

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

ROSEMARY SILGUERO,

Plaintiff and Appellant,

v.

CRETEGUARD, INC., et al.,

Defendants and Respondents.

B215179

(Los Angeles County
Super. Ct. No. BC393816)

ORDER MODIFYING OPINION
AND DENYING REHEARING
[CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on July 30, 2010, be modified as follows:

1. On page 1, the published portion of the opinion is modified by deleting “Judgment reversed with directions; appeal from order dismissed,” and replacing it with the following:

Judgment affirmed in part and reversed in part with directions; appeal from order dismissed in part and order reversed in part with directions.

* Pursuant to California Rules of Court, rules 8.1100 and 8.1110, this opinion is certified for publication with the exception of parts B and C of the Discussion.

2. On page 12, the nonpublished portion of this opinion is modified by deleting the last sentence of part C of the Discussion, beginning with “The appeal from the order is moot,” and replacing it with following text:

As to Creteguard, Inc., and Vaporgauge, Inc., the appeal from the order is moot and subject to dismissal on that basis. As to Thomas Nucum and Theodore Nucum, the order must be reversed because neither the original, first, nor second amended complaint alleged a cause of action against them under FEHA. And even if the pleadings could be construed to assert such a theory of liability against them (and we believe the pleadings do not), the trial court abused its discretion in awarding fees to the Nucums because the evidence before the trial court was insufficient to establish that Silguero’s action was unreasonable, frivolous, groundless, or without foundation under the standards set out in *Christiansburg Garment Co. v. EEOC* (1978) 434 U.S. 412 [98 S.Ct. 694, 54 L.Ed.2d 648] and adopted by our state courts. (*Jersey v. John Muir Medical Center* (2002) 97 Cal.App.4th 814, 831.)

3. On page 12, the published portion of this opinion is modified by deleting the text of the Disposition and replacing it with the following text:

The judgment as to defendants Thomas Nucum and Theodore Nucum (defendants only as to the 11th cause of action) is affirmed. The judgment as to defendants Creteguard, Inc., and Vaporgauge, Inc., is reversed and on remand the trial court is directed to overrule their demurrer to the 10th cause of action and to sustain without leave to amend their demurrer to the 11th cause of action of the second amended complaint. The appeal from the order awarding attorney fees and costs to Creteguard, Inc., and Vaporgauge, Inc., is dismissed. The order awarding attorney fees to Thomas Nucum and Theodore Nucum is reversed and on remand the trial court is directed to deny them attorney fees. The parties are to bear their own costs on appeal.

This modification changes the judgment.
Appellant's petition for rehearing is denied.

MALLANO, P. J.

CHANEY, J.

JOHNSON, J.