

475 Fed.Appx. 115

This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Ninth Circuit Rule 36-3. (Find CTA9 Rule 36-3)

United States Court of Appeals,  
Ninth Circuit.

Roberto VALENZUELA, an individual; Ruby Valenzuela, an individual; and Pearl of the Orient, Inc., a California corporation d/b/a Manila Fine Jewelers, Plaintiffs–Appellants and Cross–Appellees,

v.

ADT SECURITY SERVICES, INC.,  
Defendant–Appellee and Cross–Appellant.

Nos. 10–56455, 10–56517. | Argued and Submitted Feb. 16, 2012. | Filed April 5, 2012.

Synopsis

**Background:** Jewelry store owners brought action against security service, alleging gross negligence, and breach of contract. The United States District Court for the Central District of California, [Dolly M. Gee, J., 820 F.Supp.2d 1061](#), granted service summary judgment on gross negligence claim, granted owner summary judgment on contract claim, but enforced limited damages provision, and denied both parties attorney fees, [2010 WL 7785603](#). Parties appealed.

**Holdings:** The Court of Appeals held that:

<sup>[1]</sup> service did not violate any tort duty independent of parties' contract;

<sup>[2]</sup> liquidated damages provision was enforceable;

<sup>[3]</sup> owner was properly denied attorney fees; and

<sup>[4]</sup> service was properly denied fees.

Affirmed.

West Headnotes (4)

<sup>[1]</sup> **Telecommunications**  
🔑 Tort liability in general

372Telecommunications  
372IXSpecial Services or Activities  
372k1402Alarm and Security Systems  
372k1405Tort liability in general

Under California law, security service's failure to properly to install alarm system and failure to provide notification services when it actually received alarm signal from the system did not violate any tort duty independent of parties' contract.

3 Cases that cite this headnote

<sup>[2]</sup> **Telecommunications**  
🔑 Limitation or modification of liability

372Telecommunications  
372IXSpecial Services or Activities  
372k1402Alarm and Security Systems  
372k1406Limitation or modification of liability

Provision of security services contract limiting jewel store's damages for breach of contract to \$1,000 was enforceable under California law. [West's Ann.Cal.Civ.Code § 1671\(b\)](#).

1 Cases that cite this headnote

<sup>[3]</sup> **Costs**  
🔑 Contracts

102Costs  
102VIIIAttorney Fees  
102k194.24Particular Actions or Proceedings  
102k194.32Contracts

Although jewelry store owner was successful in obtaining breach of contract judgment against

security service, trial court was within its discretion in denying owner prevailing party status and attorney fees, under California law, where owner succeeded in obtaining only minute portion of its claimed damages. [West's Ann.Cal.Civ.Code § 1717](#).

[Cases that cite this headnote](#)

[4]

**Costs**

 **Contracts**

[102Costs](#)  
[102VIIIAttorney Fees](#)  
[102k194.24Particular Actions or Proceedings](#)  
[102k194.32Contracts](#)

Although, when comparing simple monetary results, security service was ostensibly more successful in achieving its litigation goals than was jewel store owner, district court was within its discretion in denying service prevailing party status and attorney fees under California law, since service had actively sought to avoid both entry of judgment and entry of \$1,000 damages against it on store's breach of contract claim. [West's Ann.Cal.Civ.Code § 1717](#).

[Cases that cite this headnote](#)

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Appeal from the United States District Court for the Central District of California, [Dolly M. Gee](#), District Judge, Presiding. D.C. No. 2:09–cv–02075–DMG–FFM. Before: [PREGERSON](#) and [BEA](#), Circuit Judges, and [PRATT](#), District Judge.\*

\* The Honorable [Robert W. Pratt](#), District Judge for the U.S. District Court for Southern Iowa, sitting by designation.

**\*117 MEMORANDUM\*\***

\*\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36–3.

**\*\*1** Plaintiffs–Appellants Roberto and Ruby Valenzuela and Pearl of the Orient, Inc. d/b/a Manila Fine Jewelers (collectively “Valenzuela”) appeal from the following district court orders: 1) the grant of summary judgment in favor of Defendant–Appellee ADT Security Services, Inc. (“ADT”) on Valenzuela’s claim of gross negligence; 2) the decision to enforce a limited damages provision after granting summary judgment in favor of Valenzuela on a breach of contract claim; and 3) the refusal to award attorneys’ fees in favor of Valenzuela. ADT cross-appeals the district court’s refusal to award attorneys’ fees in its favor. We have jurisdiction pursuant to [28 U.S.C § 1291](#). We review *de novo* the district court’s legal determinations. [Balint v. Carson City](#), 180 F.3d 1047, 1050 (9th Cir.1999) (en banc). We review the district court’s decision to award or deny attorneys’ fees for abuse of discretion. [Drucker v. O’Brien’s Moving & Storage, Inc.](#), 963 F.2d 1171, 1173 (9th Cir.1992).

<sup>[1]</sup> The district court properly granted summary judgment in favor of ADT on Valenzuela’s gross negligence claim. Although ADT failed properly to install Valenzuela’s alarm system and failed to provide notification services when it actually received an alarm signal from the system, ADT’s legal obligation to provide either service arose solely from its contractual relationship with Valenzuela, not from any duty independent of the parties’ contract. See [Erlich v. Menezes](#), 21 Cal.4th 543, 558, 87 Cal.Rptr.2d 886, 981 P.2d 978 (1999) (“[C]onduct amounting to a breach of contract becomes tortious only when it also violates a duty independent of the contract arising from principles of tort law.”); [Better Food Mkts., Inc. v. Am. Dist. Tel. Co.](#), 40 Cal.2d 179, 187–88, 253 P.2d 10 (1953) (limiting a plaintiff to contractual remedies where a defendant alarm company failed timely to report alarm activations to law enforcement).

<sup>[2]</sup> The district court properly limited Valenzuela’s damages for breach of contract to \$1,000. In California, liquidated damages provisions in commercial contracts are presumed valid “unless the party seeking to invalidate

the provision establishes that the provision was unreasonable under the circumstances existing at the time the contract was made.” Cal. Civ.Code § 1671(b). Valenzuela has not identified any circumstances that existed at the time of contract formation that would support a conclusion that the liquidated damages provision was unreasonable. Moreover, California courts routinely uphold such provisions in cases such as this one. E.g., *Better Food Mkts., Inc.*, 40 Cal.2d at 187, 253 P.2d 10; *Atkinson v. Pac. Fire Extinguisher Co.*, 40 Cal.2d 192, 196–97, 253 P.2d 18 (1953); *Guthrie v. Am. Protection Indus.*, 160 Cal.App.3d 951, 953, 206 Cal.Rptr. 834 (1984); *Feary v. Aaron Burglar Alarm Inc.*, 32 Cal.App.3d 553, 558, 108 Cal.Rptr. 242 (1973).

[3] The district court properly denied Valenzuela’s request for attorneys’ fees. Although Valenzuela was successful in obtaining a breach of contract judgment against ADT, “prevailing party” status for purposes of an attorneys’ fee award under California Civil Code § 1717 is measured by “compar[ing] the relief awarded on the contract claim or claims with the parties’ demands on those same claims and their litigation objectives as disclosed by the \*118 pleadings ... and similar sources.” *Hsu v. Abbara*, 9 Cal.4th 863, 876–77, 39 Cal.Rptr.2d 824, 891 P.2d 804 (1995). Valenzuela succeeded in obtaining only a minute portion of its claimed damages. It was well within the trial court’s discretion to decline Valenzuela prevailing party status in such circumstances. See *Berkla v. Corel Corp.*, 302 F.3d 909, 922 (9th Cir.2002).

\*\*2 [4] Finally, the district court properly denied ADT’s request for attorneys’ fees. Certainly, when comparing simple monetary results, ADT was ostensibly more successful in achieving its litigation goals than was Valenzuela.<sup>1</sup> A determination of prevailing party status, however, does not turn on mere monetary results; rather, it requires evaluation of overall *litigation success*. See *Hsu*, 9 Cal.4th at 876–77, 39 Cal.Rptr.2d 824, 891 P.2d 804. To that end, we find it was not an abuse of discretion for the district court to decline ADT prevailing party status where ADT actively sought to avoid both the entry of judgment and the entry of \$1,000 damages against it on Valenzuela’s breach of contract claim.

<sup>1</sup> Valenzuela maintained at all times an entitlement to over \$821,000 in damages. ADT maintained at all times that Valenzuela’s breach of contract claim was barred, or if not, that Valenzuela was limited to \$1,000 damages.

The district court’s determinations on all of the foregoing issues is, therefore, AFFIRMED.

#### All Citations

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