claims that the court's denial of attorney's fees at trial applies to the request for such fees after appeal. One has nothing to do with the other. Defendant fails to address the specific issue of plaintiffs' entitlement to attorney's fees on appeal. The issue was waived.

Assuming there was no waiver, plaintiffs are still entitled to attorney's fees. CRC rule 3.1702(c). Defendant mischaracterizes this court's denial of attorney's fees posttrial by stating, "[p]laintiffs abused the process . . . ". See Defendant's Opposition to Plaintiffs' Motion for Attorney Fees, p. 1 lines 17-18. There was no abuse.

The declaration filed by attorney Rosenfeld conforms to CCP section 2015.5.

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The motion to claim the attorney's fees on appeal was timely. CRC rules 3.1702(c)(1) and 8.891(c)(1).

"The primary method for establishing the amount of "reasonable" attorney fees is the lodestar method. . . . The lodestar . . . Is produced by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate' Lealao v. Beneficial California, Inc. (2000) 82 Cal.App.4th 19, 26.

The court finds that the hourly rate of \$450 is reasonable considering the attorney's years in practice and skill demonstrated throughout the proceedings. The court further finds that the 57.25 hours requested are also reasonable. The time expended was reasonably necessitated by the need to respond to the appeal and written arguments on this motion.

Plaintiffs are awarded \$25,762.50 for attorney's fees on appeal payable by the defendant to attorney Ben Rosenfeld.

-----END OF RULING-----

The Plaintiff's Motion for Attorney Fees on Appeal filed by JEAN ROSENFELD, HOWARD ROSENFELD on 03/06/2020 is Granted.

Later, with no parties present, and on the record, the court finds upon reviewing the case file that an Acknowledgement of Satisfaction of Judgment was filed on 12/11/2019, therefore clerk will not prepare an amended judgment.

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Plaintiff's counsel to prepare order on Motion for Attorney's Fees on Appeal and submit it to the court for signature.

Clerk to give notice.

Certificate of Mailing is attached.

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES
Civil Division**

West District, Santa Monica Courthouse,
Department J

15K09197

March 1, 2018

**ROSENFELD, JEAN vs
JAHANSHAHI, SHAHROUZ**

1:30 PM

Judge: Honorable Norman P. Tarle	CSR: None
Judicial Assistant: Michael Lee	ERM: None
Courtroom Assistant: None	Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted
Matter

The Court, having taken the matter under submission on 02/20/2018, now rules as follows: Attorney's fees are considered costs pursuant to Code of Civil Procedure [CCP] section 1033.5(a)(10), and will be considered along with the Motion to Tax Costs.

The central issue in these motions is whether or not the court will apply CCP section 1033(b), which states,

(b) When a prevailing plaintiff in a limited civil case recovers less than the amount prescribed by law as the

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maximum limitation upon the jurisdiction of the small claims court, the following shall apply:

(1) When the party could have brought the action in the small claims division but did not do so, the court may, in its discretion, allow or deny costs to the prevailing party, or may allow costs in part in any amount as it deems proper.

The prevailing party in this case are the Rosenfelds. They sued the Jahanshahis for \$3050 and recovered \$3050. Clearly, this was within the \$10,000 jurisdiction of the small claims division. In their opposition to tax costs, the Rosenfeld's claimed,

Defendant knew at the time that plaintiffs could not practically defend themselves in small claims court in Los Angeles, as they had moved to Hawaii, Howard Rosenfeld was chronically acutely ill, and plaintiffs could not rely on attorney representation in small claims court. Therefore, plaintiffs' undersigned counsel filed suit against defendants in limited civil jurisdiction. . . .

(Plaintiffs' Opposition to Defendants' Motion to Tax or Strike Costs; page 1, lines 12-16)

Plaintiffs noted, in their arguments in opposition to the motion to tax costs and in favor of their motion seeking attorney's fees, that the defendants engaged in harassing and contentious conduct that unreasonably and unfairly extended the litigation. Plaintiffs complained of being bombarded with frivolous motions,

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defendants engaging in unreasonable discovery conduct, demand for a jury trial, as well as the extensive time Jean Rosenfeld needed to be in California for this case. Most of these situations could have been circumvented by filing the case in small claims. Jean Rosenfeld's travel to California could have been limited to the single day necessary for trial. This might have been extended to two days if the defendant had lost and appealed. An appeal in small claims results in a trial de novo. Such a trial de novo permits attorneys to appear for the parties. (CCP section 116.770.)

No discovery is permitted in small claims, and the harassment in this area could have been avoided. (CCP section 116.310(b).) In addition Jean Rosenfeld could have appeared for her husband. (CCP section 116.540(k).) Her attorney could have prepared a litigation trial notebook for her to present at the trial. Her testimony could have been limited by engaging live or written expert witness testimony (CCP sections 116.531 and 116.520.) If Jean Rosenfeld's condition necessitated some type of assistance for her during the trial, a court has discretion to allow another individual to assist her pursuant to CCP section 116.540(1).

Aside from the benefits to the parties, the jurors' time and inconvenience could have been avoided.

The decision to file this matter as a limited jurisdiction case was ill considered.

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Costs and Attorney's Fees are Denied.

The Plaintiffs' Motion for Attorney's fees is Denied.

Defendant's Motion to tax costs is Granted.

Clerk to give notice.

Certificate of Mailing is attached.

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S273826

IN THE SUPREME COURT OF CALIFORNIA
En Banc

SHAHROUZ JAHANSHAHI, Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent;

JEAN ROSENFELD et al., Real Parties in Interest.

(Filed May 18, 2022)

The petition for writ of mandate is denied.

CANTIL-SAKAUYE
Chief Justice
