SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

COORDINATED PROCEEDING SPECIAL TITLE (Rule 1550(c)) **AUTOMOBILE LEASE TAX CASES**	Judicial Council Coordination Proceeding No. 4378 CLASS ACTION
This document relates to: CARLA RALSTON and BRIAN BOWERS vs. WELLS FARGO AUTO FINANCE, INC., et al., Case no. CG04433286	**ORDER GRANTING DEFENDANT'S MOTION FOR AN AWARD OF ATTORNEYS' FEES**

This case came on for hearing on September 10, 2008, in Department 309 of the above-entitled court, the Honorable Anthony J. Mohr, Judge presiding. All parties were represented by counsel. The court having considered all documents, pleadings, oral argument in support and in opposition of the petition, and in good cause appearing therefor, now issues this order.

Civil Code section 2988.9, enacted pursuant to the Vehicle Leasing Act ("VLA") states in relevant part as follows:

> Reasonable attorney's fees and costs shall be awarded to the prevailing party in any action on a lease contract subject to the provisions of this chapter regardless of whether the action is instituted by the lessor, assignee, or lessee.

Wells Fargo is the prevailing party . There is no dispute between the parties about that. The issue is whether this case involved an "action on a lease contract subject to the provisions of [the VLA]."

Defendant argues that in order to recover attorneys fees pursuant to Section 2988.9, all it needs to do is demonstrate that the complaint has at its core a lease contract subject to the VLA. Plaintiff contends that attorneys' fees are only available where the complaint asserts violations of the VLA, which the operative complaint does not.

Resolution of this issue requires analysis of four cases: *Morgan v. Reasor Corp.* (1968) 69 Cal.2d 881; *Leaf v. Phil Rauch, Inc.* (1975) 47 Cal.App.3d 371; *Brown v. West Covina Toyota* (1994) 26 Cal.App.4th 555; and *LaChapelle v. Toyota Motor Credit Corporation* (2002) 102 Cal.App.4th 977.

1. *Morgan v. Reasor Corp.* (1968) 69 Cal.2d 881

Morgan involved a contract subject to the provisions of the Unruh Act, not the VLA. Nonetheless, the Unruh Act contains a fee shifting provision virtually identical to the VLA's. *See* Civ. Code § 1811.1[1]

The plaintiffs sought a declaratory judgment, based on alleged violations of the Unruh Act. The court held that although the plaintiffs sought declaratory relief, the action was still "on a contract" for purposes of Section 1811.1, because the legislative committee "clearly intended no limitation on the type of action covered by section 1811.1 so long as the subject matter involved a contract subject to the provisions of the Unruh Act." *Morgan*, 69 Cal.2d at 896. The appellate court upheld the trial court's award of attorneys' fees.

While instructive, the *Morgan* court was not presented with a case in which 1) "the subject matter involved a contract subject to the provisions of the Unruh Act," but 2) the complaint did not allege any violations of that Act. This is the situation in the case at bar. Whether this is a distinction without a difference is central to this motion.

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[1] Civil Code section 1811.1 provides as follows: "Reasonable attorney's fees and costs shall be awarded to the prevailing party in any action on a ***contract or installment account*** subject to the provisions of this chapter regardless of whether the action is instituted by the ***seller, holder or buyer***." (emphasis added to note variances between Sections 1811.1 and 2988.9).

2. ***Leaf v. Phil Rauch, Inc.* (1975) 47 Cal.App.3d 371**

This case involved a contract subject to the provisions of the Rees-Levering Motor Vehicle Sales and Finance Act ("Rees-Levering"), not the VLA. Nonetheless, Rees-Levering contains a fee shifting provision virtually identical to that of the VLA and the Unruh Act. *See* Civ. Code § 2983.4.[2] Plaintiffs purchased a motor vehicle under a conditional sale contract. The trial court found that the defendant's express warranty was a material inducement for the plaintiffs to enter the contract. *Leaf*, 47 Cal.App.3d at 374. The defendant breached the warranty by failing to correct certain defects. *Id.* The court found this to be a material failure of consideration entitling the plaintiffs to rescind the contract. *Id.* The issue was whether the plaintiffs were entitled to attorneys' fees under the fee shifting provision of Rees-Levering.

Citing to *Morgan*, *supra*, the *Leaf* court stated: "Inasmuch as Civil Code section 1811.1 provides for the recovery of attorneys' fees in language identical in all material respects with the language of section 2983.4, the phrase 'on a contract' should be given the same meaning in both statutes. [Citation.]" *Leaf*, 47 Cal.App.3d at 377. The court held that "[t]hus: although a contract is extinguished by its rescission [Citations], and the instant action sought restitution based on plaintiffs' prior rescission of the ... contract, the action nevertheless 'involved' that contract, which was subject to the provisions of the Automobile Sales Finance Act.... Therefore, plaintiffs, the prevailing parties as against defendant ..., were entitled to attorneys' fees." *Id.* at 378-79.

While *Leaf* is instructive in that it applied the fee shifting provision of Rees-Levering despite the fact that no claims in the complaint asserted any violations thereof, there is no indication that the *Leaf* defendant raised that issue as a defense. For that reason the appellate court may have simply declined to address it. Furthermore, the issue was not whether the contract was subject to Rees-Levering, but whether the action was "on a contract" despite the fact that the contract had been rescinded. It was in this context that the appellate court adopted the liberal interpretation of the phrase "on a contract" set forth in *Morgan*, *supra*.

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[2] Civil Code section 2983.4 provides as follows: "Reasonable attorney's fees and costs shall be awarded to the prevailing party in any action on a ***contract or purchase order*** subject to the provisions of this chapter regardless of whether the action is instituted by the ***seller, holder or buyer.***" (emphasis added to note variances between Sections 1811.1 and 2988.9).

3. ***Brown v. West Covina Toyota* (1994) 26 Cal.App.4th 555**

Brown involved a contract subject to the provisions of both Rees-Levering and the Song-Beverly Act ("Song-Beverly"). The complaint asserted a cause of action for rescission based on an alleged violation of Song-Beverly, but contained no causes of action for alleged violations of Rees-Levering. Both Song-Beverly and Rees-Levering have fee shifting provisions (*see* Civil Code sections 1794 & 2983.4), but Song-Beverly's is one-sided, awarding costs and attorney fees only to the prevailing *buyer*. The issue was whether the defendant seller could be awarded fees under Rees-Levering's two-sided fee provision, or whether Song-Beverly's one-sided fee provision applied.

The court held that the statutory language of Rees-Levering "reasonably can be construed to require that the lawsuit involve a cause of action or claim under Rees-Levering." *Brown*, 26 Cal.App.4th at 562. Since the complaint contained no allegations of Rees-Levering violations, the court held that the defendant was not entitled to attorneys' fees under Section 2983.4. *Brown*, 26 Cal.App.4th at 566-67.

The court provided two bases for its decision. First, regardless of which fee-shifting provision might apply, the court found that the action was "grounded not upon the contract, but upon the duty springing from the relation created by it. [Citation.]" *Id.* at 565. Unfortunately, the court did not expand on this reasoning, other than to briefly analogize the case to *Automobile Ins. Co. v. Union Oil Co.* (1948) 85 Cal.App.2d 302:

> [T]he contract as pleaded had nothing whatever to do with the liability other than to create a duty on the part of [defendant] herein, and the action is grounded not upon the contract, but upon the duty springing from the relation created by it. While appellants might have elected to sue either in tort or in contract, it clearly appears to us that the instant action is based upon the injury done to property.... Where, as here, the breach of duty and consequent injury to one of the parties to such contract are set forth, it is the violation of its duty by [defendant] that is the gravamen of the action, which accordingly sounds in tort and is not '*ex contractu*' ....

Id. at 307 (*cited in Brown*, 26 Cal.App.4th at 564-65).

The action in the case at bar, however, is grounded in the contract, and Plaintiff asserts as much in his Third Amended Complaint ("3AC"). *See* 3AC ¶ 9 ("Defendants should segregate the cost of Optional Items and charge tax only on taxable lease items ... as required by their lease contracts."); ¶18 ("Defendants' collection of 'excess' tax constitutes a breach of the lease agreements themselves."); ¶ 46

("The lease agreement between each plaintiff and Defendants provides that the plaintiff will be required to pay only 'official' taxes."). This is not an instance in which "the contract as pleaded had nothing whatever to do with the liability." *Automobile Ins. Co.*, 85 Cal.App.2d at 307. Nor is it an instance where the violation of the duty created by the contractual relationship sounds in tort. *Id.* As such, this particular rationale for the holding in *Brown* is inapplicable.

The second basis for the decision in *Brown* focused on the fact that the contract was subject to both Song-Beverly and Rees-Levering, but the complaint only asserted a violation of Song-Beverly. According to the court, permitting fees to the defendant seller under Rees-Levering, where the cause of action had noting to do with violations thereof, "would effectively nullify the one-sided fee-shifting under Song-Beverly whenever a plaintiff sues to enforce a breach of warranty claim under Song-Beverly, but happens to have purchased the automobile under a conditional sale contract." *Brown*, 26 Cal.App.4th at 565.

This rationale is likewise inapplicable to the case at bar because the contract at issue is not subject to Song-Beverly, which applies to "buyer[s] of consumer goods." Civ. Code § 1794. The contract is a lease agreement, which means Plaintiff is not a "buyer," but a "lessor." In fact, the *Brown* court distinguished *Leaf* on the basis that it "[did] not present the same apparent conflict between the attorney fees provision of Song-Beverly and Rees-Levering." *Brown*, 26 Cal.App.4th at 566. Although the court held that a cause of action had to be based on alleged Rees-Levering violations for the fee-shifting provision to apply, it did so only in the context of a contract subject to the competing fee-shifting provisions of Song-Beverly and Rees-Levering.

4. *LaChapelle v. Toyota Motor Credit Corporation* (2002) 102 Cal.App.4th 977

In *LaChapelle*, the plaintiff specifically alleged a violation of the VLA's disclosure requirements. *Id.* at 980. The court had to decide which of two competing attorneys' fees provisions it should apply. Civil Code section 2988.5(a) sets forth the liability of a lessor for failing to comply with certain disclosure requirements. *Id.* at 993. It is a one-way statute that provides that a lessor will be liable for costs and fees if it violates Section 2988.5. *Id.* Section 2988.9, on the other hand, awards costs

and fees to the prevailing party in any action on a lease contract subject to the provisions of the VLA, regardless of who instituted that action (lessor, assignee or lessee). *Id.*

The court rejected appellant's argument that Section 2988.5(a)(3) applied for four reasons. First, the appellant argued that a purpose behind Section 2988.5(a)(3)'s fee-shifting provision was to increase the financial feasibility for consumers to sue lessors or assigness. *Id.* The court was not swayed, because Section 2988.9 is also a fee-shifting statute, provided the suit has merit. *Id.*

Second, the court noted that applying Section 2988.5 would carve an unintended exception into an assignee's right to recover attorney fees for unwarranted suits based on a violation of the VLA. *Id.* The court stated that it "can see no reason why the Legislature would wish to discourage some, but not all, unwarranted actions brought against assignees." *Id.*

Third, the court noted that Section 2988.5(a) concerns violations of disclosure statutes by lessors, but the case before it did not concern lessor liability for failing to comply with the VLA. *Id.* Section 2988.5(a), therefore, "on its face, ha[d] no application." *Id.*

Finally, the court relied on *Leaf, supra*, in finding:

> [L]anguage such as that employed in Civil Code section 2988.9 has been interpreted as applying to any and all actions where the subject matter involves a contract subject to the provisions of the consumer protection legislation at issue. [Citation.] In light of the broad interpretation traditionally given such language, and the fact that the Legislature, presumably aware of this interpretation, did not alter it in enacting Civil Code section 2988.9, it cannot be presumed that section 2988.9 was intended to have only the limited application asserted by appellant. ***We conclude, therefore, that section 2988.9 authorizes an award of fees to the prevailing party in any type of action in which the subject matter involves a contract subject to the provisions of the VLA.***

Id. at 993-94 (emphasis added).

There are a few things to note about *LaChapelle*. First, it involved a complaint that specifically alleged a violation of the VLA. This distinguishes *LaChapelle* from the case at bar. One of the issues, of course, is whether this distinction matters. The second distinction is that, just as in *Brown*, the court had to decide which of two competing attorneys' fees provisions to apply. This distinction disappears, however, because the court found that Section 2988.5(a) "on its face, has no application." *Id.* at 993.

None of these cases is directly on point. However, all of them – with the exception of *Brown*, which is distinguishable for the reasons discussed, *supra* – follow a trend towards a liberal interpretation of the phrase "on a contract." This court determines to follow that trend and finds that Section 2988.9 "authorizes an award of fees to the prevailing party in any type of action in which the subject matter involves a contract subject to the provisions of the VLA," (*Id.* at 994) regardless of whether the complaint asserts violations thereof. The court further finds that the Plaintiff's complaint asserts an action in which "the subject matter involves a contract subject to the provisions of the VLA." *Id.*; *see* 3AC ¶¶ 9, 14, 36.[3] Therefore, Defendant is entitled to attorneys' fees pursuant to Section 2988.9.

Defendant's motion for an award of attorneys' fees is GRANTED.

DATED: November __, 2008

Anthony J. Mohr

Judge of the Los Angeles Superior Court

[3] 3AC ¶ 9 ("Defendants should segregate the cost of Optional Items and charge tax only on taxable lease items ... as required by their lease contracts."); ¶18 ("Defendants' collection of 'excess' tax constitutes a breach of the lease agreements themselves."); ¶ 46 ("The lease agreement between each plaintiff and Defendants provides that the plaintiff will be required to pay only 'official' taxes.").