

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ALLISON GIBSON AND BAMM INK
ENTERTAINMENT CORPORATION,

Plaintiffs and Appellants,

v.

TWENTIETH CENTURY FOX
TELEVISION et al.,

Defendant and Respondent.

B230560

(Los Angeles County
Super. Ct. No. SC102357)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig Karlan and Lisa Hart Cole, Judges. Affirmed.

Richard Ross; Law Offices of Bruce Adelstein, Bruce Adelstein for Plaintiffs and Appellants.

Kelley Drye & Warren, David E. Fink and Kenneth D. Kronstadt for Defendant and Respondent.

INTRODUCTION

Plaintiffs and appellants Allison Gibson (Gibson) and Bamm Ink Entertainment Corporation (Bamm)¹ appeal from a final judgment after the trial court’s grant of a motion for summary adjudication in favor of Defendant and Respondent Twentieth Century Fox Television on Gibson’s breach of contract cause of action and Gibson’s dismissal of her remaining causes of action. In her breach of contract cause of action, Gibson sought a percentage of the gross receipts on a television series under a “pay-or-play” provision because she was terminated during the “second Series year.” The trial court granted defendant’s motion for summary adjudication on the ground that the contract was unambiguous and that Gibson was not entitled to any relief. Gibson argues that the contract was unambiguous and should be interpreted in her favor, and that alternatively, the contract was ambiguous so that there is a triable issue of fact. We affirm because the contract is not reasonably susceptible to Gibson’s interpretation, and is consistent with the trial court’s interpretation.

FACTUAL BACKGROUND²

1. *The Parties*

Gibson was the creator, executive producer, writer and “showrunner” on a television series “Reba” (Series). The Series was a half-hour situational comedy that was broadcast on the WB network for six seasons featuring Reba McEntire.

A “showrunner” is the person responsible for making sure series episodes are delivered during the production season. The everyday duties of a showrunner include, inter alia, heading brainstorming sessions about storylines for upcoming episodes, supervising writing staff, revising scripts, communicating with studio and network executives about series performance and direction, and reviewing budgets. If a series is

¹ Gibson was the president of Bamm. Neither we nor the parties distinguish between Gibson and Bamm in connection with the substantive issues.

² The facts are stated in a manner consistent with the standard of review.

renewed by the network and ordered for an additional season, the showrunner reviews the work of prospective writers for the next season to, among other things, ensure they can positively contribute to the next season and to develop story lines for the upcoming season.

On February 4, 2000, defendant and Gibson entered into an Overall Development/Production Agreement (Agreement), pursuant to which Gibson agreed to provide showrunner, writing, and executive producer services for the Series for a two year period commencing June 1, 2000, through May 31, 2002, and in return receive various fees, including episode fees which are based on, inter alia, the number of episodes of the Series, bonuses, royalties and contingent compensation consisting of a percentage of Modified Adjusted Gross Receipts (MAG). The Agreement contained a “pay-or-play” provision which gave defendant the right to choose not to use all or some of Gibson’s services as long as defendant paid Gibson her episode fees.

Paragraph 7(c) of the Agreement, entitled Vesting Schedule, provided in pertinent part that Gibson’s share in the MAG “will vest 25% upon completion of all services on the Pilot script, if any; 25% upon completion of all material services on the Pilot (or Prototype); 25% upon completion of all material executive producer or co-executive producer . . . services for the first Series year; and 25% upon completion of all material executive producer or co-executive producer . . . services for the second Series year. If a ‘pay-or-play’ right (‘Right’) is exercised during the first or second Series year, [Gibson] will fully vest for that Series year in which the Right is exercised.” The Agreement does not define “Series year.”

On May 24, 2001, defendant sent Gibson a letter confirming that under the agreement defendant was engaging Gibson to provide executive producer services “for all episodes produced for the first Series year (i.e., 2001/02) of [the Series]. [¶] Currently, no start date has been set. One of [defendant’s] business affairs executives will later advise you in writing of the official date and place where [Gibson] is to report to work.” The parties agreed that thereafter Gibson performed writer, executive producer, and showrunner services for the first Series year. The Series had its broadcast

premier on about October 5, 2001, and the final episode of the first season was first telecasted on about May 10, 2002.

On January 14, 2002, WB's President advised Gibson that the Series "was being given a pick-up for a second series year. At that time, the first season of the Series was still in production and Gibson had not completed performing all material services for the first Series year. Gibson began work on the second Series season, including reviewing budgets, determining the writers and directors that should be hired, of deciding on "the tone" of the Series. According to Gibson, "[A]ll of my efforts pertaining to season two started much earlier than would be normal in the television industry. The WB wanted to get a jump start on season two." Gibson declared, "All my efforts concerning the second series year are done simultaneously with my ongoing duties pertaining to the first series year." In an interrogatory response, Gibson states that "defendant never informed me they were not picking up my services for the second season."

Gibson declared that on March 25, 2002, she was told by one of the other producers of the Series that McEntire "requested a new showrunner," and prior to that time she did not know that she "was vulnerable to being removed. . . . [¶] Not then, not before, not after, not at any time, did anybody from [defendant] tell me I was being paid or played." Gibson declared, "When I learned on March 25, 2002, that . . . McEntire wanted me off the series, I stopped rendering second series year services while continuing to perform services with respect to the first series year. Had I known earlier, I would have ceased rendering second series year services at the time I was told." Gibson declared, "Being under contract, I did the job I was hired to do and would do so until the term expired or I am told to stop, or as in this instance, learned second hand." On May 10, 2002, the first season of the Series concluded. Defendant hired a new showrunner to serve on the second season of the Series effective May 10, 2002. Gibson claimed the final 25 percent of the MAG for the second season, but defendant rejected the claim.

PROCEDURAL BACKGROUND AND SUMMARY OF EVIDENCE

Gibson sued defendant for, inter alia, breach of contract (first cause of action).

Gibson alleged that defendant only paid Gibson 75 percent of her MAG but that she was vested in, and therefore entitled to, the final 25 percent of her MAG because her services were terminated during the second Series year.

Defendant filed a motion for summary judgment, or in the alternative, summary adjudication contending, inter alia, that “the second Series year did not begin until well after Gibson had been terminated,” and therefore Gibson was entitled to only 75 percent of the MAG. Defendant submitted a declaration of Anatole Klebanow, vice president of legal affairs, in support of the motion stating that, “[Gibson’s counsel] and I arrived at the ‘Series year’ formulation through our negotiations. As reflected in the negotiation file, the language that became ‘Series year’ originally read ‘full production year of the Series.’ The drafts in the negotiation file then reflect that [Gibson’s counsel] proposed changing that language to read ‘production season of the Series.’ The drafts in the negotiation file then reflect that I proposed changing the ‘production season’ language proposed by [Gibson’s counsel] so that the vesting of contingent compensation turns on the commencement of the first and second ‘Series year.’ The drafts in the negotiation file reflect that [Gibson’s counsel] made no further changes to that language. . . . [¶] ‘Series year’ has a standard and well understood meaning in the television industry. A ‘Series year’ corresponds with the production of the episodes of a television series for a given broadcast season. If the first episode of a new broadcast season will premiere in the Fall, a ‘Series year’ typically begins in or about June or July.”

Gibson opposed the motion contending that her services were terminated during the second Series year because, “[a]fter a series is renewed, the new series year commences” and a showrunner must commence work on the second Series year. Gibson submitted declarations of Steven Bocho, a creator and producer of several television shows, and Rene Balcer, a showrunner and creator of television shows, to the effect that a showrunner needs to start work on a subsequent season of a television series immediately upon the show being renewed.

Bocho declared, “I am totally familiar with the term ‘showrunner’ and the responsibilities attendant to being a showrunner. . . . [¶] Often a series will conclude its production season without the showrunner knowing whether the series will be returning for the next season. But if the series is renewed while still in production, say in March, the showrunner’s focus is expanded to the upcoming season. And if the series is renewed early, say in January, this totally enables the showrunner to get a jumpstart on the entire process. [¶] A jumpstart resulting from an early renewal enables the showrunner to attempt to engage writers and directors before they commit to other series. Television series showrunners compete with one another for capable writing and directing talent. [¶] . . . [¶] If a showrunner, after a series is renewed, does not immediately address obtaining writers and directors for a forthcoming season, this individual would not be doing his or her job. In order to evaluate potential writers, their prior work has to be reviewed and multiple scripts read. Generally, a talent agent will submit scripts on behalf of a client immediately after a show is renewed.”

Balcer declared, “I am familiar with the term ‘showrunner’ and the duties of a showrunner. . . . [¶] If [a] series is renewed while still in production, a showrunner must enlarge his or her duties and focus on the upcoming renewed season. A showrunner needs to get a jumpstart because there is great competition to engage writers and directors before they commit to other series. Television series showrunners compete with one another for capable writer and directing talent. [¶] If a showrunner, after a series is renewed, does not immediately address obtaining writers and directors for a forthcoming season, that showrunner would not be doing his or her job. In order to evaluate potential writers, their prior work has to be reviewed and multiple scripts read. Talent agents will immediately submit scripts on behalf of their clients right after a show is renewed.”

At the hearing on defendant’s motion, the trial court granted summary adjudication for defendant on Gibson’s breach of contract claim. The trial court stated that “[Gibson] admits that she stopped rendering services for the second series year on March 25, 2002, and states that she did her job ‘until [she] was told not to.’ [Citation.] Thus it was clear to [Gibson] that [defendant] was exercising its pay or play right at least

by March 25, 2002. The first cause of action [for breach of contract] therefore turns on when the ‘second series year’ began. If it began before March 25, 2002, then [Gibson] is entitled to full vesting in her MAG share. If it began after March 25, 2002, then [Gibson] is not entitled to full vesting and the first cause of action fails.”

In granting summary adjudication for defendant, the trial court stated, “Since the language of the contract is not ‘reasonably susceptible’ to two meanings, extrinsic evidence to prove the meaning of ‘series year’ is not admissible. [¶] The court therefore is limited to interpreting the plain meaning of the contract. . . . [T]he second series year could not have begun earlier than March 25, 2002, since [Gibson] admits work on the first season was still being completed at that time. Accordingly, the second series year had not begun on March 25, 2002, when [Gibson] manifestly understood that [defendant] was exercising its pay-or-play right. Thus, it is undisputed that [Gibson’s] MAG share did not vest 100% prior to or upon [defendant’s] exercise of its pay-or play right.”

After the trial court denied Gibson’s motion for reconsideration and to vacate the trial court’s ruling, Gibson dismissed her remaining causes of action with prejudice. The trial court entered a final judgment in favor of defendant, and Gibson appealed.

DISCUSSION

A. Standard of Review

“Summary adjudication is proper if the papers submitted show there is no triable issue as to any material fact and the moving party is entitled to prevail on a cause of action as a matter of law. (See Code Civ. Proc., § 437c, subd. (f)(1); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 [107 Cal.Rptr.2d 841, 24 P.3d 493].) A defendant moving for summary adjudication bears the initial burden to show the cause of action has no merit, i.e., ‘that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to that cause of action.’ (Code Civ. Proc., § 437c, subd. (p)(2).) If the defendant meets this burden, ‘the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists’ (*Ibid.*)”

(*Kight v. CashCall, Inc.* (2011) 200 Cal.App.4th 1377, 1386-1387.) ““There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.’ (*Ibid.*, fn. omitted.)” (*Lidow v. Superior Court* (2012) 206 Cal.App.4th 351, 356.)

“In reviewing an order granting summary adjudication, ‘we apply the same standard of review applicable on appeal from a grant of summary judgment. [Citation.] Accordingly, “. . . we take the facts from the record that was before the trial court when it ruled on that motion. [Citation.] ““We review the trial court’s decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained.”” [Citation.] We liberally construe the evidence in support of the party opposing summary [adjudication] and resolve doubts concerning the evidence in favor of that party. . . .”” (*Schofield v. Superior Court* (2010) 190 Cal.App.4th 154, 156-157 [118 Cal.Rptr.3d 160], quoting *Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 716-717 [68 Cal.Rptr.3d 746, 171 P.3d 1082].)” (*Rehmani v. Superior Court* (2012) 204 Cal.App.4th 945, 950-951.) “The trial court’s stated reasons for granting summary relief are not binding on the reviewing court, which reviews the trial court’s ruling, not its rationale. (*Kids’ Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 878 [116 Cal.Rptr.2d 158].)” (*Lidow v. Superior Court, supra*, 206 Cal.App.4th at p. 356.) “We affirm an order granting summary adjudication if it is legally correct on any ground raised in the trial court proceedings. (*Securitas Security Services USA, Inc. v. Superior Court* (2011) 197 Cal.App.4th 115, 120 [127 Cal.Rptr.3d 883].)” (*Kight v. CashCall, Inc., supra*, 200 Cal.App.4th at p. 1387; see *Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142 [“In performing our de novo review, we view the evidence in the light most favorable to plaintiffs as the losing parties. [Citation.] In this case, we liberally construe plaintiffs’ evidentiary submissions and strictly scrutinize defendants’ own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiffs’ favor”].)

Whether a written contract is ambiguous is a question of law reviewed de novo. (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165-1166.) If the written contract is ambiguous and there is conflicting extrinsic evidence as to its interpretation, the interpretation is a question of fact thus precluding summary judgment. (*Id.* at pp. 1165-1166; *San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 317; *Solis v. Kirkwood Resort Co.* (2001) 94 Cal.App.4th 354, 360-361; *Walter E. Heller Western, Inc. v. Tecrim Corp.* (1987) 196 Cal.App.3d 149, 158.)

B. Applicable Law

“The rules governing the role of the court in interpreting a written instrument are well established. The interpretation of a contract is a judicial function. (*Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 39-40 [69 Cal.Rptr. 561, 442 P.2d 641] (*Pacific Gas & Electric*)). In engaging in the function, the trial court ‘give[s] effect to the mutual intention of the parties as it existed’ at the time the contract was executed. (Civ. Code, § 1636.) Ordinarily, the objective intent of the contracting parties is a legal question determined solely by reference to the contract’s terms. (Civ. Code, § 1639 [‘[w]hen a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible . . .’]; Civ. Code, § 1638 [the ‘language of a contract is to govern its interpretation . . .’].) [¶] The court generally may not consider extrinsic evidence of any prior agreement or contemporaneous oral agreement to vary or contradict the clear and unambiguous terms of a written, integrated contract. (Code Civ. Proc., § 1856, subd. (a); *Cerritos Valley Bank v. Stirling* (2000) 81 Cal.App.4th 1108, 1115-1116 [97 Cal.Rptr.2d 432]; *Principal Mutual Life Ins. Co. v. Vars, Pave, McCord & Freedman* (1998) 65 Cal.App.4th 1469, 1478 [77 Cal.Rptr.2d 479] [parol evidence may not be used to create a contract the parties did not intend to make or to insert language one or both parties now wish had been included].) Extrinsic evidence is admissible, however, to interpret an agreement when a material term is ambiguous. (Code Civ. Proc., § 1856, subd. (g); *Pacific Gas & Electric, supra*, 69 Cal.2d at p. 37 [if extrinsic evidence reveals that apparently clear language in the contract is, in fact, susceptible to more than

one reasonable interpretation, then extrinsic evidence may be used to determine the contracting parties' objective intent]; *Los Angeles City Employees Union v. City of El Monte* (1985) 177 Cal.App.3d 615, 622 [220 Cal.Rptr. 411].)" (*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1125-1126.)

When the meaning of the words used in a contract is disputed, the court engages in a two-step process in interpreting a contract: "First, the court provisionally receives (without actually admitting) all credible evidence concerning the parties' intentions to determine 'ambiguity,' [that is], whether the language is 'reasonably susceptible' to the interpretation urged by a party. If in light of the extrinsic evidence the court decides the language is 'reasonably susceptible' to the interpretation urged, the extrinsic evidence is then admitted to aid in the second step—interpreting the contract. [Citation.]" (*Winet v. Price, supra*, 4 Cal.App.4th at p. 1165; *WYDA Associates v. Merner* (1996) 42 Cal.App.4th 1702, 1710.) Extrinsic evidence is inadmissible to give the instrument meaning to which it is not reasonably susceptible. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865.)

When two equally plausible interpretations of the language of a contract require parol evidence to aid in its interpretation, a question of fact is presented, thus precluding summary judgment if the evidence is contradictory. (*Walter E. Heller Western, Inc. v. Tecrim Corp., supra*, 196 Cal.App.3d at p. 158; *Solis v. Kirkwood Resort Co., supra*, 94 Cal.App.4th at pp. 360-361 [scope of release containing ambiguity cannot be resolved on summary judgment]; *San Diego Watercrafts, Inc. v. Wells Fargo Bank, supra*, 102 Cal.App.4th at p. 317 [summary judgment precluded where parties introduced conflicting evidence as to meaning of lease provisions].) An issue of fact only arises if the language of the contract is reasonably susceptible to both parties' competing interpretations and there is a credibility contest in the extrinsic evidence. (*Wolf v. Walt Disney Pictures & Television, supra*, 162 Cal.App.4th at p. 1134.)

"Usage or custom may be looked to, both to explain the meaning of language and to imply terms, where no contrary intent appears from the terms of the contract." (1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 755, p. 846.) The court in

Ermolieff v. R.K.O. Radio Pictures (1942) 19 Cal.2d 543, 550 (*Ermolieff*), stated that “[t]he usage becomes a part of the contract in aid of its correct interpretation.” “[C]ustom and usage may be resorted to in an effort to supply [sic] a deficiency if it does not alter or vary the terms of the agreement.” (*Addiego v. Hill* (1965) 238 Cal.App.2d 842, 846.) “[T]he usage evidence does not alter the contract of the parties, but on the contrary gives the effect to the words there used as intended by the parties.” (*Ermolieff, supra*, 19 Cal.2d at p. 550.)

“[A] party to a contract may be bound by a custom not inconsistent with the terms of the contract, even though he is ignorant of the custom, if that custom is of such general and universal application that he may be conclusively presumed to know of the custom. . . . [¶] . . . [¶] The rule that a person will be presumed to have contracted with reference to a general custom or usage whether he knew of that custom or not has frequently been invoked.” (*Miller v. Germain Seed & Plant Co.* (1924) 193 Cal. 62, 69.) Knowledge of the custom may be inferred from the fact that a party is engaged in the trade in which it is common. (*Wise v. Stults* (1956) 143 Cal.App.2d 592, 602; see also *Metro-Goldwyn Mayer, Inc. v. Scheider* (N.Y. 1976) 360 N.E.2d 930.)

C. Analysis

The sole issue in this appeal is the meaning of the phrase “the second Series year.” The Agreement does not define specifically “Series year,” and the parties disagree as to its meaning.

Gibson contends that “the second Series year” unambiguously means that it commenced when she started performing “material executive producer services” for the second season of the Series. Gibson asserts that, as defendant concedes, the first Series year began when she first started performing work on the first season, and there is no compelling reason why the second Series year should be interpreted differently under the Agreement. Gibson necessarily contends that the first and second Series year can

overlap, and that, contrary to the trial court's reasoning, various types of years often overlap.³

The parties agree that Gibson performed services for the first Series year on or shortly after May 24, 2001. Gibson contends that she began work on the second Series season shortly after January 14, 2002, when The WB's President advised Gibson that the Series was being renewed for a second series year. Gibson stated that, "[A]ll of my efforts pertaining to season two started much earlier than would be normal in the television industry. The WB wanted to get a jump start on season two." Gibson testified that, "[A]ll of my efforts concerning the second series year [were] done simultaneously with my ongoing duties pertaining to the first series year." Thus, she acknowledges that this work was being done during the first Series year.

Paragraph 7(c) of the Agreement states that Gibson's share in the MAG "will vest 25% upon completion of all material executive producer or co-executive producer . . . services for the second Series year Paragraph 7(c) adds, "If a 'pay-or-play' right ('Right') is exercised during the first or second Series year, [Gibson] will fully vest for that Series year in which the Right is exercised."

Gibson purports to rely upon extrinsic evidence to prove that (1) it is the custom and practice in the industry that if a series is renewed while still in production a showrunner must enlarge his or her duties by also focusing on the upcoming renewed season, and the showrunner "would not be doing his or her job" if she or she did not immediately do so, and (2) the drafting history of the agreement supports Gibson's interpretation of "the second Series year" to mean that it commenced when she started performing material services for the second season of the Series.

The declarations submitted by Gibson do not support her position. The declarants only state that a showrunner must begin performing some work during the first Season, in

³ In this appeal, defendant filed a motion to strike evidence outside the record and objections to admissibility of evidence. We do not consider in our analysis the material subject to the motion. We therefore deny the motion.

anticipation of a second Season. They do not offer any facts that bear on the interpretation of the term “Series year” in the contract in this case. If performing during the first Series year on the second Series year is the practice and it fulfilled the requirement for the final 25 percent of the contingent compensation, that would mean if a series is renewed, Gibson automatically would be entitled to that final 25 percent.

On appeal, Gibson also contends that the drafting history supports her position. She maintains that the term “production year” originally was used, and it was changed to “Series year.” According to Gibson, there is no indication this change had any significance. Thus, she argues that production year and Series year include everything that happened during the production year. The drafting history, however, does not support Gibson’s position. The change from “production year” and “production season of the Series” to “Series year” seems to clarify that the vesting of contingent compensation depends on the Series year and that each Series year is distinct.

Paragraph 7(c) of the contract provides that Gibson is entitled to the final “25% upon completion of all material executive producer or co-executive producer (in case of Shared Credit) services for the second Series year.” Gibson did not complete “all material executive producer . . . services for the second Series year.” But if a “pay-or-play right” is “exercised during the second Series year” [Gibson] will fully vest [for the MAG] for that Series year in which the right is exercised. That Gibson may perform services in preparation for a series year does not mean that the Series year has commenced.

The vesting of the right is for “that Series year.” The pay-or-play right can only be exercised for “that” one Series year—not multiple series years at the same time. Moreover, the pay-or-play right can be exercised during the first “or” the second Series year—not both. Gibson’s position is based on series years overlapping—i.e. the second Series year could begin during the first Series year. But the clause refers to first or second Series years. The language does not contemplate the overlap of those years because rights for two consecutive and different years logically could not vest in one year. Admittedly, it is not clear if the Series year depends on production or exhibition.

But that does not matter here, because, as Gibson concedes, the first Series year had not ended.

There are other references in the contract to “Series year.” For example, if Gibson rendered certain services “for at least the first 2 Series years, [she] shall thereafter be locked (on a pay or play basis) and obligated to utilize [her], non-exclusive Consultant Services for the same number of Series years equal to the number of such years during which Artist rendered [services] . . .” This clause suggests that the term “Service years” is a period of time for a series and not when work was performed and that Series years do not overlap. Also, with regard to advances, the contract provides, “at episode 89 or commencement of the 5th Series year, whichever is later . . .” Again, Series year as used here does not appear to contemplate multiple Series years occurring simultaneously.

Gibson’s interpretation of the meaning of the “second Series year” would, in effect, require that which we cannot do—alter or vary the express terms of the agreement with extrinsic evidence. (Code Civ. Proc., § 1856, subd. (a); *Cerritos Valley Bank v. Stirling*, *supra*, 81 Cal.App.4th pp. 1115-1116; *Principal Mutual Life Ins. Co. v. Vars, Pave, McCord & Freedman*, *supra*, 65 Cal.App.4th at p. 1478; *Addiego v. Hill*, *supra*, 238 Cal.App.2d at p. 846.) That is, Gibson would have us re-write the operative express language to provide that if a pay-or-play right is exercised at a time when Gibson has rendered some services for a second Series year, even if during the first Series year, her rights would vest for that second Series year. Defendant’s interpretation that the second Series year commences in June or July of the production of the Series is consistent with the language of the Agreement. Under defendant’s interpretation, there is no anomaly of first Series year overlapping with the second Series year.

Gibson has taken the position that the clause is unambiguous. She has not submitted any evidence suggesting that the clause is ambiguous or that supports her interpretation. Thus, there is no triable issue of fact.

Gibson cites no evidence that defendant actually knew she was doing work for a second Series year (other than discussions about locations for activities concerning the second Series year) or that it is inequitable in this case to deprive her of compensation for

the work she did, or for the period in which she did the work. She has not alleged any claim for equitable relief.

DISPOSITION

The judgment is affirmed. Defendant is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

We concur:

ARMSTRONG, Acting, P. J.

KRIEGLER, J.