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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

LUBERSKI, INC.,

Plaintiff and Appellant,

v.

INTEGRATED FREIGHT
CORPORATION,

Defendant and Respondent.

G049877

(Super. Ct. No. 30-2012-00601745)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Derek W. Hunt, Judge. Affirmed in part, reversed in part, and remanded.

Leibowitz Law Group, Daniel J. Leibowitz and Gary Leibowitz for Plaintiff
and Appellant.

No appearance for Defendant and Respondent.

* * *

INTRODUCTION

Luberski, Inc. (Luberski), appeals from a default judgment it obtained against Integrated Freight Corporation (Integrated Freight) in an action to recover on two loans totaling \$400,000 in principal. Luberski contends the trial court erred by awarding it prejudgment interest at the statutory rate instead of at the higher rate set forth in the loan agreements. The interest rates in the loan agreements are usurious under article XV, section 1 of the California Constitution unless an exemption applies. The trial court erred, however, because the evidence was undisputed that Luberski is a licensed California finance lender and is therefore exempt from the Constitution's usury proscriptions.

FACTS

Luberski made two loans, in the principal amount of \$200,000 each, to Integrated Freight. For each loan, Luberski and Integrated Freight entered into a loan agreement, and each loan was evidenced by a promissory note. Both loan agreements called for interest at the rate of 5 percent per month for 90 days, at which time the loans would become due, and a default interest rate of 10 percent per month. Both loans were personally guaranteed by Paul Henley, Integrated Freight's president. Luberski is licensed as a California finance lender.

Luberski filed a complaint against Integrated Freight, Henley, and others, for breach of the loan agreements and to enforce the personal guaranty. Luberski obtained a default judgment against Integrated Freight and entered into a stipulation for entry of judgment with Henley. In requesting entry of the default judgment, Luberski argued it was exempt from usury laws because it is a licensed California finance lender and sought prejudgment interest at the rate set forth in the loan agreements. Luberski submitted to the trial court a copy of its California finance lender's license.

Following a default prove-up, a judgment was entered in favor of Luberski in the sum of \$400,000 against Integrated Freight and Henley jointly and severally. The

trial court declined to award prejudgment interest at the rate set forth in the loan agreements, as requested by Luberski. In a minute order, the court stated the interest requested by Luberski was “in violation of art. XV, § 5 of the state constitution”¹ and ordered prejudgment interest at the annual rate of 10 percent pursuant to Civil Code section 3289, subdivision (b).

DISCUSSION

Article XV, section 1 of the California Constitution establishes a maximum rate of interest for nonexempt commercial loans as “(a) 10 percent per annum or (b) 5 percent per annum plus the rate prevailing on the 25th day of the month preceding the earlier of (i) the date of execution of the contract to make the loan or forbearance, or (ii) the date of making the loan or forbearance established by the Federal Reserve Bank of San Francisco.”

The exemption clause of article XV, section 1 of the California Constitution states the usury restrictions do not apply to loans made by (1) building and loan associations, (2) industrial loan companies, (3) credit unions, (4) a duly licensed pawnbroker or personal property broker, (5) any person licensed as a real estate broker, (6) any bank, or (7) “any other class of persons authorized by statute.” One such class of persons authorized by statute as exempt is licensed finance lenders. (Fin. Code, §§ 22002, 22009; see *Moore v. Hill* (2010) 188 Cal.App.4th 1267, 1280.)

Although the interest rates for the two loans made by Luberski exceeded the constitutional maximum for nonexempt lenders, Luberski submitted evidence to the trial court establishing Luberski is, and was at the time it made the loans to Integrated Freight, a finance lender licensed under Financial Code section 22009. The trial court erred by disregarding this evidence and awarding Luberski the statutory rate of interest against Integrated Freight instead of the agreed-upon rate of interest provided in the loan

¹ Article XV of the California Constitution does not contain a section 5; we assume the trial court meant section 1.

agreements. Luberski does not challenge the judgment or the rate of prejudgment interest as to Henley.

DISPOSITION

The award of prejudgment interest as to Integrated Freight is reversed and the matter is remanded with directions to award Luberski the rate of interest set forth in the two loan agreements. In all other respects, the judgment is affirmed. Appellant shall recover costs on appeal.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.