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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

BRENT ENGINEERING, INC., et al.,

Plaintiff, Cross-defendants and
Appellants,

v.

ATLAS ENGINEERING COMPANY
LLC, et al.,

Defendants, Cross-complainants and
Appellants.

G046804

(Super. Ct. No. 30-2009-00287399)

O P I N I O N

Appeals from a judgment and orders of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Appeal from order denying motion for new trial dismissed. Judgment and order denying motion to vacate judgment affirmed.

Watt, Tieder, Hoffar & Fitzgerald, Todd W. Blischke and Rebecca S. Glos
for Plaintiff, Cross-defendants and Appellants.

Dickinson & Associates and Steven L. Dickinson for Defendants, Cross-complainants and Appellants.

* * *

This case involves litigation between engineering firms and their principals arising from an agreement to jointly perform two dredging projects. Each firm sued the other on several different legal theories. The court found for Atlas Engineering Company LLC's (Atlas) on all causes of action in Brent Engineering, Inc.'s (Brent) amended complaint, other than declaratory relief, and for Brent and Ronald Burek, its president, on all causes of action in Atlas's second amended cross-complaint. On the declaratory relief claim, the court made factual findings concerning the scope of the parties' agreement. It concluded the parties entered into a joint venture to perform both projects, their joint venture made a profit, and Brent owed Atlas \$593,280. Denying Brent's motions to vacate the judgment and for a new trial, the court then entered judgment for Atlas.

Both parties appeal from the judgment. Brent also appeals from the denial of its motions to vacate the judgment and for a new trial. The order denying a new trial is not independently appealable, but may be reviewed on its appeal from the judgment. (*Markley v. Beagle* (1967) 66 Cal.2d 951, 955, 962-963; see also *Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 18.) Thus, we dismiss Brent's appeal from the order denying its new trial motion, but finding no error, affirm both the judgment and the order denying the motion to vacate the judgment.

FACTS

Brent and Atlas are licensed general engineering firms. Ronald Burek, Brent's president, testified Brent's focus is on public works contracts for highways,

earthwork, and dredging. James Strunk, Atlas's owner testified his firm performs dredging projects. He had been involved in this type of work for over 20 years. Since creating Atlas in 2004, Strunk had performed 8 to 10 dredging projects and had previously worked on another 10 such undertakings.

In early September 2008, Brent bid on a County of Orange proposal to perform maintenance dredging at Newport Dunes (Newport Dunes). The board of supervisors approved Brent's bid in October. Brent signed a contract with the county on November 4.

Burek also wanted to bid on a job named the Bolsa Chica Lowlands Maintenance Dredging Project (Bolsa Chica). But his company lacked the prior coastal waters dredging experience required to submit a bid on its own. In addition, Burek testified he was concerned his company could not simultaneously handle both projects and would need someone with experience using tugboats and scows for the Newport Dunes project. Thus, Burek and Strunk agreed to do both projects together as a joint venture.

Strunk admitted the firms agreed to form a joint venture for the Bolsa Chica project and to equally divide the profits from it. But on the Newport Dunes project, Strunk testified he agreed only to manage it in return for payment of his time and the use of his company's equipment. Nonetheless, the evidence showed Strunk sent an e-mail to a third party stating Atlas and Brent were conducting the Newport Dunes project as a joint venture. In addition, he acknowledged authoring other e-mails and documents stating the parties' joint venture covered both projects.

In October, Strunk located and, with Burek's approval and Brent's funding, acquired a tugboat named Joedy and a dump scow named Shannon for use at Newport Dunes. The same month, Brent and Atlas, using the name Brent Engineering, Inc./Atlas Engineering Joint Venture, submitted a bid on the Bolsa Chica project. The California

State Lands Commission notified the parties on November 12 their bid had been approved. The contract for this project was signed December 1.

On November 17, Burek and Strunk signed a four-page document entitled “Joint Venture Agreement.” (Bold and underlining omitted.) Burek acknowledged he prepared the document to obtain a contractor’s license for the joint venture and the bond required for the Bolsa Chica project.

That project was the only one named in the document. Burek agreed this document did not apply to any other work.

The document provided for creating a bank account for the joint venture. Both Burek and Strunk acknowledged they never opened an account or obtained a Federal Employer Identification Number for the joint venture. Burek provided the State Lands Commission with Brent’s Federal Employer Identification Number to receive payments on the Bolsa Chica project.

The document also purported to describe each party’s responsibilities for Bolsa Chica. It provided Atlas was to conduct a hydrographic survey, supply dredging equipment, and perform project management while Brent would procure bonds and insurance, mobilize, dredge, and demobilize. But other than a survey boat provided by Atlas, Brent furnished the equipment and performed all of the work on this project. Strunk managed the Newport Dunes project through March 2009, hired the personnel for it, and Atlas provided some of the equipment. Brent received payments from the public agencies and paid expenses for both projects.

The document also stated the joint venture’s “obligations” and the “[e]xpenses related to the work being performed by each party” would be “compensated at rates agreed to between Atlas and Brent.” But again, the parties never agreed to any rates. During trial, Burek testified the equipment rental rates used on post-project summaries Brent prepared for each dredging job were based on the rates published by the California Department of Transportation (Caltrans).

Article X contained an integration clause declaring the document “constitutes the entire understanding and agreement among the parties” When pressed by the court, Burek acknowledged, while he and Strunk had agreed to form a joint venture for both the Newport Dunes and Bolsa Chica projects, their “agreement was not complete as far as details”

Brent completed the Bolsa Chica dredging project in April 2009 and the Newport Dunes project finished the next month. In late February, when the projects were largely complete, a dispute arose between Burek and Strunk concerning the terms of their agreement.

Complaining that Brent was not paying the use of Atlas’s equipment on the Newport Dunes project, Strunk sent Burek an e-mail with a 3-page attachment setting forth his understanding of the terms of their agreement. The attachment was a proposed agreement describing the parties’ relationship as “a [j]oint [v]enture or partnership” on Newport Dunes, Bolsa Chica, and a third project on which they failed to obtain a contract, declaring the parties agreed to “split profits 50/50% on all . . . jobs” and that Brent’s duties on both projects were providing equipment, boats, plus “bonding and insurance and financing” The parties never signed Strunk’s proposal. Further e-mails and letters followed discussing the parties’ differences over the nature of their relationship, some of which included threats of legal action.

In July, Brent sent Atlas accountings on each project, claiming both lost money and demanding Atlas reimburse it for half of the losses. At trial, Brent introduced the accountings which purport to show Newport Dunes lost over \$2.9 million while Bolsa Chica’s loss exceeded \$530,000.

After taking the matter under submission, the court issued a tentative ruling that later became its statement of decision. The court held the parties “agreed to a joint venture to pursue both the Bolsa Chica and the Newport Dunes projects.” Finding “the

written joint venture agreement” was “incomplete, too vague, and contains too many ambiguities,” the court concluded it was “not a complete contract.” Thus, it described the parties’ agreement as “oral and partially written” and, while “the parties agreed to some of the terms of the joint venture, . . . many have to be implied because of the lack of documentation”

The court concluded “[t]he parties . . . agreed that each would take 50% of the profits and there was an un rebutted presumption that each would share 50% of the losses to the joint venture.” Noting “[f]rom the perspective of Brent . . . , the project[s] lost money,” the court nonetheless found “[t]he joint venture . . . did not lose money.”

Based on these findings, the court’s accounting determined Brent owed Atlas \$593,280 as its share of the joint venture’s profit. Contrary to Brent’s accountings, the court found the parties’ agreement “did not contemplate that [they] would be able to attribute . . . to the joint venture revenue” their “capital contributions.” The court described this category as the parties’ “reputations and expertise,” “project management services,” “overhead, . . . internal costs, . . . costs related to getting . . . equipment ready for the project, the purchase of equipment for the project (other than the Shannon and the Joedy), the cost of . . . employees, and other indirect expenses.” The court also ruled “[t]here was no agreement as to sharing costs for modifications and repairs done before the joint venture.”

But it held the parties would “share[] in the costs paid to third parties and for equipment purchased for use by the joint venture, such as [the] Joedy and [the] Shannon (minus residual values).” As for the Joedy and the Shannon, the court found “the evidence does not support a greater total amount” than \$30,000 residual value. In addition, it held “each party” was entitled to “reasonable rental rates for their own equipment used by the joint venture.” Finally, despite the written document’s terms, the court found “the parties never agreed to rental rates,” but “accept[ed] the Caltrans’ rates as reasonable for rental of this sort of equipment.”

DISCUSSION

1. Brent's Appeal

a. Introduction

Relying on the terms of the written document prepared for the Bolsa Chica project, the Uniform Partnership Act of 1994 (Corp. Code, § 16100 et seq.; UPA), and case law, Brent claims its expenses for hiring workers, purchasing and modifying construction equipment, plus its overhead costs were all related to its work for the joint venture. Thus, it argues the trial court erred in finding it could not be reimbursed for these costs. Further, Brent asserts that, had the court included these expenses in conducting the accounting, it would have found the joint venture lost money, thereby triggering a requirement Atlas reimburse Brent for one-half of the loss.

Atlas contends the trial court properly exercised its discretion in finding, “[b]ased upon the expressed terms of the written agreement, witness testimony[,] and the conduct of the parties,” that they “did not intend for the joint venture to be charged with either party’s internal costs.” Thus, it concludes “Brent’s costs of doing business are part of its capital contribution, as are Atlas’s cost of doing business.”

b. Standard of Review

The parties’ first dispute is the applicable standard of appellate review. Brent argues this case involves the “interpret[ation of] the written Joint Venture Agreement” and the application of “the [UPA],” and thus a de novo standard of review applies. Atlas asserts that since the case involved a “determination of the expressed and implied terms of the joint venture agreement” under the amended complaint’s declaratory relief cause of action, the trial court’s decision “is subject to review for abuse of discretion,” which includes “the evaluation of a witness’s testimony and weight it is to be given”

Atlas's approach is the correct one. The amended complaint included a request the court determine whether "[t]he Bolsa Chica Joint Venture Agreement and Newport Dunes Joint Venture Agreement, written and/or oral, require[d] the Parties to share equally in any financial losses incurred" Generally, "[w]hether a determination is proper in an action for declaratory relief is a matter within the trial court's discretion [Citations.]" (*Hannula v. Hacienda Homes* (1949) 34 Cal.2d 442, 448.) "[I]n granting declaratory relief, [a court] has the power to award additional relief" (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 901), and "is empowered to determine disputed questions of fact" (*Columbia Pictures Corp. v. DeToth* (1945) 26 Cal.2d 753, 760).

The terms of the parties' joint venture and Brent's right to seek reimbursement for the expenses it incurred in performing the dredging projects presented factual questions for the trial court to decide. "The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties' [citation], and 'questions of "intent" and "purpose" are ordinarily questions of fact' [citation]." (*Byrne v. Laura* (1997) 52 Cal.App.4th 1054, 1066.) Contrary to Brent's claim the parties' "conflicting interpretations . . . supported by reasonable inferences from the evidence [had to] be resolved by a trier of fact." (*Ibid.*) "Where the meaning to be given a contract turns upon the credibility of extrinsic evidence, the interpretation found by the trier of fact is binding upon the reviewing court if there is substantial evidence to support it. [Citations.]" (*Robinson & Wilson, Inc. v. Stone* (1973) 35 Cal.App.3d 396, 407.) The trial of this case covered 7 days and produced a reporter's transcript exceeding 1000 pages, during which the parties presented conflicting evidence as to the scope and terms of their joint venture.

Consequently, we must determine whether the evidence supports the trial court's factual findings and, if so, whether it properly exercised its discretion in ruling on the declaratory relief claim.

c. Analysis

Brent argues the terms of the written document the parties signed entitled it to “be reimbursed for expenses advanced to carry out [its duties],” which included costs for labor, equipment modification, and overhead. It also contends both the UPA and case law declare a partner or joint venturer is “entitled to reimbursement . . . of expenses incurred in furtherance of the objectives of the entity.” Atlas responds “[t]he [t]rial [c]ourt found that each party’s experience, resume, and operations were capital contributions to the joint venture and therefore not costs of the joint venture,” nor “advances to the joint venture” For several reasons we agree with Atlas and conclude Brent’s argument lacks merit.

First, by focusing almost solely on the terms of the written agreement, the UPA, and case law, while failing to properly summarize the trial testimony, Brent has effectively waived its right to challenge the trial court’s factual findings on its right to reimbursement for labor, equipment modification, and overhead costs. “It is well settled that all presumptions and intendments are in favor of supporting the judgment or order appealed from, and that an appellant has the burden of showing reversible error, and that, in the absence of such showing, the judgment or order appealed from will be affirmed. [Citations.]’ [Citation.]” (*Walling v. Kimball* (1941) 17 Cal.2d 364, 373; see also *Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 261.) We are “bound to view the evidence in the light most favorable to the party securing the verdict” (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 111.) Thus, “conflicts must be resolved in favor of the respondent, and all legitimate and reasonable inferences indulged in to uphold the verdict if possible. . . . 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.’ [Citation.]” (*Estate of Bristol* (1943) 23 Cal.2d 221, 223.)

In a case such as this one “a party must “set forth in [its] brief all the material evidence on the point and not merely [its] own evidence.” [Citation.]”

(*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1304.) “[A]n attack on the evidence without a fair statement of the evidence is entitled to no consideration when it is apparent that a substantial amount of evidence was received on behalf of the respondent. [Citation.]” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) Neither party has provided us with an adequate summary of the record. As noted, Brent’s statement of the facts focused primarily on the terms of the written document the parties signed to acquire a contractor’s license and bond for the Bolsa Chica project. In addition, both parties selectively cite to portions of the transcript supporting their argument, while ignoring the balance of the record. In light of Brent’s appellate claims, its failure to provide a complete summary of the evidence is fatal to its cause.

Second, the trial court properly found the parties’ “joint venture was oral and partially written” It described “the written . . . agreement” as “incomplete, too vague[] and contain[ing] too many ambiguities to be considered a complete agreement.” Thus, the court concluded the written portion of the joint venture agreement merely constituted “evidence of the parties’ intentions.” “A contract may be partly oral and partly written. [Citation.]” (*Griffith v. Bucknam* (1947) 81 Cal.App.2d 454, 458; see also *Weiner v. Fleischman* (1991) 54 Cal.3d 476, 482-483 [“A joint venture or partnership may be formed orally . . . , or ‘assumed to have been organized from a reasonable deduction from the acts and declarations of the parties’”].) Burek’s own testimony supports this ruling. He acknowledged the parties orally agreed to a joint venture before he drafted the written document, that he prepared it only to obtain the necessary contractor’s license and bond for the Bolsa Chica project, and that it “was not complete as far as details.” This testimony contradicts the premise of Brent’s claim the written document contained the joint venture’s critical terms with the UPA filling in any gaps.

Third, the written document itself does not support Brent’s argument it was entitled to reimbursement for labor equipment modification, and overhead costs. Brent

claims that document “expressly delegated certain duties to each [p]arty.” But its description of the parties’ duties fails to comport with the work each one actually performed. The document assigned project management on Bolsa Chica to Atlas, but Burek managed that project, while Strunk oversaw the Newport Dunes work.

Brent asserts the document “provided that each [p]arty would be reimbursed for the costs incurred for the work that party performed or arranged in connection with the [j]oint [v]enture [p]rojects.” The trial court noted the document did not define the term “expenses,” nor mention the parties could recover their equipment modification, employee, and overhead expenses. Brent attempts to define the term “expenses” by referring to the document’s description of each party’s responsibilities in Article III. But Article III assigns the obligation to supply dredging equipment to Atlas, thereby undercutting Brent’s claim it is entitled to the costs for modifying equipment. Further, although the document only refers to the Bolsa Chica project, Brent seeks recovery of its expenses from both projects.

As Atlas argues, the parties’ actions, or rather nonaction, before any dispute arose supports the trial court’s decision. “It is a ‘cardinal rule of construction that when a contract is ambiguous or uncertain the practical construction placed upon it by the parties before any controversy arises as to its meaning affords one of the most reliable means of determining the intent of the parties.’ [Citation.]” (*Sterling v. Taylor* (2007) 40 Cal.4th 757, 772-773.) Brent did not submit invoices for its labor, equipment modification, or overhead expenses during the performance of the dredging projects. When asked by the court if the parties had agreed each would be paid for their management of each project, Burek acknowledged their contract “was just simply silent” and neither party “attribute[d] any management fees over the course of the work . . . until we did an accounting” in July 2009. As the trial judge noted this was “after you each told each other to take a short walk.” The court’s comments and its statement of decision,

reflect it relied heavily on the parties' actions before they began arguing about the terms of their joint venture.

Fourth, Brent's legal authority does not support its right to recover capital contributions. Brent relies primarily on Corporations Code section 16401, which deals with partner's accounts. Subdivision (c) of the statute declares "[a] partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property." The section also provides "[a] partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute," (*id.*, § 16401, subd. (d)), and any "payment or advance made by a partner that gives rise to a partnership obligation under subdivision (c) or (d) constitutes a loan to the partnership that accrues interest from the date of the payment or advance" (*id.*, § 16401, subd. (e)).

While this case involves a joint venture, not a partnership, courts have recognized "[t]he rule is that the rights and liabilities of joint adventurers, as between themselves, are governed by the same principles which apply to a partnership. [Citations.]" (*Zeibak v. Nasser* (1938) 12 Cal.2d 1, 12.) However, none of the foregoing provisions contradicts the trial court's finding that under the parties' agreement, expenses for labor, equipment modification, and overhead, constitute unreimbursable capital contributions. In fact, subdivision (d) reflects a partner's reimbursement "for an advance to the partnership" only applies to an amount "beyond the . . . capital the partner agreed to contribute." (Corp. Code, § 16401, subd. (d).)

Nor do any of the cases cited by Brent support its cause. Many involved former Corporations Code section 15018, the predecessor of Corporations Code section 16401. (*Ha v. Kang* (1960) 187 Cal.App.2d 84; *Goldstein v. Burstein* (1960) 185 Cal.App.2d 725; *Kirkpatrick v. Smith* (1952) 113 Cal.App.2d 409.) The prior statute

declared in part “Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property” (Former Corp. Code, § 15018, subd. (a).) Not only does Corporations Code section 16401 lack a similar provision, as just noted, it authorizes reimbursement of a partner’s advances “beyond the amount of capital the partner agreed to contribute.” (Corp. Code, § 16401, subd. (d).)

Jones v. Wagner (2001) 90 Cal.App.4th 466 is distinguishable because it involved a joint venture where “the parties only agreed to make 50/50 capital contributions,” and “[n]either agreed to be responsible for the capital contributions of the other under any circumstances, and their agreement that the contributions would be equal would be violated if any such contributions were made.” (*Id.* at p. 473.) *Kaufman-Brown Potato Co. v. Long* (9th Cir. 1950) 182 F.2d 594 is also distinguishable because the parties’ “contracts provide[d] that Kaufman and Brown were to put up so much money for initial expense but note that all of it was to be returned out of the product as expense before division of sales returns.” (*Id.* at p. 600.) None of the remaining cases concerned a joint venturer’s or partner’s right to reimbursement for its capital contribution to the entity.

Brent argues *Boskowitz v. Nickel* (1892) 97 Cal. 19 “require[s] partners to share every expense unless something in their agreement expressly prevents it.” (Italics omitted.) There the parties made an agreement to dissolve their partnership that provided “[t]he entries in the books as they stand at the present time shall be treated as correct, and as having been made after full discussion of all matters involved.” (*Id.* at p. 20.) In subsequent litigation between the parties over the settlement of the partnership’s accounts, the Supreme Court, in part, stated “[r]espondent’s share of the office expenses is also a proper charge to be placed in the account. We find nothing in the agreement of May, 1888, to prevent the allowance of th[is] item[.]” (*Id.* at pp. 20-21.) But *Boskowitz* involved an agreement to dissolve the partnership, not one creating the entity, and the

agreement at issue specified the entries in the partnership's books were deemed correct and "made after full discussion of all matters involved." (*Id.* at p. 20.) Here, Burek acknowledged the parties failed to agree on all of the details of their joint venture.

While the trial court found Brent provided the bulk of the equipment, and the evidence showed it paid the salaries of employees, including those hired by Strunk, the court also concluded the parties' joint venture agreement did not provide the parties would share these expenses. But the court did find Brent and Atlas "anticipated that each party would be paid rent for their equipment" and, while the parties "never agreed to rental rates," it applied the Caltrans rates Brent used to prepare its summaries for each project's expenses. Burek admitted that, except for operator expense, Caltrans's rates were all inclusive, covering all essential tools and attachments needed for the purpose of the rental, any required overhaul, fuel, maintenance, supplies used by the equipment, repairs, and labor for repairs, depreciation, and incidentals. Given this evidence, to also allow Brent's recovery of expenses for hiring workers, purchasing and modifying construction equipment, and overhead would arguably amount to double recovery.

The trial court's finding each party's reputation, expertise, and project management services constituted part of their capital contribution is supported by the record. Atlas would not have worked on the Newport Dune project, save for its joint venture with Brent. On the other hand, Burek admitted he needed Strunk's experience to perform that job. In addition, Brent lacked the prior coastal waters dredging project work record the State Lands Commission required to bid on the Bolsa Chica project and, without participation from another company such as Atlas, could not have successfully bid on that project. We conclude Brent has failed to establish the trial court erred in finding it was not entitled to reimbursement for the labor, equipment modification, and overhead expenses it incurred as part of the parties' joint venture.

2. *Atlas's Appeal*

After Brent rested its case-in-chief, Atlas moved for judgment on the ground Brent's attempt to recover its expenses for the Newport Dunes project violated the Subletting and Subcontracting Fair Practices Act (Pub. Contract Code, § 4100 et seq.; Fair Practices Act). The trial court denied the motion. Later, in the statement of decision it held, "[e]ven if one or more of the contracts with the public entities violates the [P]ublic [C]ontract [C]ode, the joint venture is enforceable and the court can perform an accounting between the parties without considering the legality of the contract with the public entity." On appeal, Atlas argues "the [t]rial [c]ourt erred by including [expenses Brent incurred in the Newport Dunes project] in its calculation of monies owed Atlas by Brent" because "Brent is statutorily prohibited from passing those expenses on to Atlas" We conclude the trial court properly rejected this claim.

The Fair Practices Act requires a contractor bidding on a public works contract to identify in its bid "[t]he name . . . of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement" (Pub. Contract Code, § 4104, subd. (a)(1).) If the bid is accepted, the contractor cannot "[s]ubstitute a person as subcontractor in place of the subcontractor listed in the original bid" without the consent of the public authority that awarded the contract. (Pub. Contract Code, § 4107, subd. (a).) In addition, a contractor violates these requirements by "listing another contractor who will in turn sublet portions constituting the majority of the work covered by the prime contract" when bidding on a project. (Pub. Contract Code, § 4105.) Finally, "[s]ubletting or subcontracting of any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity." (Pub. Contract Code, § 4109.)

Violations of the Fair Practices Act allow the public authority to “cancel[the] contract or . . . assess[] the prime contractor a penalty” (Pub. Contract Code, § 4110.) In addition, the contractor may be subject to disciplinary action by the Contractors State License Board. (Pub. Contract Code, § 4111.)

Atlas argues Brent violated the Fair Practices Act by entering into the joint venture agreement with it that included the Newport Dunes project, thus rendering this portion of their agreement an illegal contract and barring Brent from recovering the “expenses incurred or paid by [it] on the Newport Dunes [p]roject.” While acknowledging the general rule precluding either party to an illegal contract from suing for relief, Atlas relies on Public Contract Code section 4112 and case law to argue a subcontractor under a contract violating the Fair Practices Act may still seek judicial relief. (Pub. Contract Code, § 4112 [“The failure on the part of a contractor to comply with any provision of this chapter does not constitute a defense to the contractor in any action brought against the contractor by a subcontractor”]; *R. M. Sherman Co. v. W. R. Thomason, Inc.* (1987) 191 Cal.App.3d 559, 565 [“The Fair Practices Act . . . implies that a noncomplying contract creates rights only in the subcontractor” and “while permitting the subcontractor to sue, it impliedly exclude[s] a reciprocal right in the contractor and, at least arguably, any defense predicated on such a right”].)

The problem with this argument is that it assumes Atlas either worked on the Newport Dunes project as Brent’s subcontractor or Brent sublet the contract to Atlas. Neither situation occurred here. Brent and Atlas entered into a joint venture to perform the Newport Dunes and Bolsa Chica projects together. “A joint venture . . . is an undertaking by two or more persons jointly to carry out a single business enterprise for profit. [Citations.]” (*Nelson v. Abraham* (1947) 29 Cal.2d 745, 749.) “‘The relationship of joint venturers is that of a mutual agency, akin to a limited partnership.’ [Citation.] [¶] . . . ‘Substantially the same rules with respect to principal and agent applicable to

members of a partnership apply to members of a joint adventure with respect to contracts with third persons within the scope of the joint enterprise, and a joint adventurer may bind his associates by a contract which is in furtherance, or within the scope, of the joint enterprise.” (*Lindner v. Friednash* (1958) 160 Cal.App.2d 511, 517.) By performing the Newport Dunes project as part of a joint venture with Atlas, Brent remained responsible for that project’s success.

Further, as the trial court recognized this lawsuit concerns the scope of the parties’ joint venture agreement, not the validity of Brent’s contract with Orange County for the Newport Dunes project. The purpose of the Fair Practices Act is “to prevent ‘bid shopping’ and ‘bid peddling’ after the award of a public contract and to give the awarding authority the opportunity to investigate and approve the initial subcontractors and any replacements.” (*Titan Electric Corp. v. Los Angeles Unified School Dist.* (2008) 160 Cal.App.4th 188, 202, fn. omitted; Pub. Contract Code, § 4101 [these practices “often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees, and other evils”].) But that did not happen here. Brent did not use the joint venture to pressure Atlas into doing the job for a lower price to increase its profit. In fact, Burek testified one reason for entering into the joint venture with Atlas was the need for Strunk’s expertise in conducting the type of dredging required for the Newport Dunes project. Consequently, the parties’ joint venture did not implicate the mischief sought to be avoided by the Fair Practices Act.

Thus, we conclude the trial court properly rejected Atlas’s reliance on the Fair Practices Act to bar Brent’s recovery of expenses from the Newport Dunes portion of their joint venture.

DISPOSITION

The appeal by appellant Brent Engineering, Inc. from the order denying its motion for a new trial is dismissed. The judgment and order denying the motion to vacate the judgment are affirmed. Each party shall bear its own costs on appeal.

RYLAARSDAM, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.