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

CT GLENDALE, LLC,

Plaintiff and Respondent,

v.

EDDY LIU,

Defendant and Appellant.

B241445

(Los Angeles County
Super. Ct. No. BC453116)

APPEAL from an order of the Superior Court of Los Angeles County. Maureen Duffy-Lewis, Judge. Affirmed.

The Law Office of Curtis W. Herron and Curtis W. Herron for Defendant and Appellant.

The Law Offices of Doo & Chong, Wendy L. Doo and Robert W. Chong for Plaintiff and Respondent.

Eddy Liu (appellant), doing business as D.H. Liu Construction, appeals from an order granting a motion for contractual attorney fees in favor of CT Glendale, LLC (respondent). Appellant argues that respondent was not entitled to attorney fees because neither party brought an action to enforce a contract. Appellant further argues that, even if respondent is entitled to contractual attorney fees, respondent did not provide the court with sufficient evidence to determine whether the fees sought were reasonable.

We find the trial court correctly concluded that the action constituted a proceeding to enforce or interpret the relevant contract, and that the trial court did not abuse its discretion in determining that the amount of fees sought was reasonable. We therefore affirm the order.

FACTUAL BACKGROUND

In 2005, Colorado Garden Terrace LLC, a California limited liability company (Colorado Garden Terrace), entered into a construction loan agreement with Preferred Bank, a California corporation engaged in the banking and lending business. Colorado Garden Terrace secured the loan for the development of property located at 1122-1130 E. Colorado Street, in Glendale, California (the property).

Colorado Garden Terrace hired appellant to be the general contractor for the project. Summit Designs, Ltd. (Summit Designs) entered into a contract to provide custom-made cabinetry work to be installed on the construction project. Money was paid to Summit Designs from funds provided by Preferred Bank.

Colorado Garden Terrace defaulted on its loan from Preferred Bank and the construction project was foreclosed upon by the bank, which acquired the property by nonjudicial foreclosure.¹ The cabinetry was never installed in the construction project, and the cabinetry remained in the possession of Summit Designs.

Appellant claimed to be owed money on the project, and in August 2009 he filed a lawsuit against Colorado Garden Terrace, Preferred Bank, and others, alleging breach of

¹ The bank subsequently assigned the property to its affiliate, SH Colorado Garden LLC (SH Colorado).

contract, foreclosure of mechanic's lien, misrepresentation, and quantum meruit (Liu action).

In September 2009, during the pendency of the Liu action, respondent entered into a purchase and sale agreement with SH Colorado, by which respondent acquired title to the development project and the property. To remove all doubt as to whether the ownership of the cabinetry assets were transferred to respondent in connection with the sale of the property, in November 2010 respondent and SH Colorado executed an assignment of rights, effectively granting to respondent all rights, title, and ownership of the cabinetry assets which it obtained through the foreclosure bill of sale.

Appellant named respondent as a defendant in the Liu action, but respondent was dismissed by way of demurrer.

Appellant reached settlement agreements with the other defendants in the Liu action. In October 2010, appellant settled the Liu action with Preferred Bank. Through the settlement agreement, for "good and valuable consideration," appellant released and forever discharged Preferred Bank, SH Colorado, respondent, and their respective subsidiaries, affiliates, officers directors, shareholders, agents, attorneys, successors and assigns, from any and all past, present and future liability from all claims that were asserted or could have been asserted in the action. The settlement agreement contains an attorney fee clause, which provides that if any party to the agreement commences an "action or other proceeding" to "enforce or interpret" the agreement, the prevailing party shall be entitled to all reasonable costs and attorney fees incurred in connection with the action.

Despite demand, Summit Designs refused to deliver the cabinetry to either respondent or appellant, both of whom claimed a right to the cabinetry assets.

PROCEDURAL HISTORY

On January 14, 2011, respondent commenced this action by filing a complaint for declaratory relief against appellant and Summit Designs. In the complaint, respondent alleged:

“[Respondent] is further informed and believes that [appellant] Eddy Liu has made misleading demands to Defendant Summit Designs for the Cabinetry Assets arguing that the settlement agreement reached with Preferred Bank for the Liu Action granted [appellant] Eddy Liu title to the assets. [Respondent] is informed and believes and thereupon alleges that the settlement agreement with Preferred Bank for the Liu Action made no mention of, and had no effect on, the ownership of the Cabinetry Assets.”

On March 10, 2011, appellant filed his cross-complaint. In his first cause of action, appellant sought a judicial determination of the rights of the parties with respect to the cabinetry. Appellant alleged that the cabinetry, or funds paid to Summit Designs for the cabinetry, belonged to him and that he “should be able to recover said sums as part of his contract, in order to offset the outstanding balance still due and owing for labor, equipment, services and materials that were actually provided” on the project.

In the second cause of action on his cross-complaint, appellant sought \$28,300 from respondent. Appellant alleged that he paid these funds to the City of Glendale as general contractor on the project, but never received the funds back.

On September 12, 2011, respondent filed a motion for summary judgment seeking summary judgment of respondent’s original complaint and appellant’s cross-complaint. Respondent argued that appellant dismissed respondent with prejudice from an earlier lawsuit, and was barred from pursuing his causes of action against respondent on the grounds of res judicata, estoppel, and waiver.

On December 7, 2011, the trial court granted respondent’s motion for summary judgment. The trial court agreed that appellant’s claims against respondent contained in appellant’s cross-complaint were barred due to the prior dismissal with prejudice in the Liu action. The trial court further found that respondent “presented sufficient, admissible evidence to show that it is the owner of the cabinets,” and that no triable issue of fact existed.

On February 1, 2012, respondent brought a motion for attorney fees pursuant to Civil Code section 1717.² In the motion, respondent stated that prior to filing the lawsuit, respondent had provided documentary evidence to Summit Designs to show that it was the rightful owner of the cabinetry at issue. Respondent argued that the underlying dispute did not arise until appellant “made misleading and conflicting claims to Summit Designs,” including a claim that appellant “had taken ownership of the cabinetry assets through the settlement agreement” in the Liu action. Respondent informed the court that respondent then “had no choice other than to take action to enforce the settlement agreement against Liu by filing for declaratory relief.” Respondent argued that it incurred further costs in enforcing the settlement agreement when it had to defend against Liu’s cross-complaint, seeking ownership of the cabinetry assets as well as \$28,300 that he claimed he was owed under the original construction contract. Respondent argued that appellant made these unfounded arguments despite readily admitting that he had settled those same claims.

Citing *Leach v. Home Savings & Loan Assn.* (1986) 185 Cal.App.3d 1295 (*Leach*), respondent argued that a third party beneficiary to a settlement agreement has the same rights as a signatory to the agreement to collect attorney fees and costs incurred in enforcing the agreement.

Appellant opposed the motion for attorney fees, arguing that respondent should be estopped from reversing its original position that “the settlement agreement with Preferred Bank for the Liu Action made no mention of, and had no effect on, the ownership of the Cabinetry Assets.” Appellant argued that respondent’s attempt to collect attorney fees was inconsistent with its pleading, in which it alleged that the settlement agreement was irrelevant to the issue of ownership of the cabinetry. Appellant

² Civil Code section 1717 provides, in relevant part: “(a) In any action on a contract, where the contract specifically provides that attorney’s fees and costs, which are incurred to enforce that contract, shall be awarded . . . to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney’s fees in addition to other costs.”

also argued that respondent's moving papers did not supply the court with sufficient information for the court to determine the lodestar figure for the proper calculation of attorney fees.

The matter was heard on March 22, 2012, and the trial court granted respondent's request for attorney fees in the full amount of \$37,622.

On May 24, 2012, appellant filed his notice of appeal from the attorney fee order pursuant to Code of Civil Procedure section 904.1, subdivision (a)(2).

DISCUSSION

Appellant presents two questions in this appeal: (1) whether the trial court erred in determining that this was an action to enforce or interpret the settlement agreement containing the attorney fees provision; and (2) whether respondent submitted sufficient evidence to support the trial court's determination that the full amount of attorney fees sought by respondent represented a reasonable fee award.

I. Action on a contract

Appellant first argues that respondent was not entitled to attorney fees at all because no party to this case brought an action to enforce a contract, as required by Civil Code section 1717.

A. Standard of review

An appellate court reviews a determination of the legal basis for an award of attorney fees independently as a question of law. (*Leamon v. Krajkiewicz* (2003) 107 Cal.App.4th 424, 431.)

Civil Code section 1717 governs a fee award in an action on a contract. (*Windsor Pacific LLC v. Samwood Co., Inc.* (2013) 213 Cal.App.4th 263, 273 (*Windsor*)). "It covers *only* contract actions, . . . where the contract sued upon itself specifically provides for an award of attorney fees incurred to enforce *that* contract." (*Xuereb v. Marcus & Millichap, Inc.* (1992) 3 Cal.App.4th 1338, 1342 (*Xuereb*)). "Its only effect is to make an otherwise unilateral right to attorney fees reciprocally binding upon all parties to actions to enforce the contract. [Citation.]" (*Ibid.*)

In order to determine whether this is an action on a contract as required by Civil Code section 1717, we must analyze the scope of the attorney fee provision at issue and the nature of the pleadings in order to “determine whether the language of the attorney fees provision in this case would permit an award of fees to appellant[] under the circumstances presented. [Citation.]” (*Xuereb, supra*, 3 Cal.App.4th at p. 1342.)

B. Attorney fee provision

The attorney fee provision in the settlement agreement between appellant and Preferred Bank provides:

“If any party hereto commences any action or other proceeding to enforce or interpret this Agreement, the prevailing party shall be entitled to all reasonable costs incurred therewith, including but not limited to reasonable attorney fees. Otherwise, the parties shall each bear their own attorney fees and costs.”

The term “party” includes a signatory’s successor in interest. (*Leach, supra*, 185 Cal.App.3d at p. 1306 [in Civil Code section 1717 cases, a nonsignatory plaintiff is entitled to receive attorney fees where the nonsignatory is a successor in interest to an original signatory on the contract].)

In addition, “[w]e understand the words ‘action or other proceeding,’ used in accordance with their ordinary and popular sense, to encompass the entire action or proceeding, including both the complaint and any responsive pleading.” (*Windsor, supra*, 213 Cal.App.4th at p. 274.) Thus, it does not matter whether the interpretation or enforcement of the agreement “has been sought by the allegations of a complaint or by affirmative defenses in an answer.” (*Ibid.*)

C. Nature of pleadings

Respondent’s complaint for declaratory relief sought a judicial declaration “setting forth the parties’ rights, duties, and obligations in respect to, in, over or upon the Cabinetry Assets.” In setting forth its request for such relief, respondent explained the basis for respondent’s position that the cabinetry assets rightfully belonged to respondent. Respondent noted that Preferred Bank and its affiliate, SH Colorado, executed an

assignment of rights effectively granting to respondent all rights, title and ownership of the cabinetry assets.

In explaining the dispute, respondent pointed out that appellant made “misleading” demands upon Summit Designs for the cabinetry assets. Specifically, it was *appellant* who invoked the settlement agreement reached with Preferred Bank in the Liu action as a basis for his claim of title to the cabinetry assets.

Respondent’s complaint necessarily sought an interpretation of the settlement agreement in order to determine whether appellant’s claim of right to the cabinetry assets was correct. If appellant had been correct in his interpretation of the settlement agreement -- i.e., if the settlement agreement had indeed granted appellant the right to ownership of the cabinetry assets -- then appellant would have been entitled to an award of attorney fees for his success in enforcing that agreement. However, respondent was the prevailing party in this action. Thus, under the terms of the settlement agreement and Civil Code section 1717, respondent is entitled to attorney fees.

In addition, appellant’s cross-complaint was an action on a contract which also called for enforcement or interpretation of the settlement agreement. The form complaint that appellant filed was captioned “COMPLAINT -- Contract.” And in his second cause of action for damages in the amount of \$28,300, appellant specifically alleged that this money, paid from the City of Glendale to respondent, “rightfully belongs to [appellant], since said funds were part of the contract price between [appellant] and the property Owner.” This allegation caused respondent to include in its answer to the cross-complaint an affirmative defense of waiver. In this affirmative defense, respondent was forced to invoke the settlement agreement:

“[Appellant’s] claims are barred by the doctrine of waiver. Specifically, Cross-Complainant . . . entered into a settlement agreement releasing, for consideration, all defendants to the [Liu action], including the unconditional release of [respondent], wherein Cross-Complainant released all known and unknown claims, including an informed express waiver of Section 1542 of the Civil Code of the State of California and any similar laws of any state or jurisdiction, whereas the settlement agreement

contemplated and related to the same causes of action now being brought by Cross-Complainant in the Cross-Complaint.”

As set forth above, the words of the attorney fee provision in the settlement agreement encompass the entire action or proceeding, including both the complaint and any responsive pleading. (*Windsor, supra*, 213 Cal.App.4th at p. 274.)

We conclude, based on the above analysis, that the trial court did not err in determining that this proceeding was an “action or other proceeding to enforce or interpret” the settlement agreement. Thus, the attorney fee provision was applicable and the motion was properly granted under Civil Code section 1717.

D. Appellant’s estoppel argument fails

Appellant repeatedly points out that respondent’s complaint *admits* that “the settlement agreement with Preferred Bank for the Liu Action made no mention of, and had no effect on, the ownership of the Cabinetry Assets.” Appellant argues that respondent’s attempt to recover attorney fees is inconsistent with its own pleadings and should be barred by the doctrine of judicial estoppel. The doctrine of judicial estoppel prevents a party from changing its position over the course of judicial proceedings when such positional changes have an adverse impact on the judicial process. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 841.)

While appellant is correct that respondent made the quoted allegation, appellant fails to acknowledge the context in which this allegation was made. It was made to counter appellant’s false claim that the settlement agreement awarded those assets to appellant. It was, in essence, an articulation of the interpretation of the settlement agreement that respondent was seeking from the court.

Contrary to appellant’s argument, respondent’s request for attorney fees does not “re-characterize its Complaint as an enforcement action on a contract which it had expressly denied had any effect on the issues.” In fact, respondent’s complaint pointed to the settlement agreement -- more precisely, appellant’s misleading interpretation of that

agreement -- as the very reason that respondent was unable to recover assets to which it was entitled.

We therefore reject appellant's estoppel argument. Respondent was forced to bring this action to interpret the settlement agreement due to appellant's false reliance upon that agreement. The matter was an action on a contract and respondent was entitled to attorney fees based on the attorney fee provision contained in that contract.

II. Substantial evidence to support determination of reasonableness of fee award

Appellant's second argument is that, even if the court finds that respondent is entitled to contractual fees, the moving papers supplied by respondent failed to give the trial court sufficient information to allow it to calculate the reasonableness of the amount claimed.

A. Standard of review

A trial court order awarding attorney fees is reviewed using the abuse of discretion standard. (*Cruz v. Ayromloo* (2007) 155 Cal.App.4th 1270, 1274.) ““In reviewing an award of attorney fees, the amount awarded by the trial court will not be set aside absent an affirmative showing of abuse of discretion in that the award is “manifestly excessive in the circumstances.”” (*Ibid.*, fn. omitted.)

“A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. [Citations.]” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.)

B. The evidence was sufficient to support the award

Respondent filed its motion for attorney fees on February 1, 2012. In it, respondent sought \$37,622 in attorney fees. Respondent argued that the fees sought were reasonable, and that this was the amount that respondent incurred in enforcing the settlement agreement and defending against appellant's meritless cross-complaint. Respondent specifically alleged that its attorneys billed at \$350 per hour. Respondent argued, “The billing rate and the hours spent on enforcing the settlement agreement and defending against [appellant's] meritless claims are reasonable in consideration of the factual background of the case, the fact that a significant amount of these fees would have

been avoided had [appellant] not insisted on continuing with his unreasonable defense and prosecution of meritless claims, and the billing practices of other attorneys positioned similarly in the legal market.”

Respondent also referenced the attached declaration of Robert W. Chong. In his declaration, Chong stated that he was one of the primary lawyers handling this matter. Chong further stated that respondent incurred significant legal fees in connection with this matter and that the hourly rates billed to respondent were well within the prevailing hourly rates in Los Angeles County for lawyers of comparable education, expertise, and experience.

In its opposition to respondent’s motion, appellant argued that respondent had not provided sufficient information for the court to determine the lodestar figure for a proper attorney fee calculation.

Respondent included more information along with its reply brief, filed March 15, 2012. Respondent explained that its attorneys and assistants spent a total of 116.6 hours billed at various rates, including \$300-\$350 per hour for attorneys, and \$70-\$180 per hour for clerks and assistants. The requested amount also included an additional 3.5 hours for the preparation of the attorney fee motion, billed at \$350 per hour.

The specific dates of billing, billing rates, and hours spent were detailed in a chart attached to the reply brief. With this spreadsheet, the court was able to determine whether the billing rate and number of hours billed were reasonable.³

³ Appellant notes that at the hearing on the attorney fee motion on March 22, 2012, appellant’s counsel requested a brief continuance to consider the information in the chart attached to respondent’s reply brief. Appellant states that “the Court pronounced its ruling without granting any continuance.” Because appellant has provided no legal or factual argument regarding any alleged error in the trial court’s failure to grant a continuance, we decline to address this point further. (See, e.g., *Consumer Advocacy Group, Inc. v. ExxonMobil Corp.* (2008) 168 Cal.App.4th 675, 694 [““[A]n appellate brief ‘should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration’””].)

Appellant argues that the information provided to the court was insufficient for the court to perform a lodestar calculation. Under the lodestar method, the court multiplies the hours worked by a reasonable hourly rate. (*EnPalm, LLC v. Teitler* (2008) 162 Cal.App.4th 770, 774.) ““The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided.’ [Citation.]” (*Ibid.*)

We find that the court had sufficient information to utilize the lodestar method. The court had before it a complete breakdown of the number of hours respondent’s attorneys worked on the case, plus the billing rate for each attorney or assistant doing the work. This is sufficient for calculation of the basic lodestar rate. The court also knew the subject matter of the case, the positions of the parties, and the content of the settlement agreement. Under the circumstances, we find no abuse of discretion in the trial court’s decision to award respondent the entire amount of \$37,622.

DISPOSITION

The order is affirmed. Respondent is awarded its costs of appeal.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
FERNES

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.