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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

KAMLESH BANGA,

Plaintiff and Appellant,

v.

**THE RESTORATION CLEANUP
COMPANY, INC. ,**

Defendant and Respondent.

A133498

**(Solano County
Super. Ct. No. FCS034970)**

Plaintiff Kamlesh Banga (Banga), who has represented herself for the duration of these proceedings, appeals from a judgment entered in favor of defendant The Restoration Cleanup Company, Inc. (Restoration) following a bench trial. She argues that the court committed reversible error in failing to issue a statement of decision and in granting Restoration’s motion for a “nonsuit” based on her failure to present sufficient evidence to support her causes of action. We affirm. First, the court did sign a statement of decision prepared by defense counsel, and procedural irregularities in the filing of that document do not require reversal of the judgment. Second, the “nonsuit,” which we treat as the granting of a motion for judgment under Code of Civil Procedure section 631.8,¹ was proper because plaintiff failed to present evidence in her case-in-chief sufficient to support a judgment in her favor.

¹ Statutory references are to the Code of Civil Procedure except where otherwise indicated.

BACKGROUND

After her home was damaged by fire, Banga filed a claim with her insurance carrier, Allstate Insurance Company (Allstate). She signed a written contract with Restoration for emergency repairs at the property, and authorized Restoration to bill Allstate directly. Restoration submitted invoices to Allstate for \$5033.46.

Banga filed suit against Restoration in 2009, claiming that it had billed Allstate for work it had not completed, and that consequently, Allstate had reduced the amount of her insurance settlement by the amount it had paid to Restoration. Banga's second amended complaint, the operative pleading, contained four causes of action based on these alleged underlying facts: (1) breach of contract and the covenant of good faith and fair dealing; (2) unfair business practices in violation of Business and Professions Code section 17200; (3) fraudulent business practices in violation of Business and Professions Code section 17200; and (4) illegal business practices in violation of Business and Professions Code section 17200.

Following discovery, a one-day bench trial was held on July 15, 2011. As part of her case-in-chief, Banga called Bernadette Felli as a witness and established the existence of a written contract between Restoration and Banga.² Banga then testified on her own behalf to the following facts: Her house was damaged by a fire on June 5, 2005; she made a property damage claim under her Allstate homeowner's policy; she contacted Restoration at the insurance adjustor's recommendation to see whether it could do structural repairs and emergency cleanup; she agreed to have Restoration bill Allstate directly; she was told by a representative of Restoration that it would only bill Allstate for work that was completed; Restoration did some cleanup work but was told by Banga on June 13, 2005 that they would not be doing any additional cleaning until it was time to paint the house; Restoration sent invoices to Allstate billing it for work in the living room, family room, dining room and bedrooms that was never performed; Restoration

² Although Banga failed to directly establish Felli's relationship to Restoration, it can be inferred from the record that Felli worked for the company in some capacity.

was paid \$4,385 by Allstate for work that was not performed. The court sustained an objection on foundational grounds to testimony by Banga that Allstate deducted \$5,366 from her insurance settlement.

After she finished testifying, Banga rested her case. Restoration moved for a “directed verdict and nonsuit” on the following grounds: (1) Banga had failed to allege any facts showing that it breached their written contract, and the parol evidence rule made inadmissible evidence of Restoration’s alleged oral promise to only bill Allstate for completed work; (2) Banga had not presented any admissible evidence of damages, i.e., evidence showing that her insurance settlement with Allstate was reduced as a result of payments to Restoration for work it did not perform; and (3) the evidence did not show that Restoration had engaged in fraudulent or deceptive business practices under Business and Professions Code section 17200. The court granted a nonsuit.

On July 29, 2011, at the court’s request, counsel for Restoration submitted a proposed statement of decision and judgment and served Banga with copies of the same. On August 4, 2011, the court signed the proposed statement of decision without change, and it was filed on August 5, 2011. The judgment was signed and entered on August 16, 2011. On August 17, 2011, Banga filed an “opposition” to the proposed statement of decision. On October 14, 2011, she filed a notice of appeal from the judgment.

DISCUSSION

I. *The “Nonsuit” Was Actually an Order Granting a Motion for Judgment Under § 631.8*

Though the trial court purported to grant Restoration’s motion for “nonsuit,” nonsuit is not available in a bench trial after evidence has been presented. (§ 581c; *Lingenfelter v. County of Fresno* (2007) 154 Cal.App.4th 198, 206.) We deem the court to have granted a motion for judgment under section 631.8, which allows a party in a court trial to move for judgment after the opposing side has completed its presentation of evidence. (See *Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 314, fn. 23.) “ ‘ “The purpose of Code of Civil Procedure section 631.8 is to enable a trial court which, after weighing the evidence at the close of the plaintiff’s case, is persuaded that the plaintiff

has failed to sustain [her] burden of proof, to dispense with the need for the defendant to produce evidence. [Citations.]” [Citation.] Thus, section 631.8 serves the same purpose as does section 581c, which permits the court to grant a nonsuit in a jury trial.

[Citation.]’ ” (*Roth v. Parker* (1997) 57 Cal.App.4th 542, 549 (*Roth*).

II. *The Court Did Issue a Statement of Decision, and its Premature Filing of the Same Does Not Require Reversal*

Banga argues that the judgment must be reversed because the court failed to file an operative statement of decision. We disagree.

When a court grants a motion for judgment during a bench trial, it must issue a statement of decision as provided in section 632. (§ 631.8, subd. (a).) “The statement of decision shall be in writing . . . however, when the trial is concluded within one calendar day . . . the statement of decision may be made orally on the record in the presence of the parties.” (§ 632.) Although a written statement of decision was not required in this case due to the short duration of the trial, the court directed Restoration to prepare one as authorized by rule 3.1590(c)(3) of the California Rules of Court. It then adopted that statement of decision by signing it and filing it on August 5, 2011. Though titled “Proposed Statement of Decision,” the document was in final form and was obviously intended to be the court’s statement of decision in the matter.

After Restoration timely filed and served the proposed statement of decision on July 29, 2011, Banga had 15 days to serve and file objections to the same. (Cal. Rules of Court, rule 3.1590(g).) Restoration acknowledges that the trial court, by filing the statement of decision and judgment before this period expired, did not give Banga the benefit of the 15-day period. But, the premature signing of a proposed statement of decision or judgment “does not constitute *reversible* error unless actual prejudice is shown.” (*Heaps v. Heaps* (2004) 124 Cal.App.4th 286, 292 (*Heaps*); see also *In re Marriage of Steiner & Hosseini* (2004) 117 Cal.App.4th 519, 524.)

No prejudice appears on this record. “The main purpose of an objection to a proposed statement of decision is not to reargue the merits, but to bring to the court’s attention inconsistencies between the court’s ruling and the document that is supposed to embody and explain that ruling.” (*Heaps, supra*, 124 Cal.App.4th at p. 292.) Banga did file an “opposition” to the statement of decision on August 17, 2011, but it was little more than an attempt to reargue her case and draw the court’s attention to evidence that was not admitted at trial. She was not prejudiced because there is no indication the written statement of decision does not accurately reflect the court’s ruling, even if Banga disagreed with its substance.

III. *The Trial Court Properly Granted Judgment in Favor of Restoration*

Banga argues that the trial court erred in granting a nonsuit/motion for judgment because the evidence supported her claims against Restoration. In assessing this claim, we apply a substantial evidence standard, meaning that we are bound by the trial court’s factual determinations below, and may not reweigh the evidence or reassess issues of credibility. (*Orange County Employees Assn. v. County of Orange* (1988) 205 Cal.App.3d 1289, 1293-1294; *Roth, supra*, 57 Cal.App.4th at p. 549.)

As to the cause of action for breach of contract, Banga was required to prove four essential elements: (1) the existence of a contract; (2) her own performance of the contract or excuse for nonperformance; (3) a breach of the contract by Restoration; and (4) resulting damages. (*Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614; *First Commercial Mortgage Co. v. Reece* (2001) 89 Cal.App.4th 731, 745.) Her theory was that Restoration had breached their agreement by billing Allstate for work before it had been completed. Yet, Banga acknowledged that her written contract with Restoration, which contained an integration clause, made no mention of such a billing requirement. Banga attempted to testify that a representative of Restoration had promised not to bill Allstate until their work was finished, but the court properly excluded this testimony under the parol evidence rule, which bars the use of

extrinsic evidence to vary, alter, or add to the terms of an integrated written instrument. (See *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Assn.* (2013) 55 Cal.4th 1169, 1174 (*Riverisland*);³ *Alling v. Universal Manufacturing Corp.* (1992) 5 Cal.App.4th 1412, 1433; see Civ. Code, § 1625, Code Civ. Proc. § 1856, subd. (a).) There was no substantial evidence that Restoration breached any provision of the written contract.

Moreover, Banga failed to introduce evidence that showed she was damaged as a result of Restoration's alleged billing for work it did not perform. Though she testified that Allstate withheld from her insurance settlement money paid to Restoration, the trial court sustained an objection based on a lack of foundation. This was not an abuse of discretion, because Banga did not establish that she had personal knowledge about Allstate's claims practices such that she could testify that money paid to Restoration would otherwise have been paid to her directly. (See *Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 762.)⁴

We next turn to the three causes of action based on violations of Business and Professions Code section 17200. A private plaintiff seeking relief under this section "must make a twofold showing: he or she must demonstrate injury in fact *and* a loss of money or property caused by unfair competition." (*Hale v. Sharp Healthcare* (2010) 183 Cal.App.4th 1373, 1381; see Bus. & Prof. Code, § 17204.) As already discussed, Banga

³ The fraud exception to the parole evidence rule that was recognized in *Riverisland* has no application here.

⁴ Banga cites an Allstate document entitled "Personal Property Damage Estimate Working Copy," which shows that "prior payments" in an amount equal to the amount paid to Restoration had been subtracted from the total loss payable on the claim. But this document, while included in the Appendix on appeal, was not introduced as an Exhibit at trial. In any event, it does not appear that Banga had available at trial any witnesses who could have laid the foundation necessary to introduce this document as a business record or under some other applicable hearsay exception, such that the truth of its contents could be considered. (See Evid. Code, § 1271.)

did not establish by competent evidence that she was actually injured as a result of the bills Restoration submitted to Allstate.

In light of our resolution of these issues on the merits, we do not reach Restoration's argument that the appeal should be dismissed due to irregularities in the service of the Appellant's Appendix and the submission of an amended designation of the appellate record. We also deny Restoration's separate motion for sanctions, filed November 14, 2012. Banga's appeal, though lacking in merit, was not wholly frivolous.

DISPOSITION

The judgment is affirmed. Respondent Restoration is entitled to recover its ordinary costs on appeal.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BRUINIERS, J.