

Bandana Trading Co. v Quality Infusion Care, Inc.

7/21/08

Juror misconduct during trial and during deliberations

Defendant Quality Infusion Care (Quality) purchased large quantities of a prescription medication called Gamunex from plaintiff Bandana Trading Company (Bandana). Gamunex is a blood plasma derivative used to treat immune deficiencies.

Until January 2005, Bandana sold Gamunex on “net 15 days” terms, meaning payment was due within 15 days of shipment. In practice, Bandana allowed its customers an additional 30 day grace period, expecting the invoice to be paid in full within 45 days of shipment. Quality had been late in payment on a few prior occasions, and Bandana would place it on a “credit hold” refusing to ship until the invoice was paid.

On January 21, 2005, Quality told Bandana it had a new client and would be required to double its order. The new client paid on a 90 day cycle and Quality asked Bandana to agree to 90 day payment terms. They eventually agreed on 60 day terms. During February, Quality placed seven orders for Gamunex, creating an outstanding balance of \$244,132.76, the largest balance it ever owed Bandana.

Meanwhile, a shortage of Gamunex developed. Bandana decided to give preference to customers who paid within 15 days, and told Quality of this new policy. Quality did not pay any of its invoices. When Quality placed its next order in March, Bandana refused to ship until Quality paid its entire outstanding balance. Quality offered to pay one half and Bandana agreed to accept that amount. Quality still did not pay. Shortly thereafter, Quality’s new client went elsewhere for the drug.

Bandana sued for breach of contract to recover the balance of past due invoices. Quality cross-complained for interference with prospective economic advantage, claiming loss of \$1,500,000 in profit from the new client. After a three day jury trial, in closing argument, Bandana’s counsel [argued](#) to the jury that Quality’s [witnesses were lying about many issues](#), including the reason it lost the account. Counsel read the [standard jury instruction](#) that, “**if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said.**”

At that point, Juror No. 2 **applauded** by clapping her hands. Counsel completed his argument without commenting on the juror’s reaction. Following a lunch break, the trial court and counsel *interviewed* each juror separately to determine the effect of Juror No. 2’s applause. None of the jurors indicated that it would impact their impartiality. None could recall the statement that prompted the applause.

Juror No. 2 explained, “I was pleased with the statement that was read whereas if it was proved that somebody lied on the stand that all of their testimony could be dismissed.” The trial court declined to remove Juror No. 2. It noted the conduct was unusual but no grounds for substitution because, it concluded, the incident did not cause any of the juror to be “influenced or prejudiced.”

Using a special verdict form, the jury returned a verdict in favor of Bandana in the amount of \$311,238.43. The jury foreman indicated each of the special verdicts had been decided by a vote of at least 10-2. Quality moved for a new trial on the grounds that Juror No. 2’s applause during closing argument constituted “[irregularity in the proceedings](#)” and that she later [engaged in misconduct](#) by intimidating and rushing other jurors to a verdict. The motion was accompanied by a declaration from Juror No. 9 describing efforts by Juror No. 2 to discourage questions in deliberations, to physically confront other jurors and to refer to her own expertise in accounting.

The trial court denied the motion. On appeal, the Second Appellate District noted a presumption of prejudice arises from serious juror misconduct. (*People v Holloway* (2004) 33 Cal. 4th 1358) [Prejudice exists if it is reasonably probable that a result more favorable to the complaining part would have been achieved in the absence of the misconduct.](#) (*Hasson v Ford Motor Co.* (1982) 32 Cal. 3d 388)

Here the **clapping was tantamount to the formation of an opinion as to the credibility of a witness**. This was technical misconduct. The applause did not indicate that Juror No. 2 had unfairly pre-judged the witnesses' Credibility or that she was unwilling to consider other jurors' points of view. **Where the misconduct is of such trifling nature that it could not in the nature of things have prevented either party from having a fair trial, the verdict should not be set aside.** (*Enyart v City of Los Angeles* (1999) 76 Cal. App. 4th 499) The applause was an insignificant infraction and did not prevent the parties from having a fair trial.

Similarly, the Justices found that referring to her accounting experience did not cause Juror No. 2's conduct to rise to the level of prejudicial misconduct. **Jurors are entitled to rely on their general knowledge and experience in evaluating the evidence.** (*In re Malone* (1996) 12 Cal.4th 935) Juror No. 9 provided no evidence that Juror No. 2 decided the case based on extraneous information.

As noted by the California Supreme Court, **"The jury system is fundamentally human, which is both a strength and a weakness....Jurors are not automatons. They are imbued with human frailties as well as virtues. If the system is to function at all, we must tolerate a certain amount of imperfection short of actual bias. To demand theoretical perfection from every juror during the course of a trial is unrealistic.**" (*In re Carpenter* (1995) 9 Cal.4th 634, 654)

The judgment is affirmed.