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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CATERSOLAR, INC., Plaintiff and Respondent, v. LUIS CADIZ et al., Defendants and Appellants.	B276094 (Los Angeles County Super. Ct. No. BC557537)

APPEAL from a judgment of the Superior Court of Los Angeles County, Elizabeth Feffer, Judge. Affirmed.

Poindexter & Doutre, Robert D. Schwartz, Joseph A. Sifferd, for Defendants and Appellants.

Sean A. Goodman, for Plaintiff and Respondent.

In a dispute concerning a residential backyard and swimming pool/spa renovation project, general building contractor Catersolar, Inc. (plaintiff or Catersolar) was awarded damages, prejudgment interest, and costs, including attorney fees, against former clients Luis and Michaela Cadiz (defendants). Defendants took nothing on their cross-complaint. On appeal, defendants argue the damages award was not supported by substantial evidence and, in any event, the claims were barred because plaintiff's general building contractor license did not permit it to work on the swimming pool and spa. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The essential background facts were not in dispute. According to the parties' joint trial statement, defendants retained plaintiff in 2013 to renovate a backyard, including new hardscape and upgrades to the swimming pool and spa. The project was phased. Defendants paid $12,763.23 for phase one, which was completed. They made a 50 percent down payment of $8,000 for phase two; the final $8,000 was to be paid upon completion of the project. Plaintiff did not complete the project, however; and defendants did not pay any portion of the remaining $8,000.

At all relevant times, plaintiff was the holder of a Class A general engineering contractor license, a Class B general building contractor license, and a Class C-46 solar contractor license. Plaintiff did not have a Class C-53 swimming pool contractor license.

This litigation began with plaintiff's limited jurisdiction complaint for the unpaid $8,000, alleging foreclosure of a

mechanic' lien, breach of contract, and common counts. Defendants brought the matter into unlimited jurisdiction with a cross-complaint for breach of contract and disgorgement. Defendants sought damages based on plaintiff's alleged shoddy work and their increased costs to finish the project and for return of all sums paid because plaintiff did not possess a Class C-53 swimming pool contractor license. (Bus. & Prof. Code, § 7031.[1]) Both sides sought contractual attorney fees and costs.[2] (Civ. Code, § 1717.)

At trial, Catersolar's principal, Mr. Roozbeh Aghdam, acknowledged the contract with defendants did not involve framing or carpentry, but did require "plumbing, electric, paving, concrete, . . . and drainage" work. Mr. Cadiz did not disagree. He testified plaintiff was to "install a split drain for the spa, the Jacuzzi, and lower the bench of the Jacuzzi so the fittings [would] fit. Add four jets into the Jacuzzi, new light, with conduit, with new conduit for the pool and the spa. And add new lines - - vacuum line, return lines — I don't know how many. . . . And change all copper piping to P.V.C. Schedule 40. Pressure test, paint the exposed pipes — any exposed pipes. And add a 2 by 3-way valve for the pool and spa. And with a return and a suction. There is a check valve to be added, G.F.I. for the pool pump and the lights. Catersolar was also to install a heater, a Pentair heater, a pump, a filter, a power center, and electric and gas lines were to be modified and connected to the new heater and filter."

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[1] All statutory references are to the Business and Professions Code unless otherwise indicated.

[2] Sureties were initially involved; but they were not part of the judgment, nor are they parties to the appeal.

After a three-day court trial, the judge issued a detailed statement of decision. Her findings included the following: "The evidence is that Catersolar satisfactorily completed the first phase of the contract, as evidenced by the City approving the construction and the Cadiz' paying Catersolar in full, and then the Cadiz' entering into a second contract for an even greater sum of money. Further, the Cadiz' also paid the first half of the second phase. The totality of the evidence indicates that the Defendants unjustifiably precluded Catersolar from completing the second half, and that Catersolar was ready, willing, and able to perform. The Defendants delayed in having the pool enclosure completed until 2014, after they had hired Poolmaster. . . . Catersolar had performed a substantial amount of work towards the second half of the second contract by October 2, 2013, but could not complete the rest of the work because the Cadiz' did not have the pool enclosure created. . . . [¶] . . . . The project involved plumbing, electric, paving, cement work, and draining. It did not involve framing or carpentry, but did include more than two unrelated trades. Therefore, the work was done under the general B license, i.e., general building contractor license."

The trial court ruled in favor of plaintiff and awarded $6,000 in damages, plus $1,200 in prejudgment interest. Defendants took nothing on the cross-complaint. In a posttrial motion, plaintiff was awarded $25,590.00 in costs, which included attorney fees per the parties' contract.

DISCUSSION

General Building Contractor License

As both sides acknowledge, the interpretation of a statute presents a question of law for our de novo review. (*Cross v. Superior Court* (2017) 11 Cal.App.5th 305, 317.) We begin with select provisions in the Contractors' State License Law. (§ 7000 et seq.)

California recognizes and licenses three "branches" of contractors: Class A, general engineering; Class B, general building; and Class C, specialty. (§ 7055.) Although Mr. Aghdam held a Class A general engineering contractor license, the parties agreed that license was not relevant to the work plaintiff performed for defendants or this lawsuit.[3]

Section 7057 addresses Class B general building contractors. Mr. Aghdam held this license as well; and for the Cadiz project, Catersolar applied for permits, including plumbing and electrical work, under the Class B general building contractor license. Subdivision (b) provides in pertinent part, "a general building contractor shall not take a prime contract for any project involving trades other than framing or carpentry unless the prime contract requires at least two unrelated building trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate license classification or subcontracts with an appropriately licensed contractor to perform the work. . . ."[4]

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[3] Similarly, Mr. Aghdam's Class C-46 solar specialty contractor license was not an issue in this litigation.

[4] Section 7057, subdivision (c) lists several exceptions, but they do not apply here.

Section 7058 concerns specialty contractors, i.e., contractors "whose operations involve the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts." California Code of Regulations, title 16, section 832, notes, "Specialty contractors shall perform their trade using the art, experience, science and skill necessary to satisfactorily organize, administer, construct and complete projects under their classification, in accordance with the standards of their trade." This regulation currently includes 42 subclassifications of specialty contractors, each representing a different trade or combination of trades. For example, Class C specialty licenses may be issued for framing and rough carpentry, concrete, electrical, plumbing, and swimming pool trades.

Section 7057, subdivision (b) recognizes an interplay between general building contractors and section 7058's specialty contracting trades. The holder of a Class B general building contractor license may enter into a "prime contract" that does not involve framing or carpentry, like the Cadiz project, only if one of three statutory conditions exist. Unquestionably, two of those conditions were absent here: Catersolar did not hold a Class C-53 swimming pool specialty license and it did not subcontract the swimming pool/spa work to a Class C-53 swimming pool subcontractor. Catersolar's contract with defendants was within its Class B general building contractor license, however, so long as it involved "at least two unrelated building trades or crafts other than framing or carpentry." (§ 7057, subd. (b).)

The statutory interpretation question here really is, what is a trade for purposes of section 7057, subdivision (b)? If at least two trades were involved in the Cadiz project, then Catersolar's

Class B general building contractor license was sufficient; otherwise, it was not.

The issue is easily resolved in this case. Forty-two separate trades are recognized in section 7058 and eligible for Class C specialty licenses. (Cal. Code Regs., tit. 16, § 832.) Those trades include concrete, electrical, plumbing, and swimming pool. Some specialty subclassifications, e.g., the Class C-53 swimming pool contractor, involve more than one trade: "A swimming pool contractor constructs swimming pools, spas or hot tubs, including installation of solar heating equipment using *those trades* or skills *necessary for such construction.*" (Cal. Code Reg., tit. 16, § 832.53, italics added.)

The regulations for specialty contractors are authorized by section 7059, subdivision (a). Section 7059, subdivision (b) reinforces the conclusion that swimming pool construction and repair involve more than one trade: "Nothing contained in this section shall prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which he or she is licensed, is incidental and supplemental to the performance of the work in the craft for which the specialty contractor is licensed." As a matter of statutory interpretation, a Class C-53 swimming pool contractor may perform the necessary electrical, plumbing, and solar heating work on a project without also having the additional Class C specialty licenses for those trades and without subcontracting the work to others who do.

In the same way, a Class B general building contractor may contract for backyard and swimming pool/spa renovations if the project requires "at least two unrelated building trades or crafts

other than framing or carpentry." (§ 7057.) "Unrelated building trades" include concrete, electrical, plumbing, swimming pool, and any others identified in California Code of Regulations, title 16, section 832. Concrete, electrical, plumbing, and swimming pool trades were all required for defendants' project. That one or more of these trades may be "incidental and supplemental" to the swimming pool/spa work does not alter their proper classification as separate and unrelated trades. With the finding that two or more unrelated trades were required under the parties' contract, Catersolar was properly licensed for the entire project, including the swimming pool/spa renovations.

As did the trial court, we reject the testimony of defendants' expert, Robert Berrigan, that the entire Cadiz project involved just one trade.[5] His testimony was not consistent with a plain reading of either California Code of Regulations, title 16, section 832.53 or section 7059. The swimming pool renovation work involved multiple trades, e.g., swimming pool, electrical, and plumbing. Moreover, defendants' project included concrete work unrelated to the pool plastering.

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[5] The trial court also found Mr. Berrigan's testimony unpersuasive and largely irrelevant. His professional opinions as to interpretations of section 7057 and California Code of Regulations, title 16, section 832.53 were not appropriate. (*Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 884 ["'it is thoroughly established that experts may not give opinions on matters which are essentially within the province of the court to decide"'].) Nor was he competent to offer testimony purporting to establish any official position by the Contractors' State Licensing Board (CSLB). He was defendants' retained expert and while he previously had been employed by the CSLB, he left that agency 25 years before the trial in this matter.

The trial court took judicial notice of exhibits 168 and 169, CLSB publications. But those documents do not support defendants' position. Even assuming they constituted "official acts of state agencies (Evid.Code, § 452, subds. (c), (d))," "the truth of matters asserted in such documents is not subject to judicial notice." (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482.)[6]

Damages and Attorney Fees

Defendants next challenge the sufficiency of the evidence to support the $6000 damages award. "We review the court's findings of fact for substantial evidence. [Citations.] Under that standard, our review begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, to support the findings below. [Citations.] In assessing whether any substantial evidence exists, we view the record in the light most favorable to respondents, giving them the benefit of every reasonable inference and resolving all conflicts in their favor. [Citation.] '[I]t is not our role to reweigh the evidence, redetermine the credibility of the witnesses, or resolve conflicts in the testimony, and we will not disturb the judgment if there is evidence to support it.'" (*Williamson v. Brooks* (2017) 7 Cal.App.5th 1294, 1299-300.)

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[6] Exhibit 168, a consumer brochure published by the CSLB, provided an incomplete, and therefore inaccurate, explanation of the requisites in section 7057. Exhibit 169, a page from the CSLB website, expressly acknowledged the option in section 7057 at issue here and advised a Class B general building contractor is entitled to work on nonframing or carpentry contracts that require at least two unrelated trades.

The parties agreed in late summer 2013 that additional work would be performed for an additional $16,000. Defendants paid $8,000 only; by agreement, the balance was due once the project was finished. Defendants stymied Catersolar's efforts to finish the project.[7] Plaintiff could not plaster the pool until the City of Los Angeles inspected the property and signed off on the "pre-plaster" work. That inspection could not occur until defendants properly enclosed the yard and pool area. Catersolar was not responsible for the enclosure, and defendants delayed its completion for months.

By December 19, 2013, defendants were still not ready for Catersolar to return to the project. On that date, Mr. Aghdam prepared an invoice showing $7,850 still due (a credit for tile purchased by defendants reduced the contract cost). On that same date, based on the lengthy period Catersolar had been away from the site, Mr. Aghdam sent defendants an email requesting immediate payment of $5,000. There was no resolution; on January 15, 2014, Mr. Aghdam sent defendants another email advising $6,000 remained unpaid under the contract. At defendants' request, this email was received into evidence. At trial, Mr. Aghdam confirmed the emails and testified he was owed $6,000 under the contract.

This evidence was sufficient to support the damages award. As the Supreme Court held in *Lewis Jorge Construction Management, Inc. v. Pomona Unified School Dist.* (2004) 34 Cal.4th 960 (*Lewis Jorge*), "Damages awarded to an injured party for breach of contract 'seek to approximate the agreed-upon performance.' [Citation.] The goal is to put the plaintiff 'in as

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[7] On appeal, defendants accept the trial court's finding that they "precluded" Catersolar from finishing the contract.

good a position as he or she would have occupied' if the defendant had not breached the contract. [Citation.] In other words, the plaintiff is entitled to damages that are equivalent to the benefit of the plaintiff's contractual bargain. [Citations.] [¶] The injured party's damages cannot, however, exceed what it would have received if the contract had been fully performed on both sides. (Civ. Code, § 3358.)" (*Id.* at pp. 967-968.)

Moreover, "[w]here the *fact* of damages is certain, the amount of damages need not be calculated with absolute certainty. [Citations.] The law requires only that some reasonable basis of computation of damages be used, and the damages may be computed even if the result reached is an approximation." (*GHK Assocs. v. Mayer Group, Inc.* (1990) 224 Cal.App.3d 856, 873 (*GHK*). Here, the $6,000 damage award was less than the contract price. It approximated what Catersolar was owed for work it had done, less the costs of plastering materials and labor it did not incur. There was no deduction for costs allegedly incurred by defendants to correct any of Catersolar's work because the trial court found defendants did not prove they were entitled to a setoff.

Nothing in the testimony or evidence presented, or in the trial court's statement of decision, suggests any portion of the $6,000 included lost profits. Rather, the trial judge specifically found the damages award for defendants' breach of the contract "represent[ed] the amount of work completed under the second phase of the subject contract." But even with a lost profits component, there would be no error. Both *Lewis Jorge, supra,* 34 Cal.4th 960 and *GHK, supra,* 224 Cal.App.3d 856 are lost profits cases. *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, the decision upon which

defendants rely, quotes from—and cites—each with approval. (*Id.* at pp. 774-775.)

Defendants challenge the award of costs only on the bases plaintiff was not properly licensed for the project and failed to prove damages. Because we have concluded otherwise, the costs award, which included attorney fees, stands.

DISPOSITION

The judgment is affirmed. Catersolar, Inc. is awarded its costs on appeal.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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* Judge of the Orange Superior Court, appointed by the Chief Justice pursuant to article VI, section 6 of the California Constitution.