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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

STEVEN CHANG,

Plaintiff and Respondent,

v.

ERIC CHANG,

Defendant and Appellant.

G049309

(Super. Ct. No. 30-2011-00487534)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David R. Chafee, Judge. Reversed and remanded with directions.

Thomas Business Law Group, Stephen J. Thomas, and Anthony D. Ross for Defendant and Appellant.

Linda Ann Chapin for Plaintiff and Respondent.

* * *

Plaintiff Steven Chang (Steven) sued his brother Eric Chang (Eric) alleging Eric violated his fiduciary duties as trustee of a trust of which they were both beneficiaries. After a bench trial, the court ruled largely in favor of Steven and awarded surcharges against Eric in excess of \$740,000, in addition to ordering Eric to return a residence to the trust and removing Eric as trustee. Eric appealed, and, in a companion opinion filed concurrently with this opinion (*Chang v. Chang* (Sept. 29, 2015, G048799) [nonpub. opn.]), we reversed approximately \$345,000 of those surcharges.

Eric also appealed an order awarding Steven his attorney fees in the amount of \$187,900, which is the subject of the present appeal.

Both parties agree the relevant statute for awarding attorney fees to a beneficiary who contests the trustee's administration of a trust is Probate Code section 17211, subdivision (b), which states: "If a beneficiary contests the trustee's account and the court determines that the trustee's opposition to the contest was without reasonable cause and in bad faith, the court may award the contestant the costs of the contestant and other expenses and costs of litigation, including attorney's fees, incurred to contest the account." The parties dispute whether the trial court properly found that Eric opposed Steven's petition without reasonable cause *and* in bad faith.

The trial court made the following finding: "Regarding the issue of whether or not Steven Chang is awarded attorney fees and costs, to be personally paid by Eric T. Chang, for contesting the instant petition without reasonable cause and in bad faith: The Court awards Steven Chang attorney fees and costs to be paid from the distributive share of Eric Chang. The Court declines to make a bad faith determination and declines to consider an award of punitive damages." The court commented, "[Eric's] actions do not rise to the level of bad faith or some ulterior motive." On the other hand, in denying *Eric* his attorney fees, the court commented that most of the fees requested were "not justified for defending the virtually indefensible breach of trustee's duties." We interpret these comments to mean that Eric opposed the petition without reasonable

cause and in bad faith, but that Eric's underlying actions in administering the trust were not in bad faith.

In reaching the conclusion that Eric opposed the petition without reasonable cause and in bad faith, the court undoubtedly relied on the fact that Steven was successful on nearly all of his claims. However, we have now reversed nearly half of the surcharges awarded, and that fact may alter the court's calculus in deciding whether Eric opposed the petition without reasonable cause and in bad faith. Rather than decide that issue in the first instance, we will remand to the court to determine whether, in light of our decision, Steven is entitled to attorney fees and, if so, in what amount. Nothing in this opinion or the companion opinion should be construed as a mandate regarding how the court should rule on these questions on remand.

DISPOSITION

The court's order awarding attorney fees to Steven is reversed and remanded so that the court may reconsider Steven's motion for attorney fees in light of our disposition in *Chang v. Chang, supra*, G048799, the companion appeal.

IKOLA, J.

WE CONCUR:

ARONSON, ACTING P. J.

THOMPSON, J.