



WEEKLY LAW RESUME™

Issue By: Dave Blinn

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Unruh Act - Tenant Unable to Establish Unruh Claim Against Apartment Owner and Manager

Ramirez v. Wong

Court of Appeal, Second District (October 6, 2010)

The attraction for Unruh Civil Rights claims by plaintiffs is the ability to recover attorneys' fees, along with the potential for an award of penalties (up to three times the actual damages) or punitive damages. This case considered whether a plaintiff could state an Unruh or other civil rights claim for her landlord's breaking in to the unit while she was not there.

Lourdes Ramirez was a single mother, who lived with her minor daughter Jennifer in an apartment building owned by Weller Wong, who employed Daniel Valdez as a resident manager. Ramirez maintained a video surveillance unit in her apartment, and in June of 2007, she reviewed the surveillance tape and observed that earlier that day Valdez had let himself into her apartment, entered her bedroom, opened her dresser and removed and taken some of her underwear. He was apparently later convicted of burglary with regard to the incident.

Ramirez filed suit against the landlord and Valdez, alleging violations of the Unruh Civil Rights Act (Civil Code Section 51) and other Civil Code violations, including Civil Code Section 51.7 and 51.9. The trial court sustained the demurrer without leave to amend and dismissed the case. Plaintiffs appealed.

The Court of Appeal affirmed the order of dismissal, holding that there was nothing in the complaint (or an amendment proposed by plaintiff after the demurrer hearing) which could give rise to any action under the Civil Code sections for discrimination.

The court looked first at the claim under Section 51, and noted that the Unruh Act was a public



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accommodations statute that focuses on discriminatory behavior by business establishments. While Valdez' conduct might engender civil or criminal liability on any number of bases, his conduct had nothing to do with the denial of equal accommodations or facilities on the basis of sex. Plaintiffs did not and could not state a claim for violation of the Unruh Act.

The court then considered Civil Code Section 51.7. It is not directly part of the Unruh Act, as it has nothing to do with public accommodations or business establishments. Rather, it states that all persons "have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property..." for any persons in protected classes under Unruh, including sex or marital status. The statute has been defined as "providing a civil remedy for hate crimes." As such, it requires violence or a threat of violence. Plaintiff had argued that a jury should decide whether they could "reasonably fear rape or other sexual attack" by Ramirez as a result of his conduct, and that a plaintiff need not be physically present with the defendant in order to state a cause of action for "intimidation by threat of violence." However, the court noted that the problem with this theory was that no threat had been made, either by words or conduct. The court looked at the dictionary definition of "threat" which involved "an expression of an intention to inflict evil, injury or damage to another." The court then again noted that while Valdez' actions may have been actionable, they could not be construed as "a threat" based on plaintiff's sex or marital status under section 51.7.

Finally, the court looked at Civil Code Section 51.9, which covered sexual harassment in certain business relationships outside the workplace, including the relationship between a plaintiff and a landlord or property manager. Plaintiff must prove that the defendant had made "sexual advances, solicitations...or engaged in other verbal, visual, or physical conduct of a sexual nature or of a hostile nature based on gender, that were unwelcome and pervasive or severe." While Valdez' conduct here may have been "physical conduct of a sexual nature," the court could not see how conduct involving no interaction with plaintiff, and of which plaintiff was not aware until after it had occurred, could constitute sexual harassment. Assuming that it could, the court held that the one documented instance was neither pervasive enough nor severe enough to permit liability under section 51.9.

As the court did not believe that there was any way the plaintiff could amend the complaint to state a cause of action under the Civil Code sections, the order of dismissal was affirmed.

COMMENT

This case clarifies that while Unruh civil rights claims no longer require a showing of intentional

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discrimination, there are still some very specific facts that plaintiffs must prove to recover on such claims.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/B217957.PDF](http://www.courtinfo.ca.gov/opinions/documents/B217957.pdf)

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