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

GRANITE ROCK COMPANY,

Plaintiff,

v.

NATIONAL STRIPING, INC.,

Defendant and Appellant;

DIVERSIFIED STRIPING SYSTEMS,
INC.,

Defendant and Respondent.

H041652

(Santa Clara County

Super. Ct. No. 113CV239862)

I. INTRODUCTION

Plaintiff Granite Rock Company was the prime contractor on an airport project involving a new runway. Granite Rock subcontracted work involving the removal and addition of ground striping as part of the project. Two entities, defendant National Striping, Inc. (NSI) and defendant Diversified Striping Systems, Inc., formerly known as National Striping Company, Incorporated (NSC), each asserted a right to payment from Granite Rock under the subcontract. Granite Rock filed an action in interpleader to determine the rights of NSI and NSC under the subcontract and deposited with the court the sum of \$219,399.83 for the striping work.

After a bench trial, the court concluded that NSC was the contracting party with Granite Rock, and that NSI and NSC acted as joint owners in NSC with regard to the contract with Granite Rock. The court awarded \$44,800 to NSI for services it separately performed on the airport project and awarded NSC the balance of the interpleaded funds, or \$174,599.83.

On appeal, NSI contends that it was entitled to the entire amount of the interpleaded funds, and that the trial court erred in awarding any amount to NSC because NSC was not a licensed contractor when the work was performed.

For reasons that we will explain, we will affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Pleadings

Granite Rock filed an interpleader action alleging that it was the prime contractor on an airport project in which striping work was performed by NSI as a subcontractor. The value of the striping work was \$219,399.83. Granite Rock alleged that NSI and NSC asserted conflicting claims to the money, which Granite Rock deposited with the court upon filing the complaint. NSI and NSC each filed an answer alleging that it was entitled to the money.

By stipulation of the parties and order of the trial court, Granite Rock was discharged from liability to NSI and NSC for any matter arising out of the rights and obligations of the parties regarding the money. Granite Rock accordingly did not appear at trial.

In a pretrial brief, NSI contended that it had been in the process of transitioning its striping business to NSC when the airport striping project was being negotiated. NSI argued that under Business and Professions Code section 7031, subdivision (a), only it could assert a valid claim for the interpleaded funds because it was a licensed contractor at the time the striping work was performed, whereas NSC was not.

NSC contended in its trial brief that it was entitled to the interpleaded funds because it, and not NSI, had performed on the airport subcontract.

B. The Court Trial

The matter between NSI and NSC proceeded to a court trial. The evidence included the following.

Joseph M. Kraus formed NSI in 2009. He was also associated with other companies, including Hydro Removal. Before the events leading to the parties' disputes, Kraus's companies performed striping and striping removal services.

In 2010, Kraus had discussions with Kevin and/or Pam Beck about embarking on a business endeavor together. According to Kraus, by 2011, he and the Becks had "an understanding" about their endeavor although "it was fluid at the time." He would sell his pavement striping equipment to the Becks in exchange for a 20 percent interest in NSC, a new company to be owned by the Becks and him.

NSC was ultimately incorporated in Nevada in January 2011. Kraus and the Becks entered into various agreements, including for the sale of Kraus's pavement striping equipment. NSC performed striping and related work on airport and roadway projects while Kraus continued to do striping removal work under one or more of his own companies.

Kraus believed there would be an advantage for the new company to use a similar name rather than using his company's existing name. Because the names were so similar, and in order for the new company, NSC, to register its name in Nevada, Kraus had to relinquish his right to use "National Striping" in Nevada and consent to NSC's use of the name. Kraus never objected to NSC using NSI's logo.

For a period of time, NSI and NSC shared office space and yard space for equipment at the same address. In late November or early December 2011, NSC moved to a different address.

Kraus was included in regular weekly meetings regarding projects that NSC was bidding on or performing. Other participants in the meeting included NSC's general manager and the comptroller.

NSC submitted a bid in May 2011 for work on an airport project in San Jose. The bid was prepared by James Stanley, who was the general manager of NSC and who had formerly worked at NSI until January 2011. The project involved a new runway and markings and the removal of old markings. The bid formulated by Stanley included labor, equipment, and materials.

When a project involved removal work, an employee of NSI or another of Kraus's companies would submit a quote for the work to Stanley at NSC. Regarding the airport project, Stanley testified that he received a quote of \$44,800 for the removal work from one of Kraus's companies, Hydro Removal. Kraus indicated at trial that Hydro Removal leased its striping removal equipment to NSI.

NSC eventually learned that Granite Rock's bid had been accepted for the whole project, and that NSC would be a subcontractor on the project. Granite Rock's subcontract identifies the subcontractor as "National Striping Company." An NSC employee signed the subcontract with Granite Rock.

In November 2011, NSI had a valid California contractor's license, while NSC did not. NSI's license number was used on NSC's subcontract with Granite Rock.

Kraus knew that the airport project was bid under the license number for his company, NSI. When NSI and NSC were sharing office space, Stanley's and Krause's offices were "basically attached" to each other. Stanley testified that Kraus was aware of NSC's every project and its day-to-day operations. Stanley testified that Kraus "urged" the use of his license until the new entity, NSC, acquired its own license. According to Stanley, this was Kraus's "common business practice from . . . previous companies."

NSC began working on the airport project in mid-December 2011, and the project was completed that same month. The removal work, which was conducted before the

actual striping, was done by employees from one or more of Kraus's other companies. Striping was done by NSC employees. NSC employees supervised the removal and striping work. NSC also provided the materials, bonding, and insurance for the project.

At some point, NSC sought to have NSI enter a subcontract with it because NSC believed it was the contracting party with Granite Rock. Kraus refused to sign the subcontract because he believed the subcontract with Granite Rock was with his company and his license.

After the work on the airport project was completed, Kraus communicated with Granite Rock regarding various compliance issues, including regarding insurance and bonding. Kraus also paid some of the NSC employees who had worked on the project even though those employees had already been paid by NSC.

Kraus acknowledged that the revenue from the airport project was supposed to be part of NSC's revenue, pursuant to his agreement with the Becks. Kraus testified that "we were going to have a joint effort there, and it was all supposed to work out. It didn't work out." Kraus testified that the Becks breached the parties' contract, including by failing to give him a profit advance. The dispute between Kraus and the Becks over their business endeavor resulted in litigation in Nevada and Utah.

Regarding the airport project, Kraus at some point contacted Granite Rock and told it that his own company NSI did the work on the project, that his contractor's license had been used, and that he should receive payment for the work on the project. NSC contacted Granite Rock claiming that it had entered into the subcontract with Granite Rock and that it was entitled to payment for work under the contract.

Granite Rock responded to NSI and NSC by stating that it understood the "subcontract was executed by an authorized officer or representative of National Striping Company, and that National Striping Company was a 'dba' or trade name used by National Striping, Inc., the entity listed on the California Contractors State License

Board's website as the holder of [the license number listed in the subcontract]." Granite Rock ultimately "froze" payment to any entity.

C. The Court's Decision and Judgment

In a written decision and judgment, the trial court determined that the parties acted as "joint owners" in NSC with regard to the subcontract with Granite Rock. The court determined that Kraus and the Becks formed NSC, that Kraus assigned the name and logo of NSI to NSC, that Kraus sold his striping equipment to NSC, and that his contribution gave him an ownership interest in NSC and entitled him to a share in the profit. While the airport project was being negotiated, NSI's striping business was being transitioned to NSC. Most of the employees of NSI transferred to NSC. Kraus also participated in NSC by attending weekly meetings and communicating with employees and management of NSC.

The trial court found that Stanley, an NSC employee, "credibly testified to preparing and bidding several projects in California for NSC, including the airport project, by using Mr. Kraus'[s] contractor license number with Mr. Kraus'[s] knowledge, participation, and approval." The court determined that NSC did not obtain its contracting license until 2012.

Significantly, the trial court found that the bid to Granite Rock was prepared by Stanley at NSC, that "the documents named NSC as the contracting party," that the contract was signed by an NSC employee, and that "NSC" was "the contracting party with Granite Rock." The court further determined that "NSC managed the project in San Jose, provided materials and labor, insurance and bonding," while Kraus "remained informed of the project and his company, Hydro-Removal Services, performed the stripping removal on the project."

The trial court found that after conflict arose between Kraus and the Becks and NSC, "Mr. Kraus sought to transform the work performed on the airport project into services provided separately by NSI. Mr. Kraus provided a second payment to

employees on the project under the name of NSI, and corrected issues regarding corporate status, insurance and bonding of the project.”

The trial court determined that “the parties’ relationship in obtaining the project was not one of contractor and subcontractor but rather a shared ownership interest in NSC, the contracting party with Granite Rock.” The court found that although “NSI and NSC may now be in dispute regarding agreements relating to the new business entity, . . . Granite Rock relied on the merged entity and the parties held themselves out to be in business together.”

The trial court concluded that “the parties acted as joint owners in NSC with regard to the contract with Granite Rock.” The court awarded NSI the amount of \$44,800, as set forth in an invoice from Hydro Removal, for services it performed on the airport project. The court awarded the balance of the interpleaded funds, or \$174,599.83, to NSC.

III. DISCUSSION

NSI contends that the trial court erred by failing to award it the entire amount of the interpleaded funds. NSI first argues that NSC was barred under Business and Professions Code section 7031, subdivision (a) from recovering compensation for work on the airport project because NSC was not a licensed contractor when the work was performed. Second, NSI argues that it established its right to the full amount of the interpleaded funds based on evidence that it was the contracting party with Granite Rock.

We find the issue of whether NSI had a right to the full amount of the interpleaded funds to be dispositive. We therefore consider that issue first.¹

¹ We deny NSI’s June 24, 2015 request for judicial notice of six documents. Two of the documents are complaints from the parties’ out-of-state litigation, and NSI fails to demonstrate the relevance of those complaints to the issues in this appeal. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2.) The remaining four documents pertain to NSC’s and/or NSI’s contractor’s licensing status, corporate status, (continued)

A. Interpleader Action

“ ‘When a person may be subject to conflicting claims for money or property, the person may bring an interpleader action to compel the claimants to litigate their claims among themselves. (Code Civ. Proc., § 386, subd. (b).)^[2] . . . The purpose of interpleader is to prevent a multiplicity of suits and double vexation. [Citation.]’ [Citation.]” (*Principal Life Ins. Co. v. Peterson* (2007) 156 Cal.App.4th 676, 682 (*Principal Life Ins.*.)

“ ‘Upon an admission of liability and deposit of monies with the court, the plaintiff may . . . be discharged from liability and dismissed from the interpleader action. [Citations.] The effect of such an order is to preserve the fund, discharge the stakeholder from further liability, and to keep the fund in the court’s custody until the rights of potential claimants of the monies can be adjudicated. [Citations.]’ ” (*Principal Life Ins., supra*, 156 Cal.App.4th at p. 682.) In this case, according to the stipulation of the parties and order of the trial court, plaintiff Granite Rock deposited the amount of \$219,399.83 with the court, Granite Rock admitted that amount was payable to defendant NSI or defendant NSC, and Granite Rock was discharged from any liability to either NSI or NSC regarding that amount.

and/or workers’ compensation coverage. To the extent these four documents reflect facts that were *already* presented at trial, the documents are unnecessary. To the extent the documents reflect facts that were *not* presented at trial, NSI fails to articulate a basis upon which this court may consider them. (See, e.g., *In re Zeth S.* (2003) 31 Cal.4th 396, 405 [generally “ ‘an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration’ ”].)

² Code of Civil Procedure section 386, subdivision (b) states: “Any person, firm, corporation, association or other entity against whom double or multiple claims are made, or may be made, by two or more persons which are such that they may give rise to double or multiple liability, may bring an action against the claimants to compel them to interplead and litigate their several claims.”

“ ‘When the right of interpleader and discharge has been established . . . , the trial of the issues between the conflicting claimants proceeds on the’ ” pleadings. (*Principal Life Ins., supra*, 156 Cal.App.4th at p. 682.) At trial, a claimant asserting the right to the interpleaded funds has the burden of proving by a preponderance of the evidence the facts essential to that claimant’s claim for relief. (*State Farm Mutual Automobile Ins. Co. v. Huff* (2013) 216 Cal.App.4th 1463, 1470 (*State Farm*); *Division of Labor Law Enforcement v. Brooks* (1964) 226 Cal.App.2d 631, 633 (*Division of Labor Law Enforcement*)).

B. Standard of Review

In this case, NSI’s and NSC’s claims to the interpleaded funds were based on the subcontract with Granite Rock. “Whether parties have reached a contractual agreement, and on what terms, are questions for the fact finder when conflicting versions of the parties’ negotiations require a determination of credibility. [Citations.]” (*Hebberd-Kulow Enterprises, Inc. v. Kelomar, Inc.* (2013) 218 Cal.App.4th 272, 283-284.)

“When a trial court’s construction of a written agreement is challenged on appeal, the scope and standard of review depend on whether the trial judge admitted conflicting extrinsic evidence to resolve any ambiguity or uncertainty in the contract.” (*De Anza Enters. v. Johnson* (2002) 104 Cal.App.4th 1307, 1315, italics omitted.) Where, as in this case, extrinsic evidence was admitted and that evidence was in conflict, “we apply the substantial evidence rule to the factual findings made by the trial court.” (*Ibid.*)

“ ‘[T]he burden rests upon appellant “to demonstrate that there is no substantial evidence to support the challenged findings.” [Citations.]’ ” (*Phillips v. Barton* (1962) 207 Cal.App.2d 488, 492 (*Phillips*)). “In considering a challenge to the sufficiency of the evidence to sustain a judgment, we examine the record to determine whether it contains substantial evidence (i.e., evidence that is reasonable, credible, and of solid value), resolving all conflicts and drawing all reasonable inferences in favor of the party who prevailed at trial. [Citations.]” (*State Farm, supra*, 216 Cal.App.4th at p. 1468.) “It is

not our task to weigh conflicts and disputes in the evidence; that is the province of the trial court. Our authority begins and ends with a determination of whether, on the entire record, there is any ‘substantial’ evidence, contradicted or uncontradicted, which will support the judgment. [Citations.]” (*Grappo v. Coventry Fin. Corp.* (1991) 235 Cal.App.3d 496, 507 (*Grappo*)). If “ ‘substantial’ evidence is present, no matter how slight it may appear in comparison with the contradictory evidence, the judgment must be upheld.” (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631 (*Howard*)).

C. Analysis

Granite Rock’s subcontract for the airport project identifies the subcontractor as “National Striping Company.” The trial court determined that the contract “named NSC as the contracting party,” that “[t]he contract was signed by an NSC employee,” and that “NSC” was “the contracting party with Granite Rock.”

On appeal, NSI contends that it “was the contracting party” with Granite Rock and that it is entitled to the interpleaded funds under the contract. In support of this contention, NSI relies on various documents. We conclude, however, that none of these documents “ ‘demonstrate that there is no substantial evidence to support the challenged finding[.]’ ” by the trial court that NSC was the contracting party. (*Phillips, supra*, 207 Cal.App.2d at p. 492.)

First, NSI relies on allegations in Granite Rock’s complaint, such as Granite Rock’s allegation that NSI was the “contracting entity.” However, the statements in the complaint are simply allegations by Granite Rock and such statements were not evidence that was admitted at the trial between NSI and NSC.

Second, the evidence that NSI relies on from the trial establishes, at most, a factual conflict regarding the identity of the contracting party.

For example, NSI points out that the address, telephone number, and contractor’s license number listed on the subcontract with Granite Rock belonged to NSI. However,

there was also evidence at trial that NSC had the same address as NSI for a period of time, and that Kraus authorized NSC's use of the contractor's license number.

NSI also argues that the subcontract names the contracting party as "National Striping Company," and that this name is NSI's "trade name and is substantially similar to its full legal name: National Striping, Inc." However, the name on the subcontract, "National Striping Company," is even more similar to NSC's name at the time: "National Striping Company, Incorporated."

NSI next points to written communications by Granite Rock indicating that Granite Rock believed it was contracting with NSI, and to documents NSI claims it submitted to a union in connection with work on the airport project. To the extent NSI contends that this evidence could have supported a finding by the trial court that NSI was the contracting party under Granite Rock's subcontract, the existence of this evidence nevertheless does not establish that the trial court erred in reaching a contrary finding, that is, that NSC was the contracting party.

As we have explained, under the substantial evidence standard of review, we cannot reweigh the evidence and we must resolve all factual conflicts in favor of NSC. (*Grappo, supra*, 235 Cal.App.3d at p. 507; *State Farm, supra*, 216 Cal.App.4th at p. 1468.) Further, "the test is *not* the presence or absence of a substantial conflict in the evidence. Rather, it is simply whether there is substantial evidence in favor of the respondent. If this 'substantial' evidence is present, no matter how slight it may appear in comparison with the contradictory evidence, the judgment must be upheld." (*Howard, supra*, 72 Cal.App.4th at p. 631.) Here, in view of the evidence at trial, including the name of the contracting party identified on the subcontract (National Striping Company), and the evidence that the contract was signed by an NSC employee, we determine that substantial evidence supports the trial court's determination that NSC was "the contracting party with Granite Rock." NSI thus fails to demonstrate that it was entitled to all of the interpleaded funds under the subcontract with Granite Rock. (See *State Farm*,

supra, 216 Cal.App.4th at p. 1470; *Division of Labor Law Enforcement, supra*, 226 Cal.App.2d at p. 633.)

NSI also argues that the trial court erred in awarding NSC the interpleaded funds because, among other reasons, NSC did not have a contractor's license. As we have just explained, substantial evidence supports the trial court's finding that NSC was the contracting party with Granite Rock, and NSI has failed to establish its own right to the entirety of the funds. We therefore need not reach the issue of whether NSC was entitled to the interpleaded funds. (See *City of Glendale v. Roseglan Constr., Inc.* (1970) 10 Cal. App. 3d 777, 782 ["It having been correctly determined that Gardner has no interest in the [interpleaded] fund, it is, to put it bluntly, none of his concern whether the trial court erred with respect to its disposition" to another party].)

IV. DISPOSITION

The judgment is affirmed. Each party is to bear its own costs on appeal.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

GROVER, J.

Foster v. Department of Motor Vehicles
H041107