

NO. S256665

**IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA**

En Banc

LUIS ALEXANDRO SHALABI,

Plaintiff and Appellant,

v.

CITY OF FONTANA et al.,

Defendants and Respondents.

REVIEW OF A DECISION BY THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT,
DIVISION TWO, CASE NO. E069671

APPELLANT'S SUPPLEMENTAL BRIEF

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Pursuant to this Court’s Order of March 24, 2021, appellant files this supplemental brief to address “whether this Court’s decision in *Ganahl v. Soher* (1884) 2 Cal.Unrep. 415, retains precedential authority in light of this Court’s subsequent decision in *Ganahl v. Soher* (1885) 68 Cal. 95.”

ARGUMENT

I. Pursuant to California Rules of Court 8.536 (a)(e), *Ganahl v. Soher* (1884) 2 Cal.Unrep. 415 No Longer Retains Precedential Authority in Light of the Subsequent Opinion Filed in *Ganahl v. Soher* (1885) 68 Cal. 95

This Court’s decision in *Ganal v. Soher* (1884) 2 Cal.Unrep. 415, lost its precedential value in light of this Court’s subsequent decision in *Ganal v. Soher* (1885) 68 Cal. 95.

This Court rendered its decision in *Ganal v. Soher* (1884) 2 Cal.Unrep. 415 on December 9, 1884. The decision was not published in the official reports. Thereafter, this Court granted a Petition for Rehearing. Following Rehearing, this Court rendered its decision, In Bank, on November 25, 1885. *Ganahl v. Soher* (1885) 68 Cal. 95.

California Rule of Court 8.536(a) provides:

The Supreme Court may order rehearing as provided in rule 8.268(a).

Further, California Rule of Court 8.536(e) provides:

An order granting a rehearing vacates the decision and any opinion filed in the case and sets the cause at large in the Supreme Court.

Consequently, as recognized by the Amicus Curiae brief that was filed in this matter, upon granting of rehearing, the subsequent In Bank decision of the Supreme Court, “not the original opinion, becomes the opinion/decision of the Court.” California Rule of Court 8.536; *In re Jessup* (1889) 81 Cal. 408, 470; *Federoff v. Birks Bros.* (1925) 75 Cal.App. 345, 347; *Weyer v. Weyer* (1919) 40 Cal.App. 765, 769-770.

Indeed, as noted in 9 Witkin, Cal. Procedure (5th ed. 2020) Appeal, § 487:

Where a prior appellate opinion was actually superseded by another, the first has no authoritative, and little persuasive, force. This is true, e.g., of some early opinions of the Supreme Court heard in a department where the final appellate decisions in the cases were rendered by the court in bank. (See *Weyer v. Weyer* (1919) 40 C.A. 765, 769, 182 P. 776; *Federoff v. Birks Bros.* (1925) 75 C.A. 345, 347, 242 P. 885; cf. *Banken v. State Bd. of Equalization* (1947) 79 C.A.2d 572, 575, 180 P.2d 400 [Supreme Court decision in bank, though superseded on rehearing, was nevertheless cited as persuasive].)

CONCLUSION

For the foregoing reasons, this Court’s decision in *Ganal v. Soher* (1884) 2 Cal.Unrep. 415, lost its precedential value in light of this Court’s subsequent decision in *Ganal v. Soher* (1885) 68 Cal. 95. In other words, the order granting rehearing on *Ganal v. Soher* (1884) 2 Cal.Urep. 415, vacated it. This Court’s subsequent decision in *Ganal v. Soher* (1885) 68 Cal. 95 became the Order of this Court.

Dated: April 7, 2021

ORTIZ LAW GROUP

By: /s/ Jesse Ortiz
Jesse Ortiz

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CERTIFICATE OF WORD COUNT

The text of this brief consists of 466 words as counted by the Microsoft Word Version 10 word processing program used to generate the brief.

Dated: April 7, 2021

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CERTIFICATE OF SERVICE

I am employed in Sacramento County. My business address is 1510 J Street, Suite 100 Sacramento, CA 95814. I am over the age of 18 years and not a party to this action. On April 7, 2021, I served true copies of the following document described as **APPELLANT'S SUPPLEMENTAL BRIEF** on the interested parties in this action as follows:

BY MAIL: I CAUSED SUCH ENVELOPE(S) WITH Priority Class postage thereon fully prepaid addressed to the persons at the address below to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the United States Postal Service.

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BY ELECTRONIC TRANSMISSION: I transmitted via the Internet a true copy(s) of the above-entitled document(s) through the court's Mandatory Electronic Filing System via the TrueFiling Portal and concurrently caused the above-entitled document(s) to be sent to the recipients listed below pursuant to the E-Service list maintained by and as it exists on that database. This will constitute service of the above listed document.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and was executed on **April 7, 2021** at Sacramento, California.

/s/ Oscar Castillo

Oscar Castillo