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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

RUDOLPH WEDDINGTON,

Plaintiff and Respondent,

v.

ROBERT RUDOLPH,

Defendant and Appellant.

D058112

(Super. Ct. No. 37-2007-00058422-  
CU-BC-NC)

APPEAL from a judgment of the Superior Court of San Diego County, David G. Brown, Judge. Affirmed.

In this action involving a transaction concerning a racehorse owned by plaintiff Rudolph Weddington, Weddington filed a complaint alleging that defendant Robert Rudolph breached a contract to purchase the horse for \$160,000. Rudolph on the other hand contended that the written agreement between the parties provided only for him to assist in raising and training the horse to prepare him for racing and a possible sale to a third party.

At trial, Rudolph brought a motion in limine seeking to exclude extrinsic evidence proffered by Weddington that the agreement was a sales contract, arguing the agreement was unambiguous, integrated, and that the evidence Weddington sought to admit was contrary to the terms of the agreement. The court denied the motion, finding the agreement was not integrated and was ambiguous. Thereafter, the jury found in Weddington's favor on his causes of action for breach of contract and conversion, awarding Weddington \$160,000 in damages.

Rudolph appeals, asserting (1) the court's admission of the extrinsic evidence violated the parol evidence rule because the parties' agreement was an integrated, unambiguous document and Weddington's evidence contradicted the language of the agreement; and (2) the added terms of the alleged oral agreement cannot be used to establish the conversion claim. We affirm.

## FACTUAL BACKGROUND<sup>1</sup>

### *A. Factual Background*

Weddington has owned approximately six to 12 horses during his lifetime. Weddington sold two of these horses around the years 2000 to 2003. The remainder of them he gave away.

Rudolph has close to 40 years of experience buying and selling horses. He is well versed in the purchase and sales of horses and how these sales are transacted.

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<sup>1</sup> Much of the factual background comes from the testimony of the parties and other witnesses at trial.

According to Weddington, however, he had never entered into a written agreement for the purchase or sale of a horse before the instant transaction.

In August 2004 Weddington attended a Barrett Sale auction specifically to find a horse that was offspring of "Tribal Rule," a horse that was a good runner with good patronage. At the auction, he purchased "Motown Philly," a mare who had been a good runner, had made some money, and who also had good patronage. At the time of purchase, she was in foal with Alicson Cat, the offspring of Tribal Rule.

Alicson Cat was born in April 2005. Weddington intended to raise the horse for a short period of time and then sell her at auction. Based on Weddington's knowledge of the purchase prices for Alicson Cat's siblings, he expected to get over \$200,000 at auction for her.

In February 2007 Weddington went to Los Alamitos Race Course to meet with a potential buyer who had requested to see some lab work on the horse. This buyer did not show up, but he met with Rudolph, who reviewed the lab work which showed that she was of "high stake" quality. According to Weddington, Rudolph expressed an interest in purchasing Alicson Cat. Weddington told Rudolph that he wanted \$160,000 for her. Rudolph denied this took place and claimed that Weddington wanted him to help get the horse trained and ready to race so Weddington could sell Alicson Cat.

Soon after that meeting, Rudolph called Weddington's brother, George Weddington (George), to inquire about whether Alicson Cat was still for sale. George informed him that the horse was still for sale and called Weddington to arrange a time for Rudolph and his trainer, Jeff Mullins, to come down and see the horse. George was also

involved in horse training and racing and had known Rudolph for approximately 35 years.

On February 13, 2007, Rudolph went to Weddington's home to look at the horse, along with Mullins and George. Rudolph and Mullins inspected the horse, and Mullins determined that the horse had a "beautiful confirmation," indicating that her look and proportions were very good.

According to Weddington, Rudolph agreed to buy the horse for \$160,000, but because he did not have the money up front he told Weddington that he would get insurance on the horse if Weddington would let him take the horse now and get it into training. Rudolph also expressed his intent to race it and/or sell it, and told Weddington that he would pay him the \$160,000 when he sold the horse and split the remaining profits equally if the horse sold for more than \$160,000. Weddington agreed, understanding that it only took about three to four months to train a horse for its first race.

Rudolph denied that he verbally agreed to buy the horse at that time or at any time. He testified that the parties agreed Rudolph would manage the horse, pay its expenses and have it trained by Mullins to race, in the hopes of finding a buyer for Alicson Cat that would exceed Weddington's minimum price of \$160,000. Such a sale would allow Rudolph to recoup his expenses and provide a 50/50 split of the hoped for excess sales price.

Approximately 10 days after the parties had met and agreed to the sale, Weddington delivered the horse to Nexstar Ranch as Rudolph had requested.

Thereafter, Weddington received a written agreement from Rudolph. The agreement stated as follows:

"This document shall serve as a binding agreement between Rudolph Weddington Trust and Robert J. Rudolph. ¶ The agreement is as follows: ¶ 1. The horse named Alicson Cat, registration #0536489, will be transferred to Robert J. Rudolph. ¶ 2. Robert J. Rudolph will be responsible for all bills and training expenses. ¶ 3. Jeff Mullins will be the horse trainer of Alicson Cat. ¶ 4. Robert J. Rudolph will not sell Alicson Cat for any price without the permission of Rudolph Weddington. ¶ 5. Robert J. Rudolph will have complete control to manage the horse Alicson Cat up to the time of racing or sale. ¶ 6. Rudolph Weddington will receive up to 160,000.00 if the horse is sold. This amount is what Rudolph Weddington has stated he wants for the horse. Any monies above this amount of \$160,000.00 after expenses will be divided 50/50 between Robert J. Rudolph and Rudolph Weddington. ¶ 7. If Rudolph Weddington wants to cancel this agreement at any time, he agrees to refund all expenses paid by Robert J. Rudolph, and this agreement will then be null and void."

According to Weddington, he thereafter called Rudolph to discuss the agreement and told him that the agreement looked more like an agreement to sell a horse for someone rather than a sales agreement. Rudolph claimed that he "[wasn't] used to this business" and that he was not going to "mess [Weddington] up." Weddington expressed concern that a lot of the terms of their agreement were not included in the writing. Rudolph reassured him that he should not worry about it because this is "something I wrote up between friends." Rudolph urged Weddington sign the agreement so they could "get the show on the road." Rudolph denied that he had such a conversation with Weddington.

Around June 2007, Rudolph requested the original foal certificate (or ownership papers), so that he could train Alicson Cat at Santa Anita Race Course. The original

papers were required by Santa Anita so they could verify that the horses are thoroughbreds and to track which ones were on the premises. On August 10, 2007, Rudolph signed the back of the foal registration certificate, which showed that the title of "owner" was transferred to Rudolph. According to Rudolph, he transferred title to his name so he would have complete control of managing the horse and to make all decisions as to the horse as set forth in paragraph 5 of the agreement.

In August 2007 Weddington went to Santa Anita to retrieve the original papers because he intended to transfer the horse into his trust. However the papers were not there. Weddington asked Rudolph where the papers were located, but Rudolph denied ever receiving them and denied knowing their whereabouts.

Around that same time, Rudolph sent Weddington a copy of their written agreement which had been altered to omit the last two paragraphs, and which stated in a handwritten notation at the bottom that it was for "for racing purposes." In response, Weddington wrote a letter to Rudolph, dated August 27, 2007, contesting the altered writing. According to Rudolph, he deleted paragraphs 6 and 7 so potential buyers would not know that the horse could be purchased for \$160,000. Otherwise, they would only receive offers at or below the minimum price.

On September 12, 2007, after calling all of the race courses in California, Weddington found the papers at Fairplex Race Course in Pomona. Weddington asked the clerk to tell him whose name was on the papers and he found out that Rudolph had transferred the horse into his own name. At that point, Weddington thought that Rudolph had stolen his horse.

Thereafter, Weddington went to Los Alamitos racetrack to speak with its clerk, Linda Sherren, who informed Weddington that Rudolph transferred the horse using the altered version of the writing which she believed to be a bill of sale. According to Weddington, Rudolph transferred legal title to himself without telling Weddington and without Weddington's permission.

Weddington went to see Tom Blake, a security officer at Los Alamitos and the stewards who are charged with investigating these types of matters at the track. The stewards set up a meeting between the parties to try and resolve the issue.

Sometime in January 2008 Weddington learned that Alicson Cat had been entered into a \$32,000 claiming race, which meant that she could be purchased for \$32,000. Weddington contacted his attorney to file an injunction, and also contacted the Valley Center Substation of the San Diego County Sheriff's Department. The sheriff's department wrote a report documenting Weddington's claim that Rudolph had stolen the horse. The sheriff's department sent the report to Los Alamitos so as to attempt to have the horse scratched from the race.

Alicson Cat was scratched from the race. Rudolph transferred the horse back to Nexstar Ranch. During that time, Weddington attempted to see the horse, but David Showalter, the owner of the ranch, refused to let Weddington see the horse based upon Rudolph's instructions.

After this dispute arose, Richard Adams, an ex-horse trainer who had known Rudolph for about 30 years, approached him about why he changed the written agreement. Rudolph told him, "Look I'm dealing with Tweedledee and Tweedledumb

here. These two fuckers . . . . Their I.Q.'s together don't equal two. I'll get this horse for fucking nothing."

Rudolph also bragged about the fact that he manipulates people, and Weddington's, brother George, confirmed this with Mullins on February 13, 2007.

Walter Frazier, a horse trainer, was at Los Alamitos one day and overheard a conversation between George and Rudolph wherein George said that Rudolph had given \$160,000 for Alicson Cat, and Rudolph said, "Yes, I did."

*B. Relevant Procedural Background*

Weddington filed a complaint against Rudolph stating claims for breach of oral contract, breach of written contract and conversion. The complaint also stated a cause of action for negligence against Los Alamitos Race Course.

At trial, Rudolph filed a motion in limine seeking to exclude extrinsic evidence that the agreement was that he would purchase the horse for \$160,000 because the unambiguous terms of the written agreement was that it was for a joint venture between the parties for the care, training, racing and potential future sale of Alicson Cat to a third party. The court denied the motion. In doing so, the court found that the agreement was ambiguous, was not integrated, and did not contain an integration clause.

Following trial, the jury found in favor of Weddington on his breach of written contract and conversion claims. The jury awarded Weddington \$160,000 on each of these claims. The jury found in favor of Los Alamitos Race Course on Weddington's negligence claim. The court granted a motion for nonsuit on the claim for breach of oral contract.

## DISCUSSION

### I. COURT'S ADMISSION OF EXTRINSIC EVIDENCE

Rudolph asserts the court erred in allowing parol evidence because (1) the written agreement was an integrated document, and (2) the parol evidence was not consistent with the terms of the written agreement. We reject this contention.

#### A. Parol Evidence Rule

The parol evidence rule "generally prohibits the introduction of any extrinsic evidence, whether oral or written, to vary, alter or add to the terms of an integrated written instrument." (*Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 343.) Although parol evidence generally is not admissible to contradict express terms of a written agreement or explain what the agreement was, it may be admitted to resolve ambiguities and clarify inconsistent provisions in a written agreement. (*Chastain v. Belmont* (1954) 43 Cal.2d 45, 51-53; *Sunniland Fruit, Inc. v. Verni* (1991) 233 Cal.App.3d 892, 898.) Whether a contract is ambiguous is a question of law subject to de novo review on appeal. (*Appleton v. Waessil* (1994) 27 Cal.App.4th 551, 554-555.)

"An integrated agreement is a writing or writings constituting a final expression of one or more terms of an agreement." (*Hayter Trucking, Inc. v. Shell Western E&P, Inc.* (1993) 18 Cal.App.4th 1, 13.) Whether a contract is integrated is a question of law to be decided by the court. (*Id.* at p. 14.) "In ruling on the matter of parol evidence and the preliminary issue of integration, a court must consider such factors as the language and completeness of the written agreement and whether it contains an integration clause, the terms of the alleged oral agreement and whether they contradict those in the writing,

whether the oral agreement might naturally be made as a separate agreement, and whether the jury might be misled by the introduction of the parol testimony. . . .'" (*Marani v. Jackson* (1986) 183 Cal.App.3d 695, 702.)

"The parol evidence rule is not merely a rule of evidence excluding precontractual discussions for lack of credibility or reliability. It is a rule of substantive law making the integrated written agreement of the parties their exclusive and binding contract no matter how persuasive the evidence of additional oral understandings. Such evidence is legally irrelevant and cannot support a judgment." (*Marani v. Jackson, supra*, 183 Cal.App.3d at p. 701, italics omitted; *Casa Herrera, Inc. v. Beydown, supra*, 32 Cal.4th at pp. 343-344.)

B. *The Agreement Was Not Integrated*

1. *Final and complete expression of parties' agreement*

In support of his contention the agreement was fully integrated, Rudolph points to the following language in the agreement: "This document shall serve as *a* binding agreement between . . . Weddington and . . . Rudolph." (Italics added.) Rudolph asserts that this language, together with the statement, "The agreement is as follows," demonstrates that the parties' intended this writing to be a full and final expression of their agreement.

Integration clauses are given great weight in determining whether a contract is integrated. (*Masterson v. Sine* (1968) 68 Cal.2d 222, 225-226.) Conversely, the absence of an integration clause may also show that the parties did not intend for the writing to be integrated. (*Wallis v. Farmers Group, Inc.* (1990) 220 Cal.App.3d 718, 730, disapproved on other grounds in *Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 389, 394.)

The quoted provisions do not constitute an express integration clause, as they merely state this is "a" binding agreement between the parties. They do not state this was the final and completed expression of the parties' agreement and that all other prior or contemporaneous agreements were superseded by the writing. This language merely expresses an intent to be bound by the terms of the writing.

Rudolph also points to the fact that neither the writing nor Weddington's letter dated August 27, 2007, reference any oral terms. While it is true that neither of these writings reference oral terms, Weddington testified that he asked Rudolph about missing terms upon receiving the writing, and Rudolph assured him that this was just something between friends and that he was not going to "mess him up." This is evidence from which the court could conclude that certain necessary terms were missing from the writing.

Moreover, the writing itself does not appear clear and complete. In fact, the court itself noted that it was "clearly the world's worst contract." Accordingly, the court properly concluded the agreement was not integrated.

*2. The parol evidence was consistent with the terms of the writing*

The second factor courts consider in determining if an agreement is integrated is whether the extrinsic evidence contradicts the writing. (*Banco Do Brasil, S.A. v. Latian, Inc.* (1991) 234 Cal.App.3d 973, 1003 (*Banco Do Brasil*).

The parol evidence at issue concerns testimony that Rudolph agreed to purchase the horse. This evidence does not contradict the writing itself, it only contradicts Rudolph's *interpretation* of the writing.

In support of his assertion that the extrinsic evidence contradicts the written agreement, Rudolph cites six "undisputed" facts. These facts do not support a finding that the extrinsic evidence contradicts the written terms.

Rudolph's first and second contentions are that the writing does not state or suggest that Rudolph agreed to purchase the horse, as it does not use the word "purchase" or "sale" anywhere in the agreement. However, paragraph 1 of the agreement states that the horse will be "transferred" to Rudolph, which can be interpreted as a statement of purchase or sale. The word "transferred" is an ambiguous term and could refer to a physical transfer, legal transfer, or both. Moreover, when a term is ambiguous, the provision is to be construed against the drafter of the instrument. (*Cathay Bank v. Lee* (1993) 14 Cal.App.4th 1533, 1540-1541.)

Further, there was testimony at trial from witnesses with experience in horse racing that the writing appeared to be a sales agreement. Sherren, the clerk of Los Alamitos, testified that in her opinion, the seven paragraph writing looked like a bill of sale (i.e., a sales agreement). According to her, presenting a bill of sale is one of two ways to transfer thoroughbred horses like Alicson Cat. Sherren handled over 6,000 horse transfers in her 10 years with Los Alamitos.

Frazier, a horse trainer, also believed the writing to be a sales agreement. He testified that when he looked at the agreement, he believed paragraph 6 to be the agreement between the parties concerning the price of the horse. He stated that despite the language of paragraph 6, the agreement could be interpreted as a bill of sale. He also

testified that when he spoke to Rudolph, he confirmed he had paid \$160,000 to Weddington for Alicson Cat.

Thus, there is substantial evidence supporting Weddington's contention that the writing was a sales agreement and, and that the parol evidence was therefore consistent with the writing. Therefore, the second factor also supports the court's finding the agreement was not integrated.

3. *It would be natural for the parties to convert an oral agreement into a writing*

The third consideration for courts to consider is whether the oral agreement might naturally have been made as a separate agreement. (*Banco Do Brasil, supra*, 234 Cal.App.3d at p. 1003.)

Here, the parol evidence at issue is not evidence of a separate and distinct oral agreement, but was offered as an explanation of the terms contained in an ambiguous writing. Since there is no allegation of a separate oral agreement, this analysis is unnecessary to our discussion.

4. *Danger of extrinsic evidence misleading jury*

The last consideration in determining whether the writing is integrated looks at the probative value of the evidence versus the possibility it may mislead the jury. (*Banco Do Brasil, supra*, 234 Cal.App.3d at p. 1008.)

Here, the court determined that the probative value of the extrinsic evidence outweighed the possibility that it might mislead the jury because the writing was ambiguous. (1RT 14:16-17; 5RT 695:19-21)! In fact, as noted, *ante*, the court stated that this is "clearly the world's worst contract." Under these circumstances, the court properly

found the agreement not integrated and admitted the extrinsic evidence to assist the jury in determining the terms of the agreement and to interpret the terms of the writing. Since the written contract was ambiguous, it was proper for the jury to hear each side give their understanding of what the contract meant.

Rudolph fails to provide any evidence that the jury was confused by the parol evidence. Rather, Rudolph asserts that the jury *must* have been confused by the parol evidence in finding that Rudolph breached the written agreement because there is no possible way that they could have interpreted the writing to be a sales agreement. Rudolph further contends that the parol evidence improperly influenced the jury because they awarded Weddington \$160,000 which was the sales price in the oral contract, when in fact that dollar amount is embodied in the writing.

However, as discussed, *ante*, the writing was ambiguous and could have been interpreted in favor of either party. Moreover, a witness testified at trial that Rudolph said that he purchased the horse for \$160,000, thus admitting the agreement was a sales agreement.

In addition, evidence was submitted from which a jury could conclude that Rudolph breached the agreement by transferring legal title of the horse into his own name, using an altered version of the written agreement, which was done without Weddington's permission or knowledge since he had not yet paid for the horse. After that, according to Weddington, Rudolph attempted to sell the horse in a \$32,000 claiming race. Even though the horse was eventually scratched from that race, the facts as to why it was scratched were disputed. Rudolph contends that he was not aware that the horse

was entered in the race and scratched it as soon as he found out, but Weddington contends that the horse was scratched because of the involvement of the sheriff's department.

The four factors used to determine whether an agreement is integrated demonstrate the court did not err in allowing the parol evidence. The writing at issue was not integrated on its face and did not contain an integration clause, the extrinsic evidence did not contradict the terms of the writing, the sales transaction was contained in the writing at issue and is not collateral as Rudolph asserts, and the evidence assisted the jury in interpreting the agreement. Therefore, the court correctly determined that the agreement was not integrated and that parol evidence should be admitted.

*C. The Evidence Was Relevant To Prove a "Readily Susceptible" Meaning*

Even assuming the agreement was integrated, extrinsic evidence was still admissible "to prove a meaning to which the language of the instrument is readily acceptable." (*Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 37.) In *PG&E*, the defendant contracted with the plaintiff to remove and replace the cover of the plaintiff's steam turbine. The contract provided that the defendant would indemnify the plaintiff against all loss resulting from "injury to property." The cover fell and damaged the exposed rotor. The plaintiff contended the plain meaning of this language was that it covered damage to its property. The trial court agreed, and excluded extrinsic evidence proffered by the defendant: admissions of plaintiff's agents, defendant's conduct under similar contracts, and other proof that the parties intended the clause to cover injury to property of third parties only. (*Id.* at p. 36.)

The California Supreme Court held this was error, because the evidence was relevant to show the indemnity clause was reasonably susceptible to the restricted meaning proposed by the defendant, and thus the evidence was admissible. (*Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co.*, *supra*, 69 Cal.2d at p. 40.)

Likewise in this case, the extrinsic evidence admitted at trial was admissible to show the agreement was a sale document. As discussed, *ante*, the agreement was ambiguous. Moreover, two witnesses testified they believed the writing to be a sales document. Further, the evidence presented of Rudolph's own actions (although disputed by him), also support this interpretation. He allegedly told Weddington not to worry about the language of the agreement. He transferred legal title to the horse to himself. According to one witness, he claimed to have paid \$160,000 for the horse. All this evidence supports the court's ruling that extrinsic evidence showing the writing was a sales agreement was admissible, even if the agreement was integrated.

### *C. The Conversion Claim*

In addition to prevailing on the breach of contract action, Weddington prevailed on his claim for conversion. "Conversion is the wrongful exercise of dominion over the property of another." (*Farmers Ins. Exchange v. Zerlin* (1997) 53 Cal.App.4th 445, 451.) This is a separate cause of action that is unrelated to the breach of contract or parol evidence issues. Thus, if that verdict was not erroneous, Weddington would still prevail in the case regardless of whether the court erred in admitting the parol evidence to which Rudolph objected.

Rudolph asserts that there was no conversion, because, without the parol evidence that he agreed to buy the horse, there was only a voluntarily turnover of possession of the horse for training, and because the special jury verdicts are based on Rudolph's intentional taking of "possession," not "ownership."

However, Rudolph ignores the jury instructions on conversion. The jury was instructed on conversion that the evidence must show that Rudolph: (1) "*intentionally* took possession of Alicson Cat for a significant period of time; *or prevented Plaintiff/Cross-defendant Weddington from having access to Alicson Cat for a significant period of time;*" (2) "[t]hat . . . Weddington was harmed;" and (3) "[t]hat . . . Rudolph's conduct was a substantial factor in causing . . . Weddington's harm." (Italics added.)

The intent element does not have to be a conscious wrongdoing, but merely "an intent to exercise a dominion or control over the goods which is in fact inconsistent with the plaintiff's rights." (*Varela v. Wells Fargo Bank* (1971) 15 Cal.App.3d 741. 750.)

Here, from the evidence Weddington presented, a reasonable jury could find that Rudolph intentionally altered the written agreement, transferred the horse into his name using the altered documents, and then attempted to sell her in a \$32,000 claiming race without Weddington's knowledge or authorization. According to Weddington, Rudolph refused to return the horse and instructed Showalter, the owner of Nexstar Ranch, not to allow Weddington to see the horse.

Further, even though specific intent of wrongdoing is not required to prove conversion, Weddington presented evidence supporting such a conclusion. Adams, an ex-trainer who has known Rudolph for 30 years, testified that he asked Rudolph why he

changed the written agreement, and Rudolph responded, "Look I'm dealing with Tweedledee and Tweedledum here . . . . Their I.Q.'s together don't equal two. I'll get this horse for fucking nothing." (3RT 329:26-330:1)! This evidence, although disputed by Rudolph, demonstrates Rudolph's state of mind that he was going to take the horse from Weddington without paying for it. These facts are substantial evidence of the element of wrongful possession.

This evidence also demonstrates that Weddington was harmed and that the harm was a product of Rudolph's acts. With respect to damages, Weddington submitted evidence that the horse was of good quality and that he expected to get at least \$160,000.00 for it.

The evidence thus is sufficient to support the jury's finding that Rudolph was liable for conversion, regardless of whether the court erroneously admitted extrinsic evidence concerning the meaning of the party's agreement. His actions deprived Weddington of his possession and ownership rights in Alicson Cat, and the evidence also shows a subjective intent to convert the horse.

#### DISPOSITION

The judgment is affirmed.

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NARES, J.

WE CONCUR:

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BENKE, Acting P. J.

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McINTYRE, J.