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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

LAKESIDE CLUB VILLAS, INC.,

Plaintiff and Appellant,

v.

LB PROPERTY MANAGEMENT, INC.,

Defendant and Respondent.

B236001

(Los Angeles County
Super. Ct. No. EC050276)

APPEAL from an order of the Superior Court of Los Angeles County.

David S. Milton, Judge. Affirmed.

Mazur & Mazur, Janice R. Mazur, William E. Mazur, Jr., for Plaintiff and Appellant.

Law Office of Stephen F. McAndrew and Stephen F. McAndrew for Defendant and Respondent.

Plaintiff Lakeside Club Villas, Inc. ("Lakeside") appeals the order awarding attorney fees to defendant LB Property Management, Inc. ("LB") following the latter's dismissal from the lawsuit. Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Lakeside is a homeowners' association for a condominium development in Burbank. In March 2006, Lakeside and LB entered into a written Management Agreement (the "Management Agreement"), pursuant to which LB agreed to provide various management services, including billing and collecting homeowner association fees. The Management Agreement provided that any dispute arising under the Management Agreement would be submitted to binding arbitration, and that "[t]he prevailing party in arbitration shall be entitled to all costs associated with arbitration of the dispute, including reasonable attorneys' fees."

On June 29, 2009, Lakeside filed the operative First Amended Complaint against the developer of the condominium project and two of the developer's principals (together, the "Developer Defendants"); LB was also named as a defendant. The complaint alleged causes of action against the Developer Defendants for breach of the project's Covenants, Conditions and Restrictions ("CCR's"), conversion, and fraud. Specifically, plaintiff alleged that the developers engaged in a fraudulent scheme whereby condominium units were sold to "straw buyers" at inflated prices and with the knowledge and intention that these buyers would not pay homeowners association fees and other costs of ownership, and that after obtaining profits from these fraudulent sales, the units would go into foreclosure, damaging the property values of legitimate homeowners in the complex. The complaint alleged causes of action against LB for breach of the Management Agreement, negligence and breach of fiduciary duty arising from its failure to collect outstanding homeowner association fees and to file liens with respect to delinquent fees, its release of liens on units sold by the developer, and misrepresentations to Lakeside concerning these matters.

Pursuant to the terms of the Management Agreement, LB moved to compel arbitration of the claims, which motion was granted.¹ Lakeside filed a Demand for Arbitration with JAMS in May 2010. Because the project's CCR's provided that any claims against the developer would be subject to resolution by judicial reference, Lakeside's claims against the Developer Defendants were submitted to JAMS, and were resolved separately from the claims against LB. In July 2010, Lakeside and LB agreed to stay their pending arbitration until the conclusion of the judicial reference proceeding between Lakeside and the Developer Defendants.

Lakeside and the Developer Defendants entered into a settlement pursuant to which, according to Lakeside, it recovered all of the damages sought in its complaint. Consequently, having no need to proceed against LB, Lakeside dismissed the arbitration, and voluntarily dismissed LB from this lawsuit on January 3, 2011.

On March 3, 2011, LB brought a motion to recover its attorney fees and costs, seeking \$11,680 in fees. Lakeside opposed the motion, arguing that LB was not the prevailing party in the arbitration, and thus was not entitled to its attorney fees. After a hearing on the motion, the trial court awarded LB \$10,278 in attorney fees. Lakeside appeals that order.

DISCUSSION

Civil Code section 1717, subdivision (b)(2), provides that "Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section." As a result of this statute, "When a plaintiff files a complaint containing causes of action within the scope of section 1717 (that is, causes of action sounding in contract and based on a contract containing an attorney fee provision), and the plaintiff thereafter voluntarily dismisses the action,

¹ We agree with Lakeside that the particulars of the dispute between Lakeside and LB over initiation of the arbitration is unnecessary to the resolution of the legal issue before this court, and so we do not recount the delays in submitting the dispute to arbitration.

section 1717 bars the defendant from recovering attorney fees incurred in defending those causes of action, *even though the contract on its own terms authorizes recovery of those fees.*" (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 617, original italics.)

The result may be different, however, if the dismissed complaint alleges non-contract claims which are covered by the attorney fees provision. The bar of Civil Code section 1717 "applies *only* to causes of action that are based on the contract and are therefore within the scope of section 1717. If the voluntarily dismissed action also asserts causes of action that do not sound in contract, those causes of action are not covered by section 1717, and the attorney fee provision, depending upon its wording, may afford the defendant a contractual right, not affected by section 1717, to recover attorney fees incurred in litigating those causes of action." (*Santisas v. Goodin, supra*, at p. 617, original italics.)

Lakeside argued below that, because it dismissed this action prior to trial, LB was not the prevailing party pursuant to Civil Code 1717, subdivision (b)(2). Citing *Santisas v. Goodwin, supra*, the trial court determined that the attorney fees provision of the Management Agreement was "sufficiently broad to allow such fees on the noncontract claim, but are limited to those associated with the arbitration of the dispute." Lakeside concedes that the trial court was correct in this conclusion. However, it raises a new theory on appeal to claim error in the award of attorney fees to LB: The Management Agreement provides that the "prevailing party in arbitration" shall be entitled to recover costs, including attorney fees; because the dispute was not arbitrated but was instead dismissed, LB may not recover its costs under the attorney fee provision of the Management Agreement.

Lakeside's contention is dependent upon the premise that there was no arbitration. The premise is faulty. A civil action is commenced when the complaint is filed. (Code Civ. Proc., § 350.) A Demand for Arbitration is a pleading analogous to a complaint in a civil suit. (*Fagelbaum & Heller LLP v. Smylie* (2009) 174 Cal.App.4th 1351, 1362; *Blatt v. Farley* (1990) 226 Cal.App.3d 621, 627.) A JAMS arbitration is commenced by filing the Demand for Arbitration, a copy of the agreement containing the arbitration provision,

and the filing fee. Thus, when Lakeside filed its Demand for Arbitration, and JAMS accepted the submission, the arbitration commenced, as Lakeside Club Villas, Inc. v. LB Property Management, Inc., JAMS Reference No. 1220041421. After accepting the submission, JAMS provided a list of potential arbitrators. Lakeside and LB jointly selected Justice Charles Vogel (Ret.) to serve as the arbitrator; each party paid \$2,500 in arbitration fees to JAMS. Clearly, there were arbitration proceedings. The fact that Lakeside ultimately dismissed the arbitration before the appointed arbitrator heard evidence and rendered a decision does not negate the fact that the parties' dispute was submitted to arbitration.

Consistent with the holding of *Santisas v. Goodin*, *supra*, 17 Cal.4th 599, Lakeside concedes that "had there been an arbitration, the prevailing party at the arbitration would have been entitled to recover fees incurred for the non-contract claims associated with the arbitration." Because we determine that there was an arbitration, and because LB obtained the relief it had sought from the outset – dismissal of the action – we affirm the award of attorney fees as costs pursuant to Civil Code section 1032.

DISPOSITION

The order is affirmed. LB is to recover its costs on appeal.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.