

# Daily Journal

## Excessive Litigation: Engage At Your Own Risk

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On January 14, in *Chavez v. City of Los Angeles* (2010 DJDAR 727), the California Supreme Court held that claims brought under the California Fair Employment and Housing Act (FEHA) can be litigated pursuant to the rules for cases of limited jurisdiction. It then affirmed a trial court's denial under California Code of Civil Procedure Section 1033(a) of the prevailing plaintiff's request for \$870,935.50 in attorney's fees in a case filed in general jurisdiction.

Although the Supreme Court held that a trial court must consider the underlying purposes of the FEHA in exercising discretion under Section 1033(a), it rejected the court of appeal's conclusion that FEHA cases (as civil rights cases) were so inherently complex and presented issues of such broad public interest that they were not intended to be litigated under the provisions set forth for limited civil cases.

Finally, the Supreme Court reaffirmed that the aim of attorney fee awards under the FEHA is to incentivize the prosecution of *meritorious* claims; that a fee award must be reasonable; and that when determining what is a reasonable fee award in a FEHA case the trial court can and should consider, among other things, the nature and extent of any successes achieved by a prevailing plaintiff.

Robert Chavez was employed as a police officer by the city of Los Angeles. On March 10, 2000, immediately upon returning from a medical leave of absence, the city provided Chavez with written notice that he

was suspended for five days due to a citizen complaint about a robbery investigation a year earlier. Chavez eventually resumed his patrol duties, but was then assigned to administrative tasks until he could be seen and cleared by a staff psychologist with the police department's Behavioral Science Services unit.

On March 24, 2000, Chavez submitted a charge to California's Dept. of Fair Employment and Housing alleging claims of discrimination on the basis of race, color, marital status, medical condition, national origin/ancestry, and disability, as well as claims for harassment and retaliation. On April 26, 2000, Chavez was approved for a transfer to a different department.

In May 2000, Chavez filed a lawsuit against the city alleging, among other things, discrimination, harassment, and retaliation. Two weeks after filing this lawsuit, his approved transfer was rescinded.

Chavez again filed a charge with California's Dept. of Fair Employment and Housing alleging the rescission of his transfer request was retaliatory. Chavez subsequently filed a further lawsuit alleging discrimination, harassment, and retaliation for having submitted the FEHA charge and for bringing prior litigation against the city.

Ultimately, after a five-day trial, the jury returned a verdict in Chavez's favor as to the retaliation claim for the city's decision to rescind his transfer request. The jury awarded Chavez only \$1,500 in economic

damages and \$10,000 in noneconomic damages. As a result of the jury's award of \$11,500, Chavez sought over \$870,935.50 in attorney's fees.

The trial court denied Chavez's fee and cost request in its entirety. In particular, the trial court noted that Chavez had failed to offer any rebuttal to the testimony of defendant's expert who put Chavez's economic loss at just under \$1,000. As a result, the trial court concluded that Chavez knew or should have known that this action should have been brought in limited jurisdiction and exercised its discretion to deny any attorney's fees pursuant to California Code of Civil Procedure Section 1033.5.

On Chavez's appeal of the trial court's order denying attorney's fees, the court of appeal reversed. Specifically, the court of appeal held that Section 1033 did *not* apply to actions brought pursuant to FEHA. It reasoned that Section 1033 was meant "to encourage pursuit of minor grievances in courts of limited jurisdiction," which is "inapposite [to] statutory discrimination civil rights actions" because "[e]ven a modest financial recovery can serve to vindicate a substantial legal right." In short, the court of appeal sought to place FEHA cases on a unique pedestal, finding they were never appropriate to be filed or litigated in limited jurisdiction.

In a unanimous decision, California's Supreme Court overturned the court of appeal and reinstated the trial court's decision to deny Chavez's attorney's fees. The Supreme Court held that there was

no statutory exclusion of FEHA cases from the procedures for limited civil cases, and therefore there was no irreconcilable conflict between Section 1033(a) and California's FEHA. Rather, the Supreme Court held that in exercising its discretion under Section 1033(a), the trial court should give due consideration to the policies and objectives of FEHA, but was free to conclude that Chavez's "failure to take advantage of the time- and cost- savings features of the limited civil case procedures may be considered a special circumstance that would render a fee award unjust."

But more fundamentally, the Supreme Court held that if Chavez "had no reasonable basis to anticipate a FEHA damages award in excess of the amount recoverable in a limited civil case, and also that the action could have been fairly and effectively litigated as a limited civil case, the trial court may deny, in whole or in part, [Chavez's] claim for attorney fees and other litigation costs."

The Supreme Court also reaffirmed that when using the lodestar method to calculate attorney fees under the FEHA, the ultimate goal is "to determine a 'reasonable' attorney fee, and not to encourage unnecessary litigation of claims that serve no public purpose either because they have no broad public impact or because they are factually or legally weak." In this regard, the Court emphasized that "although fees are not reduced when a plaintiff prevails on only one of several factually related and closely intertwined claims 'under state law as well as federal law, a reduced fee award is appropriate when a claimant achieves only limited success.'" The Court also made clear that "[a] fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether."

Based on its review of the record, the Supreme Court noted that "the extent of [Chavez's] success was modest at best,"

and that Chavez's success on his one FEHA retaliation claim, which was factually distinct from his other claims, did not have "any broad public impact or resulted in significant benefit to anyone other than himself." The Court also noted that the requested \$870,935.50 in attorney fees was "grossly inflated." For all of these reasons, the Court concluded that the trial court did not abuse its discretion in denying in full Chavez's request for attorney fees.

Although Chavez will argue this case is limited to the question of whether attorney fees can be denied to a prevailing plaintiff where the recovery obtained could have been obtained using the procedures for limited civil cases, the import of the Chavez decision may be much broader.

First, the Supreme Court made clear that not all FEHA cases warrant extensive litigation, and that there can be consequences to plaintiffs who over-litigate these cases and do not achieve result commensurate with that effort. The potential denial of all fees is a new pressure point that may help employers to resolve cases where only a limited amount is at issue.

Second, the Supreme Court has reaffirmed that a FEHA case should be treated like any other case when it comes to awarding attorney's fees. Fee awards must be reasonable in light of the successes obtained, and the mere fact that the FEHA implicates civil rights does not automatically mean that fee awards should be inflated. Plaintiffs will have to demonstrate that their case implicated some broader public benefit beyond a recovery to them.

In sum, given the current financial and administrative burdens California's court system is under, the *Chavez* decision may best be viewed as a message to counsel to think hard about how their cases add to that burden, and a warning that excessive litigation is brought with a risk.

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