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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

AMERICAN MARINE CORPORATION,
Plaintiff and Respondent,
v.
HARLEY MARINE SERVICES, INC.,
Defendant and Appellant.

A133283

(City & County San Francisco
Super. Ct. No. CGC-08-477093)

This appeal arises out of a dispute between two marine transportation companies regarding charges for services rendered pursuant to a series of contracts. On appeal following a court trial in which the trial court entered judgment in favor of plaintiff American Marine Corporation (AMC) and against defendant Harley Marine Services, Inc. (Harley), Harley contends: (1) the trial court’s “judgment in favor of AMC on the First Cause of Action for \$38,404.19 plus 18% prejudgment interest, costs and attorneys’ fees is wrong as a matter of law, or at very minimum, lacks substantial evidence”; (2) there was insufficient evidence to support the trial court’s judgment in favor of AMC on the second cause of action; and (3) the trial court lacked jurisdiction to award AMC its attorney’s fees and costs. We reject the contentions and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

AMC is a tugboat company that provides oceangoing tugboat services including the transportation of barges. Harley owns oceangoing barges that are used for transporting oil and other products and require towage by tugboats. Beginning in

December 2006, AMC and Harley entered into a series of contracts for towage of Harley's barges by AMC's tugboats.

The Patriot

In a contract dated December 14, 2006, (the First Patriot Contract), the parties agreed that AMC's tugboat, the American Patriot (the Patriot) would tug Harley's barge, the Chabria Sea, from Fourchon, Louisiana, to New York Harbor. Part I of the First Patriot Contract provided that the tow was to begin "on or about December 15, 2006," when the Patriot "leaves her departure berth at Fourchon, La" and would "continue uninterrupted until the [Patriot] arrives at her berth at New York Harbor after completion of the agreed towage" The contract rate was "\$6,500 plus fuel oil, lube oil & waste oil disposal per calendar day or a fraction thereof," and a section entitled "Special Provisions" provided that Harley would be "responsible for readying the barge for tow including but not limited tow bridle, insurance wires, navigational lights & shapes and all permits and surveys." Part II of the First Patriot Contract set out, among other things, the terms of payment, interest, and applicable law, and included a prevailing party attorney's fees clause.

The Patriot left her berth in Fourchon, Louisiana on December 15, 2006, to pick up the Chabria Sea in New Orleans. The voyage ended on December 31, 2006, when the Patriot and the Chabria Sea arrived in New York Harbor and the Chabria Sea was delivered to Harley. AMC issued an invoice to Harley for the 17 days of service times \$6,500, for a total of \$110,500, and Harley paid that amount in full.

AMC then offloaded the Patriot's fuel because the Patriot was scheduled to go into dry-dock in New York for scheduled inspection, maintenance and repairs before returning to towing work. On December 31, 2006, either 25,500 or 35,500 gallons were transferred to another one of AMC's tugs, the Challenger, and on January 1, 2007, 10,000 gallons of the Patriot's fuel were transferred to two of Harley's barges. The remainder was transferred to the shipyard before the Patriot went into dry-dock on January 2, 2007.

During the time the tug was in dry-dock, AMC and Harley negotiated and entered into a second contract for the Patriot to tow the Olympic Spirit, another one of Harley's

barges (the Second Patriot Contract). Part I of the Second Patriot Contract provided that the tow was to begin “on January 27, 2007” “for the purpose of towing [the Olympic Spirit] without cargo from New York to Panama then continue light boat to [Fourchon].” The contract rate was “\$7,000 plus fuel oil, lube oil & waste oil disposal per calendar day or fraction thereof per Tug,” and a section entitled Special Provisions provided that Harley would be “responsible for readying all barges for tow including but not limited to, insurance wires, navigational lights & shapes and all permits and surveys.” AMC’s president, Robert Shahnazarian, wanted Harley to load 85,000 gallons of fuel oil and 1,000 gallons of lube oil onto the Patriot to ensure that it could make it to Panama and back to Fourchon, and provided for that in the contract. Harley’s special project manager, Don Meberg, disagreed, stating he was going to change the fuel requirement “from 85K to 60K gallons. 60K gallons is enough for the boat to make the run to Panama and back to Louisiana and still have 20+% reserve.” Meberg therefore revised the contract to state that Harley would provide 60,000 gallons of fuel and 1,000 gallons of lube oil for the Patriot. The Second Patriot Contract also included a prevailing party attorney’s fee clause.

The Patriot left New York with the Olympic Spirit pursuant to the Second Patriot Contract. While the Patriot was en route to Panama, Harley ordered the Patriot to Galveston, Texas instead because Harley had located cargo there for the Olympic Spirit to transport. As the Patriot neared Galveston, Harley ordered the Patriot to deliver the Olympic Spirit to an area between Galveston and Texas City. On February 13, 2007, the parties then entered a third contract for the Patriot to tow the Olympic Spirit to Texas City for loading and then to Galveston, followed by the Patriot’s return without a tow to Fourchon to end the charter (the Third Patriot Contract). The services of the Patriot to Harley thereafter concluded on the Patriot’s return to Fourchon. AMC issued invoices for the daily rates for the Second Patriot Contract and the Third Patriot Contract, which Harley paid in full.

The Challenger

On December 10, 2006, AMC and Harley entered into a contract (Challenger Contract) in which they agreed that AMC's tug, the Challenger, would tow Harley's barge, the Chrestensen Sea, from Mobile, Alabama, to New York Harbor, beginning on or about December 10, 2006. The contract rate was "\$6,500 plus fuel oil, lube oil & waste oil disposal per calendar day or a fraction thereof," and a section entitled Special Provisions provided that Harley would be "responsible for readying all the barges for tow including but not limited to tow bridle, insurance wires, navigational lights & shapes and all permits and surveys." The Challenger Contract also included a prevailing party attorney's fee clause.

After the Challenger arrived in New York Harbor, the parties entered into a Bareboat Charter and a Borrowed Servant Agreement on January 8 and 9, 2007, providing for the Challenger to tow Harley's barges in New York Harbor and New Jersey Harbor. The charter was for a three-month term and ended on April 5, 2007, when Harley returned the Challenger to AMC. Article 6 of the Bareboat Charter provided that AMC and Harley were to "make a joint inventory of equipment, supplies, fuel, lubricants, and water on board . . . at time of delivery to [Harley], all of which shall be replaced or returned based upon a joint inventory, at the time of redelivery to [AMC], in the same good order and condition as when delivered or, at [AMC's] option, be paid for in cash at that time." Article 9 provided: "Prior to commencing the charter, there shall be an 'on Hire' survey by Richard Meyorrose, hereinafter called 'MARINE SURVEYOR,' and representatives of both [AMC and Harley] at the delivery location, with said vessel(s) afloat. This on Hire survey and the off Hire survey described herein shall both be paid for by [Harley]. Upon completion of [Harley's] use of said vessel(s) and prior to termination of this charter, there shall be an 'off hire' survey again by MARINE SURVEYOR, and representatives of both [AMC and Harley] at redelivery location and also with said vessel(s) afloat. [Harley] shall, at [Harley's] sole cost and expense and in such dry-docks as to which prior written approval has been given by [AMC], make such repairs as required under . . . this charter and/or use caused by [Harley's] fault or

otherwise. . . Any surveys, other than the ‘on-hire’ and ‘off-hire’ surveys required under this ARTICLE 9(a), required or resulting from this charter shall be performed by the MARINE SURVEYOR.” Article 14 provided that prevailing party attorney’s fees and costs would be left to the discretion of the court.

AMC issued several invoices pursuant to the contracts relating to Harley’s use of the Challenger. In Invoice No. 223016 dated March 27, 2007, AMC requested \$104,000 for the charter period of March 16 to 31, 2007. According to AMC, Harley paid all but approximately \$8,383 of this invoice. In Invoice No. 223066, AMC requested \$32,500 for five days hire—from April 1 to 5, 2007—plus \$1,080 in additional charges. AMC granted Harley a \$16,890.50 fuel credit for 9,130 gallons of supplied fuel at \$1.85 a gallon, leaving a balance due of \$16,689.50 on that invoice. Harley withheld payment on this invoice on the ground that it was owed credits for fuel based on discrepancies as to the amount of fuel onboard the Challenger at the end of the contract on April 5, 2007. In Invoice No. 223341 dated September 27, 2007, AMC requested \$1,490 for “furnished labor[,] equipment and material” for setting up and blowing a waterline. Harley declined to pay this amount “because on its face, it appeared to be for work covered by charter hire already paid by Harley.”

After unsuccessfully engaging in various efforts to collect on the above three invoices, AMC’s Shahnazarian assigned the responsibility for obtaining payment to its vice president, George Wittich. Wittich conducted a review and found that according to the Patriot’s log, the Patriot had 62,700 gallons of fuel at the start of the First Patriot Contract and that it had transferred 51,909 gallons to Harley’s barges, the Challenger, and the shipyard after that contract ended in New York. He realized with that amount transferred, the Patriot had only burned 10,791 gallons of fuel between Fourchon and New York, which everyone agreed was an impossibly low figure for the Patriot to have burned on this 1,700 plus mile ocean tow. Wittich therefore performed his own fuel reconciliation for the Patriot and issued Invoice 223502 to Harley for \$75,152.95, which Harley rejected and refused to pay.

The Action

On July 3, 2008, AMC filed an action against Harley seeking to recover what it believed it was owed for the services and fuel it had provided to Harley during the various voyages. In its first cause of action, AMC alleged that Harley breached the First Patriot Contract. In its second cause of action, AMC alleged that Harley breached the Bareboat Charter and Borrowed Servant Agreement for the Challenger. In its third cause of action, AMC alleged that Harley breached the Second Patriot Contract. In its fourth cause of action, AMC sought interest for late payments under the Challenger Contract.

The Trial Court's Decision

After a court trial, the trial court found in favor of AMC on the first three causes of action and in favor of Harley on the fourth cause of action. On the first cause of action, the trial court found that AMC was entitled to \$38,404.19 plus interest and reasonable attorney's fees and costs. The court noted that the Patriot's fuel log indicated that final consumption for the December 16, 2006, to December 31, 2006, voyage was only 10,791 gallons, and that the figure had been arrived at by subtracting the fuel transferred in New York to the Challenger, Harley's barge, and the shipyard in the amount of 51,509 gallons, from the amount on board the Patriot at the start of the voyage of 62,700 gallons. The court stated, "Both parties agree and convincing evidence was produced to the Court that a fuel burn of only 10,791 gallons was an impossibility considering the known rates of fuel consumption and the 1,700 mile towage."

The trial court noted that fuel consumption is "typically determined by professional surveys . . . of the amount of fuel in the bunkers at the beginning and end of the voyages." The court found that Harley did not conduct such surveys, despite the fact that the "Special Provisions" of the First Patriot Contract stated that Harley was the party "responsible for . . . all permits and surveys." The court then proceeded to find that AMC's proposed methods for estimating the fuel usage were "flawed because they depend on unsubstantiated estimates or guesswork." The court instead looked at the fuel burn entries in the Patriot's log, which the court found was "the best documentation available." The court employed what AMC referred to as a "very conservative approach"

and added the daily fuel burn amounts recorded in the logs for the entire voyage, which came out to a total of 21,700 gallons, or \$43,133.09 using the undisputed cost per gallon of \$1.9877 per gallon. The court further found that 199 gallons of lube oil at \$8.90 per gallon were used during this voyage, and that Harley had presented no evidence to dispute this amount. Finally, the court found that AMC had double-billed Harley in the amount of one daily rate of \$6,500. The court therefore entered judgment in favor of AMC on the first cause of action in the amount of \$43,133.09 for the fuel oil, \$1,771.10 for the lube oil, less the \$6,500 overcharge, for a total of \$38,404.19, plus interest and attorney's fees and costs.

On the second cause of action, the trial court found in favor of AMC in the amount of \$26,563.13 plus interest, \$6,112.45 in late charges, and reasonable attorney's fees and costs. The court noted that the dispute arose from the fact that the Challenger's fuel log showed there were 54,850 gallons on board on April 5, 2007—the end date of the Bareboat Charter and Borrowed Servant Agreement—but that the log for April 6, 2007 showed there were 67,000 gallons on board even though the log did not indicate that any fuel had been added on April 6, 2007. The court determined that both parties had a contractual obligation to have an on hire and off hire survey conducted by a marine surveyor, but that AMC was the only party that had hired a surveyor. The court found reliable the surveyor's determination that there were 54,000 gallons of fuel on the Challenger on April 5, 2007. The court further found that the evidence presented by Harley to show that 67,000 gallons of fuel was on board the Challenger on April 5, 2007, was not persuasive because Harley had relied on "disputed and conflicting [testimony] to justify the fuel credit claim and short payment or non-payment on the subject invoices." The court entered judgment in the total amount of \$26,563.13 for the unpaid invoices, plus interest, plus \$6,112.45 in late charges, and reasonable attorney's fees and costs.

On the third cause of action, the court found in favor of AMC in the amount of \$8,984.02 plus interest and reasonable attorney's fees and costs. On the fourth cause of action, the court found in favor of Harley in the amount of \$6,500 plus interest and reasonable attorney's fees and costs.

Harley filed a timely notice of appeal and challenges the trial court's judgment as to the first and second causes of action.

DISCUSSION

1. First Cause of Action

Harley contends the trial court's "judgment in favor of AMC on the First Cause of Action for \$38,404.19 plus 18% prejudgment interest, costs and attorneys' fees is wrong as a matter of law, or at very minimum, lacks substantial evidence." We reject the contention.

a. Payment of Invoice

First, Harley asserts the ruling was incorrect as a matter of law because the First Patriot Contract "only required Harley to pay on receipt of an invoice."¹ Harley claims that because the trial court ultimately rejected AMC's method of calculating the Patriot's fuel consumption, the court in essence "rejected" the invoice AMC had sent to Harley, and Harley therefore "owed nothing to AMC for fuel." Harley has provided no legal argument or authority to support its position that a plaintiff in a breach of contract action is completely barred from recovery where a court finds that anything less than the full amount of an invoice is owed to the plaintiff. Moreover, the First Patriot Contract did not provide that AMC was entitled to payment only if it submitted an agreed invoice to Harley. The contract also did not provide that Harley was entitled to free fuel if AMC's calculation of the fuel consumption was later determined by a court to be overstated. Rather, by the clear terms of the contract, Harley was obligated to pay for the "fuel oil, lube oil & waste oil disposal."

b. Rental Car Theory

Harley claims that AMC was bound by—and the trial court should have applied—the "rental car theory" of fuel consumption because AMC's attorney stated in opening—and AMC's witnesses testified—that Harley "was required to return the rented vehicle [in this situation, the Patriot] with the same amount of fuel on board as when the [voyage]

¹The First Patriot Contract provides that Harley shall make payments to AMC for certain amounts owed "within ten (10) days of receipt of invoice."

commenced or to pay AMC for any deficiency[,] with Harley entitled to credit or payment of any excess.” Harley asserts that because there was more fuel in the Patriot at the end of the Third Patriot Contract than there was at the beginning of the First Patriot Contract, Harley was entitled to a fuel credit under the rental car theory.

This argument is flawed because it is based on the incorrect premise that the fuel records were accurate, when in fact, the trial court found there were no reliable records that accurately reflected the number of gallons that were in the Patriot at the beginning of the First Patriot Contract. The court also found that this lack of evidence was the result, at least in part, of Harley’s failure to obtain an on hire and off hire survey as it was contractually obligated to do. Without accurate records showing the number of gallons that were on board the Patriot at the beginning of the First Patriot Contract, Harley cannot successfully claim that it is entitled to a fuel credit based on that inaccurate figure.

Harley’s argument is flawed for the additional reason that it is based on the incorrect presumption that all three contracts relating to the Patriot were “one continuous tow,” when in fact the First Patriot Contract, by its terms, ended when the Patriot arrived at its own berth on December 31, 2006. Harley relies on Civil Code section 1642 in arguing that all three contracts constituted “one continuous tow,” but the statute merely provides that “ ‘several contracts, relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.’ ” Here, the three contracts for the Patriot’s towage services were separate contracts that started and ended at different times and locations, involved the towage of different barges, and set forth different daily rates of charter hire; thus, the trial court was not required to consider them to be one contract. (See *San Francisco Milling Co. v. Frye & Co.* (1934) 2 Cal.App.2d 563 [two contracts involving two separate transactions had to be considered separately because the contracts were entered on different dates and called for the delivery of different quantities of a product on different times and dates].) In addition, there was a dry-dock period before which significant amounts of fuel were transferred from the Patriot to other barges and tugs. Harley fails to even address how this fuel transfer affected the application of the “rental car theory” to the facts of this case. The

trial court did not err in not calculating the Patriot's fuel usage under the "rental car" method of simply comparing the amount of fuel that was aboard the Patriot at the beginning of the First Patriot Contract with the amount of fuel that was in the Patriot at the end of the Third Patriot Contract.²

c. Restoration of Fuel

Harley contends the trial court's judgment in favor of AMC on the first cause of action was erroneous because there was evidence that Harley had "more than restored the fuel" that the Patriot burned when it placed approximately 60,000 gallons of fuel onto the Patriot in late January 2007. It argues that by disregarding the fact that Harley put approximately 60,000 gallons of fuel on the Patriot, the trial court, in essence, erroneously interpreted the word "pay" too narrowly to mean "pay with money," i.e., that Harley's in-kind payment via "replacement of the fuel did not count." The record shows, however, that Harley put fuel on the Patriot when she came out of dry-dock, *for the tow to Panama and Fourchon pursuant to the Second Patriot Contract*, not to reimburse AMC for the fuel that had been burned on the voyage from Fourchon to New York that occurred pursuant to the First Patriot Contract. There was no evidence that Harley supplied any fuel at the start of the First Patriot Contract, or during the course of the tow, or that it paid for or replaced the fuel that was burned during the Fourchon to New York tow trip. Harley has failed to show how the 60,000 gallons of fuel it placed in the Patriot for the purpose of the second voyage affected the amount to which AMC was entitled for fuel burned during the first voyage.

d. Substantial Evidence

Harley asserts in a summary fashion that the trial court's judgment as to the first cause of action, if not legally erroneous, was not supported by substantial evidence. We

²The trial court rejected a similar argument Harley made below, stating: "Harley claims to have purchased more fuel than the Patriot burned Harley confuses the issue by combining fuel and lube oil consumption from Fourchon to New York (see First Cause of Action) with the Patriot's consumption from New York to Galveston/Fourchon. Both a legal and a factual fiction results because surveys were not performed and no accurate fuel consumption figures exist."

disagree. As noted, the trial court, faced with limited reliable fuel records, calculated the fuel burn by adding up the daily burn records from the Patriot's logs for December 15 to December 31, 2006. Rodney Gerald Gullickson, captain of the Patriot, testified that this method was one way to calculate fuel usage and that 21,000 to 22,005 gallons was a reasonable number. The Patriot's log, which the court found was the "the best documentation available," along with Gullickson's testimony, provided substantial evidence to support the court's findings.

2. Second Cause of Action

Harley contends there was insufficient evidence to support the trial court's judgment in favor of AMC on the second cause of action because Harley was entitled to fuel credits in the amounts of \$12,522, \$1,257.20 and \$25,840—the total of which exceeded the amount of the monetary award to AMC.³ We reject the contention.

"When a trial court's factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins and ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873–874.)

First, Harley claims it was entitled to a credit in the amount of \$12,522 for the 6,300 gallons of fuel aboard the Challenger that "went missing." Although Gullickson, who reviewed the Challenger's fuel logs, testified that 6,300 gallons must have "disappeared off the vessel," there was no evidence, other than his speculative remarks, to prove that AMC had transferred 6,300 gallons of fuel from the Challenger's tanks to

³Harley does not dispute that there was substantial evidence to support the trial court's findings as to the second cause of action that Harley had underpaid AMC's invoices by \$26,563.13, and that it owed an additional \$6,112.45 in interest on late paid invoices.

another vessel or storage facility. Moreover, Gullickson testified that “mistakes” in record keeping “happen every day,” suggesting that the discrepancy in the numbers was more likely the result of an error. There was substantial evidence to support the denial of Harley’s claim for credit for “missing” fuel.

Second, Harley contends it was entitled to a credit in the amount of \$1,257.20 because the excess fuel on the Challenger at the end of the Bareboat Charter should have been valued at \$1.9877 per gallon instead of \$1.85 per gallon. The trial court, however, stated only that the price of fuel *for the First Patriot Contract* was \$1.9877 per gallon, not that the price of fuel would be the same for both the first and second causes of action. In fact, AMC’s Wittich testified that the price of fuel and lube oil is determined by the price at the port at which the vessel goes “off hire.” The Challenger went off hire at Fourchon where, according to Wittich, the price per gallon of fuel as of April 5, 2007 was \$1.85, whereas the Patriot went off hire in New York, where the price per gallon of fuel was \$1.9877. There was substantial evidence to support the denial of this credit.

Third, Harley contends it was entitled to a credit of \$25,840 because there was insufficient evidence to support the trial court’s finding that there were only 54,000 gallons of fuel on board the Challenger on April 5, 2007. Harley suggests that because the fuel records showed there were 54,850 gallons of fuel on the Challenger on April 5, 2007, and 67,000 gallons on April 6, 2007, without any indication in the fuel log that 12,150 gallons of fuel had been added between those dates, the fuel log for April 5, 2007, must have been falsified. The *engine log* for the Challenger, however, reflected that the Challenger “took on water & fuel” on April 6, 2007. Further, Shahnazarian testified that on April 6, 2007, AMC was preparing to tow a dredge for a long time customer that routinely provided fuel to AMC’s tugs, suggesting that it was likely the customer added fuel to the Challenger on April 6, 2007. Moreover, as the trial court found, an independent marine surveyor reliably determined there were 54,000 gallons on the Challenger on April 5, 2007.

At trial, Harley presented the testimony of a captain who testified, among other things, that AMC’s Shahnazarian pressured crewmembers to understate the amount of

fuel on board the Challenger, and that the marine surveyor's findings were questionable because he did not see the surveyor even board the Challenger on the day the survey was conducted. Shahnazarian testified that he had worked his whole life to build AMC and there was no way he would risk his company's reputation over 13,000 gallons of fuel by urging someone he barely knows to falsify an official coast guard document. The trial court apparently credited Shahnazarian's testimony and found Harley's captain not credible, when it found that Harley's position was not persuasive because Harley had relied on "disputed and conflicting [testimony] to justify the fuel credit claim" We will not disturb those credibility findings on appeal. (*Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334 [" 'credibility of witnesses . . . and the determination of [any] conflicts and inconsistencies in their testimony are matters for the trial court to resolve' "].) There was substantial evidence to support the denial of the \$25,840 credit.

3. Attorney's Fees and Costs

Harley contends the trial court lacked jurisdiction to award AMC its attorney's fees and costs. We reject the contention.

a. Background

The trial court issued its initial Statement of Decision on November 9, 2010. On November 12, 2010, AMC filed its Objections and Proposed Amendments to the Statement of Decision asserting it was entitled to recover its attorney's fees and costs on the second cause of action because "Harley didn't prevail on its claim for additional credits in the litigation." On November 19, 2010, Harley filed its Objections and Proposed Amendments To The Statement of Decision. In their papers, the parties asserted that a court may amend its statement of decision after it receives objections from the parties so long as final judgment has not been entered.

On November 30, 2010, before the trial court had ruled on the parties' objections, Harley filed a Notice of Intent to Move for New Trial on the First Cause of Action. Eventually, on March 11, 2011, the trial court issued an Amended Statement of Decision in which it added an award of attorney's fees and costs to AMC for the second cause of

action. The court then issued a Corrected Amended Statement of Decision on March 29, 2011, stating: “On November 9, 2010, the Court issued its Statement of Decision, no judgment having been issued, and for good cause showing, the Court, *sua sponte*, issued an Amended Statement of Decision on March 11, 2011. This Corrected Amended Statement of decision corrects clerical errors and deletions in the decision entered on March 11, 2011.” The court issued an Errata to the Corrected Amended Statement of Decision on June 30, 2011. Judgment was entered on September 8, 2011.

b. Contention

Harley contends the trial court erred in amending its Statement of Decision to award attorney’s fees and costs to AMC for the second cause of action because the court had already “lost jurisdiction” on January 31, 2011, 60 days after the date Harley filed its November 30, 2010 motion for a new trial. We reject the contention.

Code of Civil Procedure section 660, on which Harley relies, provides in relevant part that “the power of the court to rule on a motion for a new trial shall expire 60 days . . . after filing of the first notice of intention to move for a new trial.” The time limits set forth in the section are mandatory and jurisdictional, “and an order made after the 60-day period purporting to rule on a motion for new trial is in excess of the court’s jurisdiction and void.” (*Siegal v. Superior Court* (1968) 68 Cal.2d 97, 101.) The statute, however, deals only with the trial court’s jurisdiction to “rule on a *motion for a new trial*” (italics added); there is nothing in the language of it that precludes a court from modifying its Statement of Decision before it has entered judgment.

In fact, it is settled that a trial court has the authority to amend its statement of decision at any time before final judgment has been entered. (*Bay World Trading, Ltd. v. Nebraska Beef, Inc.* (2002) 101 Cal.App.4th 135, 140–141 [both Code of Civil Procedure section 632 and California Rules of Court rule 3.1590 relating to statements of decision “contemplate[d] that a court may amend its statement of decision after it receives objections from affected parties”]; see *Brown v. Barham* (1966) 242 Cal.App.2d 696, 702 [“ ‘at any time before [judgment] is entered, the court may change its conclusions of law and enter a judgment different from that first announced. [Citations.] Moreover, a judge

who has heard the evidence may at any time before entry of judgment amend or change his findings of fact.’ ”].) Here, because judgment had not yet been entered, the trial court had the inherent power to amend its Statement of Decision. The fact that the court did not rule on Harley’s motion for a new trial within the 60-day period specified in Code of Civil Procedure section 660 meant only that that motion was denied by operation of law; it did not strip the court of its inherent power to reevaluate and modify its Statement of Decision before entry of judgment.

DISPOSITION

The judgment is affirmed. Respondent American Marine Corporation shall recover its costs on appeal.

McGuiness, P.J.

We concur:

Pollak, J.

Jenkins, J.