

PROFESSIONAL LIABILITY UPDATE

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MALICIOUS PROSECUTION

California Law

by Jessica B. Rudin

The Second District holds that there can be no liability for continuation of a properly initiated existing proceeding.

Ted L. Vanzant v. DaimlerChrysler Corporation (2002) 96 Cal. App. 4th 1283.

Ted Vanzant produced and sold radiator grille overlays for DaimlerChrysler Jeep vehicles. In 1993, DaimlerChrysler sued Vanzant in federal court for trademark infringement, unfair competition, violation of Business & Professions Code § 17200 and dilution of trademark. Vanzant filed a counterclaim to cancel DaimlerChrysler’s trademarks for the radiator grill.

The parties filed cross-motions for summary judgment. The trial court entered a partial summary judgment in favor of DaimlerChrysler, denied Vanzant’s motion, and permanently enjoined Vanzant from producing and selling the radiator grills.

Vanzant appealed the order granting partial summary judgment and a permanent injunction. The Ninth Circuit Court of Appeals reversed and remanded

on the grounds that the trial court failed to consider whether DaimlerChrysler’s trademark for a grille design extended to grille overlay under the “related goods rule.”

After the Ninth Circuit Court reversed and remanded, the parties again filed cross-motions for summary judgment. The trial court granted Vanzant’s motion on the trademark and unfair competition claims and denied his motion as to the state law anti-dilution claim. DaimlerChrysler’s cross-motion for summary judgment on Vanzant’s counterclaims was granted.

Vanzant then sued DaimlerChrysler for malicious prosecution. DaimlerChrysler demurred to the complaint on the grounds that the initial orders granting partial summary judgment, granting a permanent injunction and denying

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Vanzant's motion for summary judgment conclusively established probable cause. Vanzant argued that even if these rulings established probable cause to initiate the underlying action, given the Court of Appeal's reversal of these orders, DaimlerChrysler lacked probable cause to continue the action. The lower court sustained DaimlerChrysler's demurrer.

The Court of Appeal endorsed the "interim adverse judgment" rule first enunciated in *Roberts v. Sentry Life* (1999) 76 Cal. App. 4th 375 and *Hufstедler, Kaus & Ettinger v. Superior Court* (1999) 42 Cal. App. 4th 55. DaimlerChrysler's success on its motion for partial summary judgment, successful application for a permanent injunction, and successful opposition to Vanzant's motion for summary judgment on his anti-dilution claim created a conclusive presumption that it had probable cause to sue Vanzant.

The Court then considered whether the "interim adverse judgment" rule also shielded DaimlerChrysler from liability for malicious prosecution for continuing the litigation after the Ninth Circuit Court of Appeal reversed the orders and judgments in favor of DaimlerChrysler and remanded the matter back to the District Court. The Court concluded there can be no malicious prosecution liability for continuing a properly initiated existing proceeding. The Court specifically rejected *Restatement of Torts 2d*, § 674, which recognizes liability for continuing litigation. The better course for a litigant faced with "malicious continuation" of litigation is to seek sanctions in the underlying litigation.

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