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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

CANEPA DESIGN et al.,

Cross-complainants and
Respondents,

v.

JAMES MAZZOTTA,

Cross-defendant and Appellant.

H038631

(Santa Cruz County
Super. Ct. No. CV168887)

I. INTRODUCTION

This case arises from a cross-complaint brought by Canepa Design¹ against cross-defendant James Mazzotta. Following a court trial, the trial court found that Mazzotta breached a sales contract by delivering a 1958 Porsche Carrera GT to Canepa Design without a properly functioning four-cam engine. Canepa Design was awarded damages for breach of contract as well as costs, which included attorney fees.

On appeal, Mazzotta challenges the judgment on two grounds. First, Mazzotta argues that he was not a party to the underlying contract, but merely an agent for his business entity, Autosport International (Autosport). Second, Mazzotta argues he did not

¹ In its trial court filings, the business entity was referred to as Canepa Group, Inc., dba Canepa Design. Herein, we will refer to the business entity as Canepa Design.

breach the sales contract by providing a vehicle without a properly functioning four-cam engine because the contract specifically provided for an “as is” vehicle sale. Mazzotta also challenges the attorney fees award, arguing that Canepa Design was only entitled to the attorney fees it incurred after Mazzotta became a cross-defendant. For the reasons stated below, we will affirm the judgment, including the attorney fees award.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Relationship Between Canepa and Mazzotta

Bruce Canepa owns Canepa Design, a business that sells and restores collector cars. Canepa has many repeat customers, and he has personal relationships with almost all of them. Mazzotta was one of Canepa’s repeat customers. Canepa had begun selling cars to Mazzotta in the 1980’s. Canepa had also purchased cars from Mazzotta over the years. As was Canepa’s custom, they did “most everything on a handshake” and often used Canepa’s generic sales contract. Whenever Canepa purchased a car from Mazzotta, he paid Mazzotta personally. Whenever Mazzotta purchased a car from Canepa, the payment came from one of Mazzotta’s personal accounts.

Mazzotta’s main interest was racing vintage cars. Mazzotta had a personal car collection, and he had two separate facilities for selling cars. Mazzotta had set up a dealership entity, which had gone by several different names, including Autosport. Having a dealer license and resale license helped Mazzotta avoid paying certain taxes and fees. Having a dealer license also simplified the paperwork when he bought or sold a vehicle.

Prior to the transaction involving the 1958 Porsche Carrera GT, Mazzotta had purchased a Porsche 962 from Canepa. Although the Porsche 962 was a “personal car” that Mazzotta intended to race, the contract had denoted Autosport as the buyer; Mazzotta had signed the contract “on behalf of” Autosport. To purchase the Porsche 962, Mazzotta had given Canepa other personal cars, plus a personal check.

B. Restoration of the 1958 Porsche Carrera GT

In about 1988, Oliver Robert Garretson acquired a 1958 Porsche Carrera GT.² Garretson took a long time to restore the vehicle, and in 2003 or 2004 he created a marketing advertisement to sell the vehicle. He indicated that the vehicle could be sold with several different engines, including a four-cam engine, which would make the vehicle significantly more valuable. A four-cam engine has twice the horsepower of a four-cylinder pushrod engine.

At some point, Mazzotta informed Garretson that he wanted to purchase the Porsche Carrera GT with a four-cam engine. Garretson understood that Mazzotta wanted the vehicle for his personal collection. He agreed that Mazzotta could withhold \$60,000 from the \$300,000 purchase price until Garretson rebuilt and delivered the four-cam engine.

C. Contract Negotiations Between Canepa and Mazzotta

In 2008, one of Canepa's clients was looking for a Porsche Carrera GT with a four-cam engine. Canepa learned that Mazzotta had a Porsche Carrera GT. Mazzotta sent Canepa a brochure describing the vehicle and offered to sell it for \$400,000. Canepa understood that the offer was for "[a] totally restored '58 Carrera GT" that would be "getting a completely rebuilt 4 cam engine," as advertised on the brochure.

Canepa knew that Mazzotta had purchased the Porsche Carrera GT for only \$300,000 from Garretson, and that Mazzotta was withholding \$60,000 from Garretson while waiting for the four-cam engine. Canepa had known Garretson since 1978 and believed Garretson was capable of rebuilding a four-cam engine. A four-cam engine would usually be built with about \$150,000 worth of parts and the rebuild would usually cost almost \$100,000.

² "GT" denotes the vehicle is for racing, not for road driving.

In September of 2008, Canepa agreed to purchase the Porsche Carrera GT from Mazzotta for \$400,000. According to Canepa, Mazzotta agreed to deliver the car to Canepa with a pushrod engine; within 30 days, Mazzotta would provide Canepa with a four-cam engine. Garretson would come to Canepa's shop to remove the pushrod engine and install the four-cam engine.

The written contract regarding the sale of the Porsche Carrera GT specified that Canepa Design was purchasing the vehicle from Autosport. The written contract further provided: "Vehicle sold as-is—no warranty expressed or implied." The contract was signed by Canepa "on behalf of" Canepa Design, and by Mazzotta "on behalf of" Autosport.

Canepa admitted that the written contract did not "spell out" the additional terms concerning the four-cam engine. However, the contract did specify that the car was a 1958 Porsche 356 Carrera GT, which "[a]nybody knows" includes a four-cam engine. Canepa testified that he understood an "as is" clause to simply mean that the vehicle was being sold without a warranty.

Canepa also admitted that the written contract identified Autosport as the seller. He nevertheless believed Mazzotta was the actual seller and that Mazzotta was using the Autosport dealership so he could deliver "an open title" from Garretson to Canepa.

In order to purchase the Porsche Carrera GT, Canepa obtained a line of credit from a bank. He then wrote a \$400,000 check to Mazzotta and mailed the check to Mazzotta's home address. The check was deposited into Mazzotta's personal account.

D. Engine Rebuild Problems

Canepa's initial buyer grew tired of waiting for the four-cam engine, which was not delivered to Canepa within the 30 days the parties had originally discussed. In December of 2008, Canepa began advertising the Porsche Carrera GT in anticipation that the four-cam engine would be provided soon.

Garretson finished rebuilding the four-cam engine in April of 2009. When the engine was delivered to Canepa's shop, it did not start. Garretson came down to Canepa Design, removed the engine, and brought it to his shop in Sonora. He asked for the vehicle to be brought to his shop, and he installed the four-cam engine there. When the vehicle was returned to Canepa Design, the engine still did not run properly; in fact, it was "worse" than before.

In July of 2009, Canepa informed Mazzotta that he was returning the vehicle. Mazzotta said he did not have the money to repay Canepa, but he offered to return the Porsche 962 he had previously purchased, as compensation. Canepa decided to return the Porsche Carrera GT to Mazzotta. The vehicle was delivered to Autosport.

In March of 2010, Canepa asked Mazzotta for his \$400,000 back. In his response, Mazzotta acknowledged that he was supposed to have provided Canepa with a working four-cam engine.

In January of 2011, Mazzotta returned the Porsche Carrera GT to Canepa. At that point, the vehicle still would not start, and it had additional body damage.

At some point, an engineer at Canepa Design took the four-cam engine apart and documented the numerous problems. There was a missing O ring. There was no clip inside the distributor. Improper sealant had been used. The teeth on the starter ring gear were worn. There were metal filings behind the rear main seal. There was rust around the pivot hold on the mechanical advance weight, as well as on the sides of the cam lobes and within the camshaft. There was a crack on the lock of the valve adjustment block.

James Wellington, an expert in Porsche engines, also looked at the four-cam engine after Garretson rebuilt it. He found similar problems.

E. Complaint, Cross-Complaint, and Related Filings

On September 21, 2010, Autosport filed a complaint against Canepa Design and Canepa individually, alleging breach of contract, conversion, and fraud. The complaint concerned the sale of the Porsche 962.

On November 1, 2010, Canepa Design filed a cross-complaint against Autosport, alleging that Autosport had breached the contract regarding the Porsche Carrera GT. On June 21, 2011, Canepa Design amended its cross-complaint to substitute Mazzotta as a “Roe” cross-defendant.

Autosport had filed for bankruptcy just before Canepa Design named Mazzotta as a cross-defendant. Thus, the matter proceeded to a court trial on Canepa Design’s cross-complaint against Mazzotta only.

In his trial brief, Mazzotta argued that he was not a party to the contract regarding the Porsche Carrera GT. Mazzotta argued that the contract was only between Canepa Design and Autosport; Mazzotta had never personally obligated himself under the contract. Mazzotta further argued that the “ ‘as is’ ” clause of the contract regarding the Porsche Carrera GT relieved Autosport of any duty to deliver the vehicle with a functional engine.

F. Statement of Decision and Judgment

The trial court issued its statement of decision on May 17, 2012. The court found Mazzotta in breach of the contract because he was required to provide the Porsche Carrera GT to Canepa Design “with a properly functioning four cam engine.”

In the statement of decision, the trial court addressed Mazzotta’s argument that “the only appropriate cross-defendant was Autosport.” The court found: “That argument is not persuasive as the evidence verified that the check for the subject vehicle was made out to Mr. Mazzotta, was cashed by him, as an individual, and deposited into his personal bank account. All post-sale efforts confirmed a transaction for the benefit of Mazzotta, as an individual, rather than a transaction on behalf of the Autosport entity. Lastly, numerous admissions within Mr. Mazzotta’s deposition testimony confirm the personal, rather than corporate, nature of this transaction.”

The court awarded Canepa Design \$201,495.14 in damages, plus costs.³ Canepa Design subsequently sought clarification of the statement of decision, arguing that it should include reasonable attorney fees. Mazzotta filed objections to the statement of decision. Mazzotta objected to the court's factual findings regarding the breach of contract and Mazzotta's personal liability as well as to the amount of damages.

The judgment was filed on June 6, 2012. The judgment provided that Canepa Design was entitled to reasonable attorney fees.

G. Post-Judgment Motions

Mazzotta filed a motion for a new trial and a motion for judgment notwithstanding the verdict (JNOV) on June 11, 2012. Mazzotta again argued there was no evidence that he was personally liable under the contract for the Porsche Carrera GT and that there was no breach of contract because the vehicle had been sold " 'as is.' " The trial court denied both the motion for a new trial and the motion for JNOV at a hearing held on July 13, 2012.

Canepa Design filed a memorandum of costs and a motion for attorney fees on June 21, 2012. Canepa Design sought \$40,630.25 in attorney fees incurred between October 26, 2010 and May 25, 2012. Canepa sought to recover only 50 percent of the hours attributable to tasks that equally benefitted Canepa's defense of the original complaint.

Mazzotta filed opposition to the attorney fees motion, arguing that Canepa Design was only entitled to recover attorney fees from July 21, 2011—the date upon which Mazzotta became a cross-defendant.

In its reply, Canepa Design noted that \$9,799.50 of the attorney fees were incurred prior to July 21, 2011 and argued that because those fees were associated with

³ The damages included repair costs of \$129,611.14 and carrying charges of \$71,884 from the line of credit.

“discovery, research, and discussions,” they “applied equally to the litigation pre and post Mazzotta as a cross-defendant.”

At a hearing on August 6, 2012, the trial court found that Canepa Design’s request for attorney fees was “reasonable and appropriate.” The court filed an amended judgment on August 16, 2012, which included an award of \$40,630.25 in attorney fees.

III. DISCUSSION

A. *Mazzotta’s Personal Liability*

Mazzotta claims that he cannot be held personally liable for breach of contract because he was acting as the agent for a disclosed principal, Autosport. (See, e.g., *Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 79 [“A known agent of a disclosed principal is not normally personally liable for transactions consummated on behalf of the principal.”].)

“An agent is one who represents another, called the principal, in dealings with third persons.” (Civ. Code, § 2295.) Here, the trial court found that Mazzotta was not acting as an agent of Autosport when he signed the contract, but on his own behalf. “Agency is generally a question of fact. [Citations.] Where conflicting evidence of agency is presented, we review the trial court’s determinations for substantial evidence. [Citation.]” (*van’t Rood v. County of Santa Clara* (2003) 113 Cal.App.4th 549, 562 (*van’t Rood*).)

Substantial evidence supports the trial court’s finding that the transaction at issue in this case was of a “personal, rather than corporate, nature.” The evidence at trial established that Mazzotta maintained a personal car collection, which was separate from his two facilities for selling cars. Whenever Canepa purchased a vehicle from Mazzotta, Canepa paid Mazzotta personally. Likewise, Mazzotta always paid Canepa from his personal bank accounts. When Garretson sold Mazzotta the Porsche Carrera GT, he understood that Mazzotta wanted the vehicle for his private collection. When Canepa purchased the Porsche Carrera GT, he paid Mazzotta personally, not Autosport. Canepa

sent the check to Mazzotta's home address, and the check was deposited into Mazzotta's personal account. Finally, there was no evidence that the vehicle title was ever in Autosport's name. (Cf. *Boquilon v. Beckwith* (1996) 49 Cal.App.4th 1697, 1720 [upholding trial court's finding that defendant made loans to plaintiff "in her individual capacity," not as an agent of her real estate company, where funds came from defendant's personal checking account and title was not transferred to real estate company].)

Mazzotta relies on the language of the contract itself in contending that he was, in fact, acting as an agent for Autosport when Canepa Design purchased the Porsche Carrera GT. As Mazzotta points out, the contract indicated that Autosport was the seller, and it was signed by Mazzotta "on behalf of" Autosport. However, the contract's characterization of Mazzotta as Autosport's agent is not controlling. "[C]ontract recitals of the existence or absence of agency, while relevant, are never determinative. [Citations.]" (*Pistone v. Superior Court* (1991) 228 Cal.App.3d 672, 680-681; see also Rest.3d Agency, § 1.02 (2006) ["Whether a relationship is characterized as agency in an agreement between parties . . . is not controlling."].) As stated above, "[a]gency is generally a question of fact" to be determined by the trial court. (*van't Rood, supra*, 113 Cal.App.4th at p. 562.) Only " '[w]hen the essential facts are not in conflict and the evidence is susceptible to a single inference' " is the agency determination a matter of law for the court. (*Ibid.*) Here, the evidence at trial established that Mazzotta frequently ran vehicle sales through his business entities to avoid paying certain taxes and fees and to simplify paperwork. Moreover, Mazzotta had previously purchased a personal vehicle from Canepa, using a nearly identical contract, which he had similarly signed "on behalf of" Autosport.

Based on our review of the record, substantial evidence supports the trial court's finding that Mazzotta was acting on his own behalf, not as an agent of Autosport, when he signed the contract concerning the sale of the Porsche Carrera GT. (See *van't Rood, supra*, 113 Cal.App.4th at p. 562.)

B. “As Is” Contract Provision

Mazzotta contends he did not breach the contract with Canepa Design by delivering the Porsche Carrera GT without a functioning four-cam engine because the contract specified that the Porsche Carrera GT was being sold “as is.”

Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. (Civ. Code, § 1636.) The language of a contract governs its interpretation, “if the language is clear and explicit, and does not involve an absurdity.” (Civ. Code, § 1638.) “[T]he intention of the parties is to be ascertained from the writing alone, if possible.” (Civ. Code, § 1639.) However, the court may admit parol evidence to construe a written instrument when its language is ambiguous. “The test of whether parol evidence is admissible to construe an ambiguity is not whether the language appears to the court to be unambiguous, but whether the evidence presented is relevant to prove a meaning to which the language is ‘reasonably susceptible.’ [Citation.]” (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165 (*Winet*).

“The trial court’s ruling on the threshold determination of “ambiguity” (i.e., whether the proffered evidence is relevant to prove a meaning to which the language is reasonably susceptible) is a question of law,” which is subject to independent review. (*Winet, supra*, 4 Cal.App.4th at p. 1165.) If there is conflicting parol evidence concerning the parties’ intent, such that the trial court must resolve credibility issues, “any reasonable construction will be upheld as long as it is supported by substantial evidence. [Citation.]” (*Id.* at p. 1166.)

Here, the trial court found that despite the “as is” language of the contract, Mazzotta was required to provide the Porsche Carrera GT to Canepa Design “with a properly functioning four cam engine.” The trial court did not err by finding that Canepa’s proffered evidence was relevant to prove a meaning to which the “as is” language was reasonably susceptible. (*Winet, supra*, 4 Cal.App.4th at p. 1165.) Under the circumstances, in which a 1958 Porsche Carrera GT was sold for \$400,000 without

the type of engine that would normally be installed in such a vehicle, and where there were several attempts to install a working rebuilt four-cam engine, the trial court properly allowed parol evidence to prove that “as is” meant that the Porsche Carrera GT would be sold “with a properly functioning four cam engine.”

In addition, Canepa testified that he understood an “as is” clause in a vehicle contract to mean only that the vehicle was not being sold with a warranty. “[P]articular expressions may, by trade usage, acquire a different meaning in reference to the subject matter of a contract. If both parties are engaged in that trade, the parties to the contract are deemed to have used them according to their different and peculiar sense as shown by such trade usage and parol evidence is admissible to establish the trade usage even though the words in their ordinary or legal meaning are entirely unambiguous. [Citation.]” (*Hayter Trucking, Inc. v. Shell Western E&P, Inc.* (1993) 18 Cal.App.4th 1, 15.)

Substantial evidence supports the trial court’s determination that the parties’ agreement did, in fact, contemplate that the Porsche Carrera GT was being sold “with a properly functioning four cam engine.” Mazzotta purchased the Porsche Carrera GT from Garretson for \$300,000 but withheld \$60,000 in order to ensure that Garretson provided a functioning four-cam engine. According to Canepa, the Porsche Carrera GT was specifically designed to have a four-cam engine, not the pushrod engine that was temporarily installed. Canepa testified that Mazzotta had agreed to provide him with a working four-cam engine within 30 days of the sale, and Mazzotta had provided Canepa with a brochure that advertised the four-cam engine. Under the circumstances, the trial court did not err by finding that the “as is” clause did not relieve Mazzotta from liability for breach of contract.

C. Attorney Fees

Mazzotta contends the trial court erred by failing to apportion the attorney fees award to include only the attorney fees that Canepa Design incurred after Mazzotta was named as a cross-defendant.

We review awards of attorney fees under an abuse of discretion standard. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) The trial court has discretion to apportion fees, such as those incurred on a contract cause of action and those incurred on other causes of action. (*Abdallah v. United Savings Bank* (1996) 43 Cal.App.4th 1101, 1111.) However, the trial court is not required to apportion fees when there are common issues between such causes of action, i.e., when the claims are “ ‘inextricably intertwined.’ ” (*Ibid.*)

In arguing that the trial court should have apportioned the attorney fees, Mazzotta relies primarily on *Heppler v. J.M. Peters Co.* (1999) 73 Cal.App.4th 1265 (*Heppler*). In that case, the plaintiffs went to trial against four non-settling defendants. Only one of the four defendants, Martin Roofing Company, Inc. (Martin) was found liable; Martin was ordered to pay the plaintiffs’ attorney fees. (*Id.* at p. 1274.) On appeal, the court found that “the trial court erred by not apportioning the attorney fees award, which was based on the trial preparation and trial time (seven weeks) of plaintiffs’ counsel.” (*Id.* at p. 1297.) The court explained: “Martin’s part of the case could have been tried in considerably less time than seven weeks had the trial not taken up issues that involved the other nonsettling subcontractors. It strikes us as eminently unfair to tag Martin with all of plaintiffs’ attorney fees for the entire seven-week trial.” (*Ibid.*)

In this case, Canepa Designs originally brought the cross-complaint against Autosport, then added Mazzotta as a cross-defendant prior to trial. The case was ultimately tried against Mazzotta only. The cause of action did not change, and it appears the evidence regarding the breach of contract would have been the same had the case proceeded to trial only against Autosport. Under these circumstances, the trial court did

not abuse its discretion by determining that Canepa Designs was entitled to recover attorney fees for the trial preparation done before Mazzotta was a named defendant. As the trial court found, Canepa Design’s request for attorney fees was “reasonable and appropriate.”

IV. DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

GROVER, J.