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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JANET SUE REISWIG,

Defendant and Appellant.

G045612

(Super. Ct. No. 07CF2337)

O P I N I O N

Appeal from an order of the Superior Court of Orange County,
Patrick Donahue, Judge. Affirmed.

Douglas G. Benedon, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Scott C. Taylor and
Nguyen Tran, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

1. Introduction

Janet Sue Reiswig appeals from an order imposing a mandatory restitution fine against her in the amount of \$1,126,894 pursuant to Penal Code section 186.11, subdivision (c) (section 186.11(c)).¹ She contends section 186.11, subdivision (k) (section 186.11(k)) prohibited the trial court from making a restitution order, imposing a \$200 restitution fine, and imposing a parole revocation fine in addition to imposing the mandatory restitution fine under section 186.11(c). We disagree and affirm.

2. Background

This matter is a continuation of our decision in *People v. Reiswig* (June 3, 2010, G040459) (nonpub. opn.). In that case, a jury convicted Reiswig of three counts of making an untrue statement in the purchase or sale of a security in violation of Corporations Code section 25401, two counts of identity theft in violation of section 530.5, subdivision (a), and two counts of forgery with intent to defraud in violation of section 470, subdivision (a). (*People v. Reiswig, supra*, G040459.) At sentencing, the trial court made a restitution order of \$752,075 pursuant to section 1202.4, subdivision (f) (section 1202.4(f)), imposed a restitution fine of \$200 pursuant to section 1202.4, subdivision (b) (section 1202.4(b)), and imposed (and stayed) a \$200 parole revocation fine pursuant to section 1202.45. (*People v. Reiswig, supra*, G040459.)

In *People v. Reiswig*, we affirmed the convictions and the trial court's restitution order made pursuant to section 1202.4(f). We remanded for the trial court to impose the mandatory restitution fine under section 186.11(c) and to correct any clerical errors in the restitution order. (*People v. Reiswig, supra*, G040459.) Upon remand, the trial court imposed the mandatory restitution fine in the amount of \$1,126,894. The court ordered that Reiswig be given a credit of \$316,000 toward the restitution order.

¹ Further code references are to the Penal Code unless otherwise indicated.

Reiswig filed a notice of appeal. An order setting the amount of restitution is appealable as an “order made after judgment, affecting the substantial rights of the party.” (§ 1237, subd. (b); *People v. Guardado* (1995) 40 Cal.App.4th 757, 763.)

3. Discussion

Although Reiswig appealed from the trial court’s order imposing the section 186.11(c) mandatory restitution fine, she does not challenge the fine or its amount. Instead, she argues that because the trial court imposed a mandatory restitution fine under section 186.11(c), it could not impose the restitution order made pursuant to section 1202.4(f), the \$200 restitution fine pursuant to section 1202.4(b), and the \$200 parole revocation fine pursuant to section 1202.45.

The basis for Reiswig’s argument is the following proviso in section 186.11(k): “If a fine is imposed under this section, it shall be in lieu of all other fines that may be imposed pursuant to any other provision of law for the crimes for which the defendant has been convicted in the action.”

The restitution order pursuant to section 1202.4(f) is not a fine but direct restitution to the victim. Section 1202.4(f) provides: “[I]n every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court.”

California law recognizes two distinct types of restitution in criminal matters: (1) restitution fines, which are not directly related to the crime victim’s loss, and (2) restitution to the victim, which is based on the crime victim’s actual loss. (3 Witkin & Epstein, *Cal. Criminal Law* (3d ed. 2000) Punishment, § 97, p. 152.) In accordance with that distinction, section 1202.4 separately provides for “[a] restitution fine in accordance with subdivision (b)” and “[r]estitution to the victim or victims, if any, in accordance with subdivision (f).” (§ 1202.4, subd. (a)(3)(A) & (B).) The restitution

order, unlike a fine, “shall be enforceable as if the order were a civil judgment.”

(§ 1202.4, subd. (a)(3)(B).)

As for the restitution fine and the parole revocation fine, we agree with the reasoning of *People v. Lai* (2006) 138 Cal.App.4th 1227 (*Lai*) and conclude section 186.11(k) did not prohibit the trial court from imposing those fines. In *Lai*, as here, the trial court imposed a restitution fine under section 186.11(c), a mandatory restitution fine under section 1202.4(b), and a parole revocation fine. (*Lai, supra*, at p. 1251.) The defendant argued, as Reisinger does, that section 186.11, former subdivision (l) (now subdivision (k)) prohibited the court from imposing the restitution fine under section 1202.4(b) and the parole revocation fine in addition to the mandatory restitution fine under section 186.11(c). (*Lai, supra*, at p. 1251.)

The Court of Appeal disagreed with the defendant and reasoned:

“Consistent with its language, [section 186.11, former] subdivision (l) may be understood to recognize the established distinction between restitution fines that must be imposed for conviction of any crime, and penal fines that may be imposed only for conviction of particular crimes. Thus, subdivision (l) expressly precludes ‘all other fines that *may* be imposed pursuant to any other provision of law *for the crimes for which the defendant has been convicted in the action.*’ (Italics added.) Reasonably construed, this language describes discretionary penal fines that apply to specific offenses. As an example, the crime of insurance fraud (§ 549) is punishable by a state prison sentence (16 months, two or three years), or by a fine (\$50,000, or double the amount of the fraud, whichever is greater), or by both. If the defendant’s qualifying convictions for the section 186.11, subdivision (a) enhancement are violations of section 549, then a fine under section 186.11, subdivision (c) would be ‘in lieu of’ (§ 186.11, subd. (l)) the discretionary fine provided by section 549. [¶] On the other hand, the operative language of subdivision (l) cannot reasonably be said to describe a restitution fine. Unlike fines that ‘may’ be imposed ‘for the crimes for which the defendant has been convicted’ (§ 186.11,

subd. (l)), a restitution fine ‘shall’ be imposed in ‘every case where a person is convicted of a crime,’ and is ‘in addition to any other penalty provided or imposed under the law.’ (§ 1202.4, subs. (b) & (a)(3)).” (*Lai, supra*, 138 Cal.App.4th at pp. 1252-1253.)

4. Disposition

The order imposing the mandatory restitution fine pursuant to section 186.11(c) is affirmed.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.