Gorobets v. Jaguar Land Rover North America

326 Cal.Rptr.3d 309

Court of Appeal, Second District, Division 2, California.

A § 998 offer must be sufficiently certain, specific, or definite in its terms and conditions. An offer is sufficiently certain only if:

1. Its terms and conditions are sufficiently certain that the offeree—at the time the offer is made—can evaluate the worth of the offer and make a reasoned decision whether to accept that offer and
2. Its terms and conditions are sufficiently certain that the *trial court*—at the time the case is resolved—can determine whether the judgment is more favorable than the offer.

Burdens of Proof

The 998 offeror bears the burden of demonstration its offer was sufficiently certain and unconditional with any ambiguities strictly construed *against* the offeror.

The 998 offeree bears the burden of demonstrating the offer was not made in good faith.

ISSUES

1. Is a 998 offer sufficiently certain if it consists of two offers made at the same time to the same party and leaves it to the offeree which offer to accept?
2. Is a 998 offer sufficiently certain if it promises to pay the offeree for the categories of damages to which the offeree is statutorily entitled (plus some categories to which it is not), agrees to immediately pay any undisputed amounts for those categories, and shunts any disputed amounts to a third-party mechanism for resolution?

HOLDING

Nope. But…Although the offeror in this case made two simultaneous offers (which would render both of them ineffective), only one of those two offers was itself invalid; as a result, the offeror's 998 offer in the end consisted of a single valid offer such that the trial court's orders and resulting amended judgment were correct in limiting the offeree to pre-offer costs and attorney fees and awarding the offeror post-offer costs based on the offeree's failure to obtain a more favorable award at trial than the single, valid offer.

FACTS

Plaintiff just wanted to drive a cool car. On October 2, 2015, Plaintiff entered into an agreement with Defendant to lease a brand spanking new 2016 Land Rover LR4 ($59,474). Instead, he was stuck with a defective, nonconforming lemon with steering, suspension, engine, exterior, electrical, structural, HVAC, interior and brake problem…So, basically all the problems. All of which persisted even after Plaintiff brought it in for repairs. (Plaintiff's Opening Brief to the Court of Appeals states that the first repair occurred 6 weeks into the lease and that this

"would be the first of *fourteen* repair requests for the subject vehicle's irreparable engine, electrical, and structural issues.") (emphasis included).

So, on April 4, 2019, Plaintiff filed a complaint under California's "lemon laws," the Song-Beverly Consumer Warranty Act. (A law that, thankfully, allows a prevailing consumer to recover reasonably incurred attorney fees "based on actual time expended". Thus, permitting Plaintiff to retain trail counsel, who so kindly agreed to "bear the risk of litigating the case on a fully contingent basis." *See* Appellant's Opening Brief.) Approximately eighteen months after Plaintiff filed suit, Defendant served Plaintiff with a 998 offer.

The offer was 2 simultaneous offers, phrased as alternatives, that invited the Plaintiff to choose between them. One was a lump sum offer in which Defendant offered to "pay $85,000.00 to Plaintiff to return" the vehicle to Defendant "with free and clear title." The second was a category-based offer with a dispute resolution mechanism. It included an offer to pay Plaintiff back for all past expenses and incidental or consequential damages as well as a category to which plaintiff was not entitled under the statute (a waiver of the Act's mileage offset for use of the vehicle prior to bringing the defects to Land Rover's attention).

The offer required Plaintiff to provide an itemization with proof for each of the categories. If there were any disputed amount, they would be resolved by Plaintiff's choice of dispute resolution processes. Plaintiff was also required to return the car with free and clear title in this scenario. As to either offer, Defendant offered to pay Plaintiff's attorney fees and costs in either (1) a flat amount of $7,500 or (2) an amount to be determined by the court. Plaintiff could choose.

PROCEDURAL HISTORY

The case went to trial and the jury found for the Plaintiff, awarding $76,155.27 in damages. Both parties filed memoranda of costs and then cross-motions to strike or tax the other's recovery. Plaintiff sought $76,118.32 in costs on the ground that he was the "undisputed 'prevailing party'" in the case. Defendant sought $14,612.17 in costs on the ground that Plaintiff did not achieve a more favorable outcome at trial than Defendant's 998 offer and, as a result, Defendant was entitled to the costs it incurred *after* that offer and Plaintiff was limited to the costs he incurred *prior* to that offer. **The trial court ruled that the cost-shifting provision of § 998 applied because Defendant's 998 offer provided Plaintiff with a sufficiently specific and unconditional offer of $85,000**.

Plaintiff also moved for $543,413.34 in attorney fees. The trial court ruled that § 998 barred Plaintiff from recovering attorney fees he incurred after Defendant's offer. The court denied as "inappropriate" plaintiff's requests for a multiplier of his attorneys' fees and awarded plaintiff $22,492 in pre-offer fees. These rulings were affirmed by the court of appeals.

DISCUSSION

Simultaneous offers *do* satisfy the first, offeree-focused requirement of sufficient certainty because they do not interfere with the *offeree's* ability to evaluate the worth of the

offer[s] and make a reasoned decision about which of the simultaneous offers to accept. But ultimately, they are invalid because the same logic does not fly for the second requirement of sufficient certainty because a trial court cannot determine whether the judgment is more favorable than the offer. One of the policy considerations behind § 998 is to prevent offers that aim to game the system. Simultaneous offers would empower litigant to game the system. The court concluded that simultaneous offers are invalid because they are too uncertain for the trial court to evaluate under § 998 on the back end.

However, the court did not throw out both offers. Instead, it determined if both offers were independently valid. If both were valid, the court concluded the trial court is unable to apply § 998 at the back end and the offers are all invalid. But if only one is valid, then the trial court can apply § 998 at the back end as too that offer and the prohibition against simultaneous offers is not implicated. **The court noted that nonmonetary terms are not enough alone to create uncertainty—if they are capable of valuation by the offeree and the trial court, the offer will be deemed certain**.

The court ultimately held that an offer to pay amounts to which an offeree is statutorily entitled and to shunt any disputes over entitlement to those amounts to a third-party arbiter is not sufficiently certain to be valid under § 998. **While an offer is not "uncertain merely because it calls upon the offeree to fill in the blanks and do the math," it fails to satisfy the second prong for certainty because it would require the court "to engage in wild speculation bordering on psychic prediction" for the amount the parties would have agreed upon in an ADR process.** Thus, only the lump sum offer was valid.

Because plaintiff failed to obtain a more favorable offer than the only valid offer on the table, Plaintiff was limited to recovering his pre-offer costs and attorney fees and was required to pay Defendant's post-offer costs.

DISSENT

The dissenting judge agreed with the majorities determination that simultaneous offers are invalid under § 998. And thought the story should end there. It was unclear to the dissent how the Plaintiff could have known that the general prohibition against simultaneous offers would not be enforced in this case. The dissent found it inequitable to force the Plaintiff to absorb the Defendant's post-offer costs as a repercussion of the court's determination, more than 4 years after the offers were made, that one of the offers was invalid.