



Superior Court of California
County of Kern
Bakersfield Department 11

Date: 09/13/2018

BCV-17-102855

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING VS CATHY'S CREATIONS, INC.

Courtroom Staff

Honorable: David R. Lampe

Clerk: Veronica D. Lancaster

**NATURE OF PROCEEDINGS: RULING ON DEFENDANTS' MOTION TO
ENFORCE JUDGMENT; HERETOFORE SUBMITTED ON SEPTEMBER 5, 2018**

RULING:

The court grants the motion in part and denies the motion in part as herein stated.

Summary of Ruling

Perhaps not surprisingly, this action has returned to this court for further consideration in the form of this motion following this court's final judgment dated May 1, 2018, from which no appeal has been taken.

This motion requires that the court consider the nature of the action leading to judgment, the effect of that judgment on the subsequent conduct of the parties, and the continuing jurisdiction of the court after judgment, now and in the future.

The DFEH filed the underlying civil action pursuant to Government Code section 12974, thereby invoking the equitable jurisdiction of the court. Although the object of such an action from the DFEH's perspective is provisional relief, this case is unique in that the Defendants fundamentally did not dispute the underlying conduct (that is, discrimination based upon sexual orientation), but instead asserted prevailing First Amendment rights as a defense. Neither side objected to the jurisdiction of the court. The court acquired personal and subject matter jurisdiction of the cause. The case proceeded upon the merits of the constitutional defense.

This court ultimately decided the issue in favor of the Defendants based upon the facts presented for the reasons stated in the court's judgment. This was a plenary judgment, not a preliminary one. This judgment is final, not being appealed.

The Defendants are procedurally correct to bring this motion to enforce. The court's final judgment was one in equity, determining the corresponding rights and duties of the parties. As a decree in equity, the court has continuing equitable jurisdiction to enforce its decree and to ensure that the rights of the

parties are maintained according to the court's judgment. This is not a matter of res judicata, because there is no second proceeding. This is a matter of the court's original jurisdiction.

Although the court's judgment was plenary and final, this does not mean that the DFEH is foreclosed from appropriate investigation pursuant to Government Code section 12963, et seq. Under principles of comity and the doctrine of Separation of Powers, it is incumbent upon this court to respect the right of the DFEH to perform its statutory executive investigatory function. The nature of an equitable decree is that it is necessarily based upon the facts which are known or knowable at the time it is rendered. The DFEH is not foreclosed from reasonably investigating the factual underpinnings of this court's adjudication, provided that the investigation proceeds in a lawful and legitimate manner. As stated in the Conclusion to this ruling, to the extent that this motion asks this court to enjoin any further investigation by DFEH into the circumstances of the complaint of the Real Parties in Interest, the motion will be denied.

However, just as this court must respect the DFEH's executive authority, the DFEH, and the Defendants for that matter, must respect this court's judicial authority. This court has rendered a plenary judgment addressing the constitutional rights of the Defendants. Neither side may submit the matter to the court's jurisdiction without objection, "take the court's temperature," and then act as if the court's judgment has not been made. To do so would defeat the very nature of continuing equitable jurisdiction. Certainly, it would be unseemly and in derogation of the court's jurisdiction for any party to "forum shop."¹

Further, although the court must and does permit the DFEH's investigation pursuant to statute, that investigation is undoubtedly proscribed to some degree by the court's judgment. The court having rendered its judgment, the investigation must be tailored to the ascertainment and discovery of facts reasonably and rationally calculated to serve as the basis for an argument for modification of the judgment. It would be naïve for the court to expect that controversy will not arise during discovery of the scope of the DFEH's investigation.

Therefore, as stated in the Conclusion to this ruling, the court will grant the motion in the following particulars. First, to the extent that the DFEH deems it necessary to petition to compel compliance with any of its administrative discovery pursuant to section 12963.5, or if the Defendants deem it necessary to seek any protective order from such discovery, any such filings shall be made with this court. Further, to the extent that the DFEH's investigation causes it to conclude that further enforcement is necessary which cannot be informally resolved pursuant to section 12965, then any such further proceeding should be brought before this court in the nature of action or petition for modification of the court's original judgment. This limited grant of the motion perhaps has little practical significance, because, as conceded by counsel for the DFEH, venue of further proceedings under section 12963.5 and 12965 is with this court in any case.

Brief Procedural History

¹ The court only takes jurisdiction of the cause before it and matters necessarily incident thereto. The court does not presume jurisdiction over any other causes of action based upon different primary rights, or over different parties.

On December 14, 2017, the DFEH commenced this civil action pursuant to Government Code section 12974. On that date, the Court denied the DFEH's request for a temporary restraining order, and set an order to show cause hearing for February 2, 2018. At that time, the Court determined that the nature of the proceeding was an "action" and that "the Petition is the complaining document in the action, which is equivalent to the Complaint." As a result, Defendants ultimately answered.

On February 5, 2018, the Court issued its ruling describing the proceeding as an action by the DFEH for enforcement of the Unruh Civil Rights Act. For the reasons stated in the ruling, the court determined that the state could not succeed on the facts presented as a matter of law. That ruling was subsequently attached to the Court's final order (dated March 2, 2018) on the DFEH's petition. Following a Case Management Conference on March 16, 2018, the parties submitted alternative proposed judgments to the court.

On May 1, 2018, the Court entered a minute order in which it stated that "the court is not fully satisfied with the alternative forms of judgment crafted respectively by each of the parties. The court will prepare its own form of judgment." The Court entered its own judgment, which stated in significant part:

"On Plaintiff the Department of Fair Employment and Housing's civil action:

"No Statement of Decision having been requested pursuant to Code of Civil Procedure section 632, and the matter having been tried in less than one day, therefore:

"IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is hereby rendered and to be entered in favor of Defendants Cathy's Creations, Inc. dba Tastries and Catharine Miller, and against Plaintiff Department of Fair Employment and Housing for the reasons stated in the attached Order."

Notice of Entry of that judgment was served on May 9, 2018.

On July 9, 2018, the time for the DFEH to file an appeal from the final judgment ran, with the DFEH filing no such notice of appeal.²

Nature of the Court's Judgment

The DFEH's action was brought under Government Code section 12974 which provides: "[w]henever a complaint is filed with the department and the department concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this part, the director or his authorized representative may bring a civil action for appropriate temporary or preliminary relief pending final disposition of such complaint."

In its opposition to the current motion, the DFEH refers to its 12974 action as a "preliminary injunction action" and that the court denied a "motion for preliminary injunction." As the DFEH envisions it, it

² The DFEH abandoned a previous appeal taken on April 30, 2018 from the court's earlier March 2, 2018 order.

perceives the adjudication as “preliminary,” and that it is further entitled to litigate “unsettled constitutional questions at issue,” and to “fully litigate them on the merits in a civil action for permanent relief” under section 12965.

The court does not view the matter as so limited.

The court did not deny a “motion for preliminary injunction.” As stated, the court ordered, adjudged, and decreed that judgment was rendered and entered in favor of the Defendants for the reasons stated, that is, that the Defendants held a fundamental constitutional right under the First Amendment to engage in the conduct which was the subject matter of the complaint. In other words, the Defendants admitted to the business practice complained of which this court recognized would be a discriminatory practice under the Unruh Act absent constitutional protection. As such, the court’s determination was plenary in nature, based upon the defense at issue—a constitutional right.

The fact that section 12974 and section 12965 both refer to a “civil action” does not necessarily mean that the statutory scheme envisions two civil actions, particularly when both would be subject to the same rules of venue. A common sense interpretation of these code sections under these circumstances is that one civil action is involved, and that section 12974 authorizes a filing earlier than contemplated by section 12965 where “prompt judicial action is necessary.”

Even if the current action filed by DFEH were to be considered a petition for preliminary injunction, it does not mean that the court is without authority or jurisdiction to render a plenary decision. Here, the parties did not undertake to litigate the matter presented to the court solely as a matter for preliminary determination. Instead, both sides discussed the constitutionality of the Defendants’ conduct in a plenary manner. When the parties choose to present a constitutional question upon uncontroverted facts to the court, the court is empowered to treat the matter as a plenary question. (See *Eckl v. Davis* (1975) 51 Cal. App. 3d 831, 835.)

Further, the issue of whether to issue an injunction was ancillary to the basic question of law presented. Injunction is not a cause of action—it is a remedy. The court undeniably held both subject matter and personal jurisdiction. The Defendants admitted the conduct. The sole question presented was a question of law—whether or not the Defendants were entitled by constitutional right to engage in the conduct. For this reason, there was a satisfactory showing to submit the cause upon the merits for plenary relief. No purpose would be served by further trial to delay determination of the fundamental constitutional question. (See *Camp v. Bd. of Supervisors* (1981) 123 Cal. App. 3d 334, 357–58.)

The Court’s Continuing Jurisdiction

The fact that the court has issued a plenary judgment does not necessarily mean that the case is “over.” The action by the DFEH was equitable in nature. The court’s decree was made in an exercise of its equitable jurisdiction. The court’s equitable jurisdiction continues.

Ordinarily, a trial court’s jurisdiction over the parties and the subject matter continues until a final judgment is entered. (*Diamond Heights Village Assn., Inc. v. Financial Freedom Senior Funding Corp.* (2011) 196 Cal.App.4th 290, 305.) However, a court retains jurisdiction to “compel obedience to its judgments, orders, and process.” (Code Civ. Proc., § 128, subd. (a)(4).) In cases involving equitable

claims and relief, such jurisdiction is broad. “The jurisdiction of a court of equity to enforce its decrees is coextensive with its jurisdiction to determine the rights of the parties, and it has power to enforce its decrees as a necessary incident to its jurisdiction. Except where the decree is self-executing, jurisdiction of the cause continues for this purpose, or leave may be expressly reserved to reinstate the cause for the purpose of enforcing the decree, or to make such further orders as may be necessary. [Citations.] A court of equity can mold its decrees to suit the exigencies of the case. [Citation.] Where equity has acquired jurisdiction for one purpose, it will retain that jurisdiction to the final adjustment of all differences between the parties arising from the causes of action alleged. [Citations.] Where a court has taken jurisdiction of a suit in equity it may determine all legal as well as equitable issues in order to completely dispose of the matters in controversy. [Citations.]” (*Day v. Sharp* (1975) 50 Cal.App.3d 904, 912–913, quoting *Klinker v. Klinker* (1955) 132 Cal.App.2d 687, 694; accord, *Balboa Island Village Inn, Inc. v. Lemen* (2007) 40 Cal.4th 1141, 1161.)

The power to retain and exercise post judgment jurisdiction by a court in equity in order to interpret the judgment and determine unresolved issues and future problems is well settled. (See, e.g., *Dawson v. East Side Union High School Dist.* (1994) 28 Cal.App.4th 998, 1044–1045; *Day v. Sharp*, *supra*, 50 Cal.App.3d at pp. 911–913; *Rynsburger v. Dairymen's Fertilizer Co-op., Inc.* (1968) 266 Cal.App.2d 269, 278–279; *Ecker Bros. v. Jones* (1960) 186 Cal.App.2d 775, 787; see also *Roden v. AmerisourceBergen Corp.* (2005) 130 Cal.App.4th 211.) Indeed, even in the absence of an express reservation of jurisdiction, “[a]n equity court has inherent power to make its decree effective by additional orders affecting the details of performance....” (*Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 767; accord, *Palmco Corp. v. Superior Court* (1993) 16 Cal.App.4th 221, 225.)

The post judgment exercise of jurisdiction in equity cases is supported by policies favoring judicial economy and finality; by resolving issues that remain after judgment is entered, the court is able “to do full and final justice between [the parties] without the necessity of filing a new action.” (*Day v. Sharp*, *supra*, 50 Cal.App.3d at p. 912; see also *Pailhe v. Pailhe* (1952) 113 Cal.App.2d 53, 64 [in exercising its equitable powers, the court can, “in one action, grant all the relief to which the parties are entitled, although at law such a result might strictly require several actions.’ ”].)

That this court has continuing equitable jurisdiction is inherent in the very purpose of equity. “Equity or chancery law has its origin in the necessity for exceptions to the application of rules of law in those cases where the law, by reason of its universality, would create injustice in the affairs of men.” (*Estate of Lankershim* (1936) 6 Cal.2d 568, 572–573.) The object of equity is to do right and justice. Courts of equity will mold and adjust their decrees so as to award substantial justice according to the requirements of the varying complications that may be presented to them for adjudication. (*Times–Mirror Co. v. Superior Court* (1935) 3 Cal.2d 309, 331, 44 P.2d 547; See *Hirshfield v. Schwartz* (2001) 91 Cal. App. 4th 749, 770–71.)

In the present case, the court must ensure that its judgment is respected by the parties. No one can come to court, invoke its jurisdiction, acquire the court’s judgment upon the matter, and then ignore the court’s decree. The court must act to preserve its jurisdiction. To fail to do so would be contrary to the rule of law inherent in a constitutional republic.

The Court’s Deference to the Statutory Authority of the DFEH

However, although the court has continuing jurisdiction in the matter, this does not mean that its judgment forecloses the DFEH from its statutory obligations.

The DFEH has the authority and duty to investigate, conciliate, mediate, and prosecute complaints alleging violations of the Unruh Act. (Govt. Code, §12930 (f)(2).) After the filing of any complaint alleging facts sufficient to constitute a violation of the FEHA, the department is required to make a prompt investigation. (*Id.* § 12963.) If the department determines after investigation that the complaint is valid, the department is required to immediately endeavor to eliminate the unlawful employment practice or civil rights violation complained of by mediation efforts. (*Id.* §§ 12963.7(a) and 12965 (a).) Under Government Code section 12965, after investigation, the DFEH may bring a civil action on behalf of the aggrieved person if its efforts to eliminate the unlawful practice without litigation fail. (*Id.* § 12965(a) and (c).)

The court does and will not enjoin the DFEH from its statutory and investigatory duties as discussed above. The court's judgment is in no way intended to prohibit or superintend the DFEH's performance of its executive function except as authorized by law. To do otherwise would be to ignore comity and violate the doctrine of separation of powers. This court's retention of equitable jurisdiction while deferring to the executive function of the DFEH strikes an appropriate balance between the constitutional judicial authority of this court, and the executive authority by law of the DFEH. (See *California Corr. Peace Officers Assn. v. State of California* (2000) 82 Cal. App. 4th 294, 311–12.)

The court's judgment in this case was not a prohibitory injunction against the DFEH from fulfilling its statutory duties. The judgment of this court was necessarily founded upon the facts presented. To the extent that Defendants interpret the court's judgment as precluding any further actions by the DFEH upon the complaint of the Real Parties in Interest, the Defendants must be mindful that a court exercising equitable jurisdiction may always modify or dissolve a decree having prohibitory effect. While the general rule is that a court's final judgment may not be impeached collaterally, the rule does not apply to any prohibitory decree in equity. "This is so because the decree, although purporting on its face to be permanent, is in essence of an executory or continuing nature, creating no right but merely assuming to protect a right from unlawful and injurious interference. Such a decree, it has uniformly been held, is always subject, upon a proper showing, to modification or dissolution by the court which rendered it. The court's power in this respect is an inherent one. Its action is determined by the facts and circumstances of each particular case, with a view to administering justice between the litigants, and it has the power to modify or vacate its decree when the ends of justice will be thereby served." (*Sontag Chain Stores Co. v. Superior Court in & for Los Angeles Cty.* (1941) 18 Cal. 2d 92, 94–95; see also *Inmates of Sybil Brand Inst. for Women v. Cty. of Los Angeles* (1982) 130 Cal. App. 3d 89, 111–12.)

The Scope of Further Proceedings

Except as to issue this ruling, there is nothing more at this time before the court. The court retains jurisdiction. The DFEH may proceed with its investigation.

The statutory scheme envisions that the court may become further involved during the course of the DFEH's investigation, and thereafter.

To the extent that the Defendants claim grounds to resist the specific discovery sought by the DFEH during its investigation, Government Code section 12963.5 provides the method for this court to review and scrutinize the discovery process. That section provides that the court “shall have jurisdiction to compel the attendance and testimony of witnesses, the production of books, records, documents, and physical materials, and the answering of interrogatories. If an individual or organization fails to comply with a subpoena, interrogatory, request for production, or examination under oath by refusing to respond fully or objecting thereto, or by obstructing any proceeding before the department, the department may file with a superior court a petition for an order compelling compliance.”

It seems clear that the scope of the DFEH investigation must be directed at the factual underpinnings of the court’s judgment, and must be rationally and reasonably related to a basis for presenting evidence for modification of the court’s judgment.

Furthermore, should the DFEH conclude that further enforcement action is necessary pursuant to Government Code section 12965, the DFEH should file the appropriate pleading asserting its claims with this court.

By retaining jurisdiction in this matter, the court is doing little or no more than the statutory investigatory and enforcement scheme already provides, since the venue of further proceedings is with this Superior Court in any case. Section 12965 provides that any enforcement action “shall be brought in any county in which unlawful practices are alleged to have been committed, in the county in which records relevant to the alleged unlawful practices are maintained and administered, or in the county in which the person claiming to be aggrieved would have worked or would have had access to public accommodation, but for the alleged unlawful practices,” which under all these circumstances is Kern County. Government Code section 12963.5 provides that any petition for enforcement should be brought “in any county in which the department's investigation or inquiry takes place,” which for all practical purpose in this case is also Kern County.

Conclusion

The court must strike the appropriate balance between its own jurisdiction and authority and that of the DFEH under the circumstances presented. Therefore, for the reasons stated herein the court rules as follows:

1. The court grants the motion to enforce to the extent that the court retains jurisdiction of the premises of the action and related matters and specifically retains jurisdiction of any further proceedings under Government Code sections 12963.5 and 12965; and
2. Except as stated above, the motion is denied.

Under the circumstances of the time limits imposed by statute with respect to discovery and further proceedings, the minute order of the court shall be the order of the court.

Copy of minute order mailed to all parties as stated on the attached certificate of mailing.

CERTIFICATE OF MAILING

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, and not a party to the within action, that I served the *Minute Order dated September 13, 2018* attached hereto on all interested parties and any respective counsel of record in the within action by depositing true copies thereof, enclosed in a sealed envelope(s) with postage fully prepaid and placed for collection and mailing on this date, following standard Court practices, in the United States mail at Bakersfield California addressed as indicated on the attached mailing list.

Date of Mailing: September 13, 2018

Place of Mailing: Bakersfield, CA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Tamarah Harber-Pickens
CLERK OF THE SUPERIOR COURT

Date: September 13, 2018

By: _____
Veronica Lancaster, Deputy Clerk

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