

When the Legal Bill Still Has to Be Paid: Court of Appeal Rules That Attorney, Which
Prosecuted Matter on a Contingency Fee Basis, May Pursue Defendant for Attorney's
Fees, Even if the Plaintiff Has Released the Defendant

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In a matter that will have implications for litigation in which attorney's fees may be awarded, the California Court of Appeal, Second Appellate District, ruled in Mancini & Associated v. Jason Schwetz (2019) WL 4187472 ("Mancini/Schwetz case") that, where a Plaintiff, without the Plaintiff attorney's knowledge or consent, releases the Defendant from a pending judgment, including attorney's fees and costs, the attorney for the Plaintiff may still pursue the Defendant for fees and costs.

The facts of the Mancini/Schwetz case are relatively routine. Mancini & Associates, a plaintiff employment litigation firm, was retained by Gina Rodriguez to pursue a lawsuit against her former employee, a tanning salon, in the matter Rodriguez v. Schwetz. The matter went to trial and resulted in a verdict in favor of Rodriguez whereby the jury awarded \$68,650.00 in damages against Defendant Schwetz on a breach of contract claim, and no damages against a separate Defendant. The Trial Court then awarded \$12,628.46 in costs and \$136,050.00 in attorney's fees to Rodriguez (a small amount of costs were also awarded against another Defendant).

Following the judgment, which was entered in 2008, Mancini & Associates, on behalf of Plaintiff Rodriguez, sought to collect damages. Despite the efforts of Mancini's collection attorneys, the judgment proved uncollectable.

Some six years later, Plaintiff Rodriguez contacted Defendant Schwetz on Facebook, and the two then had lunch and resumed a friendship. In 2015, the Mancini firm employed Michael Berke, a collections attorney, to again pursue collection of the 2008 judgment. In early April 2015, Berke contacted Schwetz by telephone, and also subpoenaed bank records. Thereafter, Schwetz contacted Plaintiff Rodriguez and asked if she had hired Berke. Rodriguez said she had not. Schwetz then prepared a documented entitled "Memorandum of Settlement and Mutual Release" which Rodriguez agreed to sign, without the knowledge of her counsel. Schwetz then asserted he had been released from payment of the judgment.

A year later, in 2016, the Mancini firm brought suit against Schwetz alleging causes of action for intentional interference with contract, intentional interference with economic relations, negligent interference with prospective economic relations and enforcement of an attorney lien.

The matter went to trial. At trial, Schwetz testified that he and Rodriguez drafted the Memorandum because Plaintiff Rodriguez wanted to resolve their differences. Schwetz admitted that he knew there were continuing efforts to collect a judgment against him, however, Following presentation of the evidence and argument by the parties, the Trial Court decided that Mancini had established that Schwetz intentionally interfered with the Retainer Agreement to Mancini's economic detriment. The Court then entered judgment for \$409,351.81. Schwetz appealed, contending that Mancini's claims were precluded by the litigation privilege and that insufficient evidence existed that he intentionally interfered with Mancini's contractual relationships with Plaintiff Rodriguez.

On appeal, the Court of Appeal ruled that the litigation privilege did not apply, finding that Schwetz' acts in executing the Memorandum were communicative, but were in the course of tortious conduct (along with other acts) to deprive the Mancini firm of its attorney's fees. The Court of Appeal also ruled that there was sufficient evidence that Schwetz knew of the Mancini firm's attorney fee lien, and/or that he intended to interfere with Mancini's collection efforts.

The Mancini/Schwetz case is important in that, where a Plaintiff may have a relationship with the Defendant, a settlement between the Plaintiff and Defendant may not be binding on the attorney for the Plaintiff insofar as recovery of attorney's fees.

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