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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

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CONTINENTAL CENTRAL CREDIT, INC.,  
  
Plaintiff and Respondent,  
  
v.  
  
PAUL ATKINSON,  
  
Defendant and Appellant.

C068734

(Super. Ct. No.  
SC20100183)

Paul A. Atkinson (Paul A.)<sup>1</sup> appeals from a judgment in favor of plaintiff Continental Central Credit, Inc. (CCC) on its collection suit to recover unpaid assessments on seven timeshare properties. Paul A.'s defense to the lawsuit and his claim on appeal is that he is not the owner of the properties, rather, his (now-deceased) father Paul G. Atkinson (Paul G.) owned them.

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<sup>1</sup> For brevity and clarity, we refer to members of the Atkinson family by their first names, with middle initials for the two Pauls.

Paul A. contends there was insufficient evidence that he owned the properties. He further contends the trial court erred in relying on a 2005 judgment for earlier unpaid assessments, which was satisfied by garnishment of his wages, because he was never served with the complaint in that case. Finally, he contends the court erred in denying his motion for a new trial.

These contentions fail to persuade us. Accordingly, we shall affirm.

### **FACTS**

#### *The Atkinsons*

Before his death in 2009, Paul G. was a farmer, teacher and lawyer in Atwater. He was married to Ellen and had two children, Paul A. and Rosalie. He lived on West Sunset Drive in Atwater and kept his law offices at 703 W. 23rd Street in Merced; his children owned the latter property.

Paul A. worked at Smith Chevrolet in Turlock for 20 years. After Paul G. died, Paul A. moved to the family home in Atwater. Rosalie worked for Paul G. as a paralegal until 2004. By the time of trial, she was on disability.

#### *Purchase of Timeshare Properties*

Some time prior to 2003, Paul G. purchased timeshare properties at Tahoe Seasons Resort. In 1990, Paul G. and Ellen brought suit against Tahoe Seasons Resort, seeking damages or a deed of reconveyance. Due to the reference to a deed of reconveyance, it appears the lawsuit was related to the purchase of property.

Subsequently, Paul G. was invited to bid at a tax sale on several other timeshare properties at Tahoe Seasons Resort. Seven of those properties were purchased in 2003. The tax deed shows the purchaser as "Atkinson Paul, Atkinson Rosalie, Joint Tenants with Right of Survivorship." The deeds state that tax statements were to be mailed to Paul G.'s 23rd Street office address in Merced. Checks for the purchases were drawn on the account of "Paul Atkinson." The signature and bar number on the checks matched those of Paul G.

Paul G. paid taxes on the properties; after he died, Rosalie paid them. The tax bills for the 2010-2011 tax year, which were admitted at trial, were sent to a post office box in Atwater. These tax bills showed the owners of the properties as "Atkinson Paul" and "Atkinson Rosalie." In contrast, the tax bills for two other properties at Tahoe Seasons Resort showed the owners as "Atkinson Paul G" and "Atkinson Ellen B" or "Atkinson Paul G" and "Atkinson Rosalie."

In 2005, CCC, as assignee of Tahoe Seasons Resort, filed suit against "Paul Atkinson" and Rosalie for past due assessments for 2004 and 2005 and obtained a default judgment for \$21,536.54. The judgment was satisfied in full by garnishment of Paul A.'s wages at Smith Chevrolet.<sup>2</sup>

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<sup>2</sup> Paul A. moved to augment the record on appeal to include the trial court's file for the 2005 action. The trial court took judicial notice of this file. We construe Paul A.'s motion as a request for judicial notice and grant it. (Evid. Code, §§ 452, subd. (d); 459, subd. (a).)

### *The Complaint*

In 2010, CCC again brought suit against "Paul Atkinson" and Rosalie. The complaint alleged defendants purchased seven timeshare units with Tahoe Seasons Resort at a tax sale. Under the covenants, conditions and restrictions on the properties, defendant agreed to pay annual assessments. Defendants had failed to pay assessments from December 1, 2006 to the present and owed \$31,830.03. Tahoe Seasons Resort had assigned this indebtedness to CCC.

### *The Trial*

The case was tried before the court without a jury. Paul A. and Rosalie appeared in pro per. No court reporter was present. On appeal, the parties rely on a settled statement.

Karen Frates, the assistant general manager of the Tahoe Seasons Time Interval Owners Association, testified Tahoe Seasons learned of the ownership of timeshares by deeds and determined the owner's address from county tax statements. Annual assessment statements were sent to "Paul" and Rosalie at 703 W. 23rd Street in Merced.

Paul A. testified he had never lived at the Merced address. When CCC garnished his wages in 2006, he went to Paul G. and asked what the claims were about. Paul G. said he would look into it. "For whatever reason," nothing was done. Paul A. approached another attorney about the matter after Paul G. died. Paul A. claimed he knew nothing about the timeshares until the wage garnishment. He did nothing to stop the garnishment and

did not tell Rosalie. He claimed he never received a summons and complaint in 2005 for CCC's first lawsuit.

Rosalie testified that she had a discussion with Paul G., during which he said he was thinking about buying the properties, but she claimed she did not know that he had purchased them. She never saw or received the tax deeds.

Ellen testified she was not aware of the purchase of the seven timeshares until she learned about the wage garnishment. Neither Paul A. nor Rosalie mentioned the purchase to her.

The trial court found Paul A. and Rosalie purchased the properties at a tax sale and taxes on the properties were paid annually by them or on their behalf. Paul A. was aware of the properties, having previously paid a judgment in excess of \$20,000 for homeowner's fees. Judgment was entered in favor of CCC in the amount of \$21,844.41 plus costs and attorney fees.

*Motion to Vacate Judgment*

Paul A. moved to vacate the judgment, claiming the factual record did not support the court's conclusion that Paul A. was an owner of the properties. Paul A. argued that since Paul G. had purchased the properties, the presumption was that Paul G. owned them. He complained that the court refused to admit evidence of Paul G.'s bidding on the timeshares.

In his reply to CCC's opposition, Paul A., now represented by counsel, argued he was never served in the 2005 case, so what occurred therein should be given no evidentiary value. He advanced the alternative remedy of a new trial.

CCC objected to expanding the motion to a new trial motion. The court denied the motion.

### **DISCUSSION**

#### I

##### *Substantial Evidence of Paul A.'s Ownership*

Paul A. contends there is insufficient evidence that he owned the seven timeshares. He contends the evidence--Paul G.'s previous purchase of timeshares and his discussion of the subsequent purchase with Rosalie, Paul G.'s signature and bar number on the checks used for the purchase, Paul G.'s office address on the deeds, the payment of taxes by Paul G. and then Rosalie, and that notices of assessments were sent to Paul G.'s office--established that Paul G. was the owner. Paul A. contends his awareness of the 2005 default judgment does not show his ownership because he was never served in that case.

Most of the evidence upon which Paul A. relies supports the conclusion that it was Paul G. who *purchased* the seven timeshares. As CCC argues, however, it is their *ownership*, not purchase, at issue here. The tax deeds for the seven timeshares show the owner as Rosalie Atkinson and "Paul Atkinson" as joint tenants with rights of survivorship. The parties disagree whether "Paul Atkinson" is Paul A. or Paul G.

Ownership of the seven timeshares was determined under the tax deeds. (See Civ. Code, §§ 1091, 1092, 1105, 1107.) Deeds are interpreted under the same rules as govern any other contract. (Civ. Code, § 1066; *City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 238.) Where a contract is

susceptible to two or more meanings, each of which is plausible, it is ambiguous and extrinsic evidence may be introduced to aid the interpretation of the contract. (*Nava v. Mercury Casualty Co.* (2004) 118 Cal.App.4th 803, 805; *Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1140-1141.) Extrinsic evidence includes "objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract; the object, nature and subject matter of the contract; and the subsequent conduct of the parties." (*Morey v. Vannucci* (1998) 64 Cal.App.4th 904, 912.)

Where the interpretation of a contract turns on the credibility of conflicting extrinsic evidence, it is for the trier of fact to determine the meaning of language in the contract. (*Morey v. Vannucci, supra*, 64 Cal.App.4th at pp. 912-913.) Where "'extrinsic evidence is properly received, and such evidence is conflicting and conflicting inferences arise therefrom, the appellate court will accept or adhere to the interpretation adopted by the trial court provided that that interpretation is supported by substantial evidence.' [Citations.]" (*Estate of Williams* (2007) 155 Cal.App.4th 197, 205-206.)

The substantial evidence standard of review is highly deferential. (*Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 447.) "In reviewing the evidence on such an appeal all conflicts must be resolved in favor of the respondent, and all legitimate and reasonable inferences indulged in to uphold the verdict if

possible. It is an elementary, but often overlooked principle of law, that when a verdict is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the jury. When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court. [Citations.]” (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.)

Although there was conflicting extrinsic evidence on the ownership of the seven timeshares, with Paul A. testifying he knew nothing of them, substantial evidence supports the trial court’s determination that the “Paul Atkinson” named in the tax deeds was Paul A. There was evidence that Paul G. used his middle initial in his business dealings. His 1990 suit against Tahoe Seasons Resort was brought under the name “Paul G. Atkinson.” His middle initial was also used on his business cards, his revocable trust, and tax bills for properties other than the seven timeshares at issue here. There was no evidence that Paul A. used his middle initial in business dealings. For example, he signed his answer to the complaint simply as “Paul Atkinson.” Further, while the address used for the purchase was Paul G.’s law office, Paul A. had access to the property as he and Rosalie owned it.

In finding that Paul A. was an owner of the seven timeshares, and accepted that ownership, the trial court relied

on his response to the 2005 default judgment and wage garnishment for unpaid assessments. From 2006 until 2010, Paul A.'s wages were garnished to satisfy in full a judgment of \$21,536.54. Paul A. did nothing to stop the wage garnishment, even though he claimed he consulted Paul G. and another attorney about the matter. The trial court could reasonably infer that Paul A., who was making \$4,300 a month at Smith Chevrolet, would not accept the wage garnishment for a debt of over \$20,000 unless he believed that he was responsible for that debt. (See Evid. Code, § 638 [presumption that one who exercises acts of ownership over property is the owner].)

This evidence of Paul A.'s subsequent conduct, along with evidence that Paul G. used his middle initial and Paul A. did not, and the reasonable inferences to be drawn therefrom, provide substantial evidence that Paul A. was an owner of the seven timeshares.

## II

### *Reliance on 2005 Judgment*

Paul A. contends the trial court erred "to the extent the court believed the prior default judgment was res judicata on the question of ownership." Paul A. contends it was error to rely on the 2005 default judgment because that judgment was void; Paul A. asserts he was never served with a summons and complaint. The record is unclear on this issue.<sup>3</sup>

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<sup>3</sup> The Proof of Service shows service on "Paul Atkinson." The Proof of Service and accompanying Affidavit of Reasonable

However, as Paul A. recognizes, the trial court did not find the 2005 judgment was res judicata. Instead, the court construed Paul A.'s payment of that judgment, through wage garnishment, as evidence that he was aware of the timeshares and accepted ownership of them. It is the evidence of Paul A.'s *conduct* rather than the fact of a judgment that the court relied on in its finding. For this purpose, it is immaterial whether the 2005 judgment was valid or void. The key fact is that Paul A. did not challenge the default judgment that named him as a judgment debtor for unpaid assessments on the seven timeshare properties, but instead fully satisfied the substantial judgment through wage garnishment. The trial court did not err in relying on this evidence.

### III

#### *Motion for New Trial*

Paul A. contends the trial court abused its discretion in denying his motion for a new trial.<sup>4</sup> He contends the trial court abused its discretion because (1) he represented himself in proper, (2) he was prepared to introduce highly material evidence,

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Diligence for service on Rosalie notes substitute service on "Paul Atkinson," a person of "suitable age and discretion," at 10360 W. Sunset Drive in Atwater. CCC interprets this to mean service was on Paul A. because he was of "suitable age." But we see no evidence in the record that any process server knew the age of Paul A. or Paul G. In any event, as we explain above, the validity of the judgment is irrelevant to our analysis.

<sup>4</sup> The standard of review from denial of a motion for a new trial is abuse of discretion. (*Garcia v. Rehrig Internat., Inc.* (2002) 99 Cal.App.4th 869, 874.)

and (3) granting the motion would not have caused undue delay or prejudiced CCC. We find no abuse of discretion.

First, Paul A. originally moved only to vacate the judgment under Code of Civil Procedure section 663 on the basis that the facts did not support the judgment. He does not contest denial of that motion and any such challenge would be meritless for the reasons discussed *ante*. While the motion to vacate was timely, his request for the alternative remedy of a new trial was made for the first time in his reply brief, submitted on June 17, 2011. This date was (considerably) more than 15 days after mailing of the notice of entry of judgment on May 6, 2011. Thus, even were we inclined to construe the reply brief as a motion for a new trial, it was untimely. (Code Civ. Proc., § 659.)

Second, Paul A.'s status as a pro se litigant does not entitle him to a new trial with counsel. Self-represented litigants are "held to the same standards as attorneys. [Citation.]" (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.) As our Supreme Court has explained, "[S]elf-representation is not a ground for exceptionally lenient treatment." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984.) The high court reasoned, "A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and

would be unfair to the other parties to litigation.” (*Rappleyea v. Campbell, supra*, 8 Cal.4th at p. 985.)

Third, the only statutory ground for a new trial based on new evidence is: “Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.” (Code Civ. Proc., § 657, subd. 4.) “A new trial may only be granted based on newly discovered evidence if reasonable diligence was exercised in the discovery of the evidence, and the evidence is material to the moving party’s case, meaning that it is likely to produce a different result. [Citation.]” (*Trovato v. Beckman Coulter, Inc.* (2011) 192 Cal.App.4th 319, 327.) While Paul A. contends his new evidence is material, he makes no showing that it is newly discovered and could not have been produced at trial.

#### IV

##### *Attorney Fees*

The trial court awarded CCC attorney fees of \$15,362.50 pursuant to the contractual provision for attorney fees in the covenants, conditions and restrictions. Each of the parties request attorney fees should it prevail. CCC is entitled to attorney fees on appeal. (*Morcos v. Board of Retirement* (1990) 51 Cal.3d 924, 929-930 [where attorney fees are properly recoverable in the trial court, they are recoverable on appeal].)

**DISPOSITION**

The judgment is affirmed. CCC is awarded costs and attorney fees on appeal. (Cal. Rules of Court, rule 8.278(a)(1)(2).)

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DUARTE, J.

We concur:

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BLEASE, Acting P. J.

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HULL, J.