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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MONICA AJIS,

Plaintiff and Respondent,

v.

FOREMAN FINANCIAL, INC.,

Defendant and Appellant.

B280208

(Los Angeles County
Super. Ct. No. BC585421)

APPEAL from an order of the Superior Court of
Los Angeles County, Samantha P. Jessner, Judge. Reversed and
remanded with directions.

Severson & Werson, Jan T. Chilton and Kerry W. Franich
for Defendant and Appellant.

Law Office of David Valdez, Jr. and David Valdez, Jr.
for Plaintiff and Respondent.

Defendant Foreman Financial, Inc. (Foreman) appeals from a postjudgment order awarding attorney fees to plaintiff and respondent Monica Ajis and granting in part and denying in part Foreman's motion to strike or tax costs.

Ajis sued a used car dealership, Teo's Auto Sales, Inc. (Teo's), for selling her a defective vehicle in violation of various consumer protection statutes, and alleged that Foreman was jointly liable as the assignee of the sale contract. After a bench trial, the trial court entered judgment on the consumer protection claims against Teo's only, but found Foreman liable under the Rosenthal Fair Debt Collection Practices Act (Rosenthal Act) (Civ. Code, § 1788 et seq.) because Foreman had billed Ajis when her loan had not been finalized.

Ajis submitted a memorandum of costs and moved for attorney fees, again arguing that Foreman as assignee was liable for fees incurred in prosecuting all causes of action on which she prevailed. The trial court accepted this argument, also finding that it would be impossible to allocate fees among the defendants given the interrelatedness of the claims. The trial court awarded attorney fees jointly against Teo's and Foreman. Other than striking Ajis's claim for jury fees, the trial court denied Foreman's motion to strike or tax costs.

Foreman appeals, arguing that by entering judgment on the consumer protection claims against Teo's only, the trial court necessarily concluded that Foreman was not the assignee of the contract. Thus, Ajis did not prevail against Foreman on those claims, and cannot recover fees on that basis. Foreman does not dispute that it is liable for fees under the Rosenthal Act, but argues that the trial court should have excluded from the award any fees incurred in prosecuting Ajis's other causes of action.

Foreman further asserts that the trial court erred in awarding Ajis expert witness fees because they were not allowable as costs under the Rosenthal Act. Foreman's arguments have merit. Accordingly, we reverse the attorney fees award and remand so the trial court may allocate the fees appropriately. We also direct the trial court to strike the award of expert witness fees.

BACKGROUND

A. The pleadings

On September 2, 2014, Ajis filed a complaint against Teo's and the surety on its dealer bond, International Fidelity Insurance Company (International Fidelity). Foreman was not listed as a defendant. Ajis alleged the following: On or about May 3, 2014, she purchased a 2006 BMW X5 from Teo's based on a salesperson's representation that the vehicle was in "excellent condition." Ajis signed a retail installment sale contract that Teo's subsequently assigned to Foreman. Ajis soon discovered the vehicle had many mechanical problems. Ajis returned the vehicle to Teo's for repairs, but after almost a month nothing had been done. Ajis spoke to the owner of Teo's and asked to cancel the sale contract, but the owner refused to do so or return her \$3,000 down payment. On or about August 21, 2014, Foreman sent Ajis a letter stating that the assignment of the contract to Foreman had been unwound.

Ajis asserted causes of action against Teo's for violations of the Consumer Legal Remedies Act (CLRA) (Civ. Code, § 1750 et seq.), Unfair Competition Law (UCL) (Bus. & Prof. Code, § 17200 et seq.), and Song-Beverly Consumer Warranty Act (Song-Beverly Act) (Civ. Code, § 1790 et seq.), alleging that the BMW was unmerchantable and Teo's employees made numerous

misrepresentations in connection with the sale. Ajis also alleged two causes of action for rescission and one for fraud against Teo's, and a cause of action under Vehicle Code section 11711 against International Fidelity seeking the funds from the dealer bond.

On June 17, 2015, Ajis filed her First Amended Complaint (FAC) adding Foreman as a defendant. The FAC alleged that Foreman "accepted assignment and acted as an assignor of the retail installment sale contract." In addition to the facts alleged in the original complaint, the FAC alleged that Ajis informed Foreman of the problems with the vehicle and her desire to cancel the contract, but Foreman refused to cancel and sent "at least three monthly statements to [Ajis], as well as[] a collections notice." After sending the three statements, Foreman informed Ajis on or about August 21, 2014 that Ajis had failed to qualify for credit and the assignment of the contract to Foreman had been unwound. The FAC states "[Ajis] is informed and believes that FOREMAN'S current position is that it never accepted assignment of the CONTRACT."

The FAC alleged eight causes of action. The first four, against Teo's and Foreman, alleged violations of the CLRA, UCL, and Song-Beverly Act, as well as fraud. The allegations in support of these causes of action essentially mirrored those in the original complaint. The FAC alleged that Foreman was liable because, pursuant to Civil Code section 2983.5 and the terms of the sale contract, Foreman was "an assignee and/or holder" of the contract and thus "subject to all claims, equities, and defenses that [Ajis] has against the seller, TEO'S." In the alternative, "if FOREMAN was not the assignee or holder," the FAC alleged Foreman was liable because Foreman and Teo's "acted as partners and/or agents of each other."

The fifth cause of action was against International Fidelity, again under Vehicle Code section 11711.

The FAC's sixth and seventh causes of action, against Foreman and Teo's, alleged violations of the CLRA and UCL based on the theory that Foreman had sent billing statements to Ajis despite not having accepted assignment, with Teo's being liable under theories of agency and/or conspiracy. The eighth cause of action, against Foreman only, alleged violations of the Rosenthal Act, also based on Foreman sending statements and collection notices to Ajis.

Teo's filed a cross-complaint against Ajis the same day the FAC was filed.¹ Foreman answered the FAC on July 20, 2015, asserting a general denial and numerous affirmative defenses. The trial court entered default against Teo's on July 27, 2015, although the record does not indicate why.

B. Trial²

The case was tried before the court without a jury. The owner of Foreman testified. He explained that under Foreman's dealer agreement with Teo's, Foreman would buy sale contracts from Teo's up front and perform due diligence on the vehicle loan afterwards. If Foreman concluded it could not issue the loan, the agreement required Teo's to buy back the contract from Foreman. In this case, Foreman accepted assignment of Ajis's contract from Teo's on May 28, 2014. Ajis did not provide the documentation necessary to verify her credit, so on June 9, 2014, Foreman informed Teo's that it was unwinding the deal and requiring

¹ The cross-complaint is not in the record on appeal.

² We limit our discussion of the facts elicited and arguments made at trial to those relevant to this appeal.

Teo's to repurchase the contract, which Teo's did. Teo's paid for the repurchase using a credit on another loan on August 12, 2014. Teo's owner also testified and confirmed that Teo's was the current owner of the contract.

Foreman's owner admitted that Foreman had sent Ajis billing notices both before it had accepted assignment and after it had denied her loan application. He also admitted Foreman sent Ajis a past due notice after the assignment had been unwound.

Ajis's counsel read into the record Foreman's response to a request for admission in which it admitted that it "accepted assignment of the subject contract from Teo's Auto Sales, Inc."

During closing, when the trial court asked for the theories of liability as to Foreman, Ajis's counsel stated that Foreman was liable on the first four causes of action based on "assignee liability under [Civil] Code section 2983.5, and as an agent and coconspirator." He explained that the sixth, seventh, and eighth causes of action (those alleging that Foreman had sent billing statements to Ajis although her loan had not been approved) "were pled in the alternative because of the ambiguous responses that Foreman [gave] as to accepting assignment of the contract and when assignment is accepted and when they actually stopped billing." The trial court expressed confusion about these alternative theories, and Ajis's counsel requested that the trial court dismiss the sixth and seventh causes of action, which it did.

At the end of trial, the court orally pronounced judgment. The trial court stated that the theories of liability as to Foreman on the first through third causes of action "are based on agency and co-conspiracy," and found that Ajis had not met her burden to prove those theories. It entered judgment "in favor of [Ajis] and against the defendant Teo's Auto Sales only" on the first

three causes of action, awarding damages of \$5,151, restitution of \$3,000, and rescission of the contract.

The trial court ruled in favor of Ajis on the eighth cause of action under the Rosenthal Act, finding that Foreman was “attempting to collect on a loan that [it] really didn’t have finalized.” The trial court fined Foreman \$800 total for four improper collection statements. The trial court ruled in favor of Teo’s and Foreman on the fourth cause of action for fraud, and in favor of International Fidelity on the fifth cause of action. The trial court ruled in Ajis’s favor and against Teo’s on the cross-complaint. The trial court made no ruling as to fees and costs; Ajis’s counsel stated that Ajis would be moving for fees.

Ajis’s counsel drafted and filed the written judgment, which the trial court signed on September 9, 2016 with slight modifications not relevant to this appeal. The written judgment stated that on each of the first three causes of action judgment was entered “in favor of Plaintiff and against Teo’s Auto Sales”; on the fourth cause of action “in favor of Defendants and against Plaintiff;” on the fifth cause of action “in favor of International Fidelity Insurance Company and against Plaintiff”; on the eighth cause of action “in favor of Plaintiff and against Foreman Financial, Inc.”; and on the cross-complaint “in favor of Cross-Defendant/Plaintiff and against Cross-Complainant.” The judgment further stated that the purchase contract was rescinded, that Teo’s was liable for \$5,161³ in damages and \$3,000 in restitution, and that Foreman was liable for \$800 in

³ For reasons not pertinent to this appeal, the trial court modified the draft judgment and increased the damages owed by Teo’s by \$10.

damages. The judgment was silent as to fees and costs. No party appealed from the judgment.

C. Motion for attorney fees⁴

Ajis filed a memorandum of costs on October 6, 2016 seeking \$14,324.62, including \$7,400 in fees for expert witnesses.

Ajis filed a motion for attorney fees on October 23, 2016 against Teo's and Foreman. The motion was based on attorney fee provisions in the CLRA, Song-Beverly Act, and Rosenthal Act, and in the sale contract that Teo's sought to enforce in its cross-complaint. Ajis argued that Foreman had "admitted to being the assignee [of the contract] in response to a request for admissions" and as the "admitted assignee" was liable for Teo's "actions, including attorney fees." Ajis sought \$93,916 in fees as well as \$3,882 in fees and costs for bringing the fees motion.

Foreman opposed the motion, arguing that Ajis's motion had misrepresented Foreman's role as assignee given that Foreman did not complete the loan and "unwound the deal back to Teo's." Foreman claimed that the trial court "explicitly found in favor of Foreman as to all causes of action also pled against Teo's," and therefore Foreman could not be responsible for fees related to those causes of action. Foreman contended that the fees should be apportioned such that Foreman would be responsible only for fees incurred in prosecuting the Rosenthal Act cause of action and proposed what it considered a proper apportionment.

⁴ The parties raised a number of arguments in the trial court pertaining to attorney fees and costs, but we limit our discussion to those relevant to this appeal.

Ajis filed a reply, emphasizing that Foreman had admitted to accepting assignment of the contract, and stating that given that admission, it would have been impossible for the trial court to enter judgment in favor of Foreman but against Teo's.

Foreman also filed a motion to strike or tax costs, arguing among other things, that expert witness fees were not allowable as costs under Code of Civil Procedure section 1033.5, subdivision (b)(1). Ajis retorted that having admitted to accepting the assignment, Foreman was liable along with Teo's for costs, and that the expert witness fees were recoverable under the Song-Beverly Act.

The trial court issued an order largely granting Ajis's motion. It found Ajis was entitled to attorney fees under the CLRA, Song-Beverly Act, Rosenthal Act, and the attorney fee provision in the contract. The trial court rejected Foreman's argument that Foreman was responsible for the fees incurred only in pursuing the Rosenthal Act claim: "[A]s argued by Plaintiff, Foreman is liable for the statutory claims against Defendant Teo's as the assignee of the contract, which includes the statutory attorneys' fees." The trial court then cited *Music Acceptance Corp. v. Lofing* (1995) 32 Cal.App.4th 610, 629 (*Music Acceptance Corp.*). The trial court continued: "Therefore, it is clear that Ajis is entitled to her attorneys' fees as to each of the prevailing causes of action against both Foreman an[d] Teo's. Moreover, given the similarity and interrelatedness of the issues presented in this matter, it is impossible to separate the claimed fees by cause of action and the court therefore cannot apportion the fees."

The trial court further found that Ajis's counsel had offered insufficient evidence in support of his claimed hourly rates and

selected \$375 per hour as the appropriate rate. On this basis the trial court awarded fees of \$89,437.50. The trial court granted Foreman’s motion to strike or tax costs as to jury fees, but otherwise denied the motion.

Foreman timely appealed from the trial court’s order.

STANDARD OF REVIEW

A trial court’s decision as to “ ‘the propriety or amount of statutory attorney fees to be awarded’ ” is reviewed for abuse of discretion, but “ ‘a determination of the legal basis for an attorney fee award is a question of law to be reviewed de novo.’ ” (*Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 Cal.5th 744, 751.)

DISCUSSION

I. The Trial Court Did Not Enter Judgment Against Foreman On The CLRA or Song-Beverly Act Causes of Action.

Foreman argues that “the judgment necessarily resolved the assignee or holder theory of vicarious liability against Ajis,” and thus Foreman was not liable for Teo’s violations of the CLRA and Song-Beverly Act or the fees incurred in prosecuting them. We agree.

It is true that statutory or contractual provisions can impose liability on assignees for claims brought against the original contracting party. The contract at issue in this case contained a provision stating that “Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof.”

(Boldface and some capitalization omitted.) Similarly, Civil Code section 2983.5, subdivision (a), a provision of the Rees-Levering Motor Vehicle Sales and Finance Act invoked by Ajis in the FAC, states that “[a]n assignee of the seller’s right is subject to all equities and defenses of the buyer against the seller.”

Here, however, the trial court’s conclusion that Foreman was an assignee on the contract “liable for the statutory claims against Defendant Teo’s . . . includ[ing] the statutory attorneys’ fees” is contradicted by the judgment itself, which imposed no such liability. Although Ajis alleged that Foreman was the assignee on the contract, and Ajis’s counsel made that argument in closing, the trial court entered judgment on the CLRA, UCL, and Song-Beverly Act causes of action against Teo’s only, and ordered Teo’s, not Foreman, to pay the damages and restitution on those claims. This was in line with the trial court’s oral pronouncement of judgment, which specifically stated that judgment on those three causes of action was entered “in favor of the plaintiff and against the defendant Teo’s Auto Sales only.” There is no indication in the trial court’s oral pronouncement or the written judgment that the trial court found Foreman liable as an assignee. Had the trial court so found, logically judgment would have been entered against both Foreman and Teo’s on the first three causes of action. In contrast, the trial court expressly entered judgment against Foreman on the Rosenthal Act cause of action, and assessed damages separate from those assessed against Teo’s. The judgment therefore reflects the trial court’s drawing of distinctions between the two defendants and evaluating their liability separately.

We acknowledge that as far as the record indicates, the trial court never expressly ruled on the question of assignee

liability, and did not mention it when pronouncing judgment. But the fact that the trial court entered judgment only against Teo's on the first three causes of action, with no indication that Foreman was also liable, sufficiently establishes that the trial court did not accept Ajis's assignee theory. To conclude otherwise would be unjust to Foreman, who had no basis to believe it had been found liable on the first three causes of action, and thus no reason or opportunity to request clarification from the trial court or to appeal the judgment. Ajis, in contrast, whose counsel drafted the judgment, had both incentive and opportunity to clarify the extent of Foreman's liability, but did not do so.

Ajis argues that Foreman's admission that it accepted assignment of the contract "conclusively established its status as assignee." Thus, Ajis contends, "[t]he trial court did not, and could not, find that [Foreman] was not an assignee." Ajis argues that a ruling in favor of Foreman but against Teo's on the first three causes of action would deny her "[c]omplete relief" and subject her to "multiple and inconsistent obligations."

Ajis's argument ignores the evidence at trial that, while Foreman initially accepted assignment pursuant to its dealer agreement with Teo's, it unwound that assignment and returned the contract to Teo's after Ajis failed to provide the required documentation. Given this evidence, the trial court could reasonably have concluded that Foreman was no longer an assignee even if it had initially accepted assignment and was not subject to Ajis's claims against Teo's. Such a ruling would not create "multiple and inconsistent obligations," because Foreman, having unwound the transaction, no longer had any right to collect from Ajis or otherwise enforce the contract. Although Ajis

argues that “both defendants have the same interests,” this was not the case once Foreman no longer owned the contract.

Ajis points to other evidence that Foreman accepted assignment, such as a stipulation that it attempted to repossess the BMW at some point. Ajis also argues that the trial court, in ordering only Teo’s to pay damages and restitution on the CLRA, UCL, and Song-Beverly Act claims, was not indicating thereby that Foreman was not liable, because under Civil Code section 2983.5, subdivision (a), Foreman’s assignee liability was limited to “the amount of debt owing to the assignee at the time of the assignment.” Thus, Ajis claims, rescission of the contract “extinguished the entire debt and exhausted all of [Foreman’s] liability. [Foreman] was not liable for any additional damages or restitution and therefore was not ordere[ed] to pay any.” (Fn. omitted.)

Ajis’s arguments at best establish that the trial court *could* have found Foreman liable as an assignee and nonetheless *could* have assessed damages and restitution only against Teo’s. These arguments do not establish that the trial court in this case did so, nor will we so conclude given the clear language of the judgment.

Music Acceptance Corp., *supra*, 32 Cal.App.4th 610, the case cited by the trial court in its fees order and again in Ajis’s respondent’s brief, is unavailing. In that case, a jury found that a seller had violated various consumer protection laws in selling a piano, but nonetheless found the buyer liable to the finance company holding the purchase contract and seeking payment of the balance of the purchase price. (*Id.* at pp. 613-614.) The Court of Appeal held that this verdict was inconsistent given the contract language subjecting the holder “ ‘to all claims and defenses which the debtor could assert against the seller.’ ”

(*Id.* at p. 622.) “[O]nce the jury determined that [the seller] breached its express or implied warranties, the jury was compelled to render a verdict in favor of [the buyer] on [the holder’s] complaint to recover the unpaid balance on the piano.” (*Id.* at p. 621.)

Music Acceptance Corp. is distinguishable because in that case there was no dispute as to which entity held the contract; the jury was instructed that “ ‘Music Acceptance Corporation who holds [the buyer’s] consumer credit contract for the purchase of a piano, is subject to the same claims and defenses which [the buyer] is asserting against [the seller].’ ” (*Music Acceptance Corp.*, *supra*, 32 Cal.App.4th at p. 617.) Indeed, it was the holder who brought the action in the first place seeking to recover the unpaid balance on the debt. (*Id.* at pp. 613-614.) Under those circumstances, a finding against the seller necessarily also applied to the entity indisputably identified as the holder of the contract. Here, in contrast, Foreman’s status as assignee was far from clear, and in fact the uncontested evidence strongly suggested Foreman was no longer the assignee at the time Ajis filed her complaint. Even accounting for Foreman’s response to the request for admission, the evidence did not compel the conclusion that Foreman was subject to the claims against Teo’s. In short, the trial court could reasonably have found against Teo’s and in favor of Foreman on the CLRA and Song-Beverly Act causes of action.⁵

⁵ We note that in *Music Acceptance Corp.* the buyer challenged the inconsistent verdict by filing motions to vacate the judgment, for judgment notwithstanding the verdict, and for a new trial, and appealed when the trial court denied those motions. (*Music Acceptance Corp.*, *supra*, 32 Cal.App.4th at

II. The Trial Court Erred In Awarding Attorney Fees Against Foreman Under The CLRA and Song-Beverly Act.

Because the judgment imposed no liability on Foreman under the CLRA or Song-Beverly Act, the trial court had no legal basis to order Foreman to pay attorney fees pursuant to those statutes. The CLRA's attorney fee provision "award[s] court costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to this section." (Civ. Code, § 1780, subd. (e).) The Song-Beverly Act's provision instructs the court to award "costs and expenses, including attorney's fees" "[i]f the buyer prevails in an action under this section." (*Id.*, § 1794, subd. (d).) Here, where the trial court did not enter judgment against Foreman on the first three causes of action, Ajis was neither a prevailing plaintiff or buyer as to Foreman, and was not entitled to any fees from Foreman under the CLRA or Song-Beverly Act.

We cannot construe the attorney fees order as an attempt to amend the judgment to impose assignee liability on Foreman because the trial court lacked the authority to do so. " 'Once judgment has been entered . . . the court may not reconsider it and loses its unrestricted power to change the judgment. It may correct judicial error only through certain limited procedures such as motions for new trial and motions to vacate the judgment.' " (*APRI Ins. Co. v. Superior Court* (1999) 76 Cal.App.4th 176, 181.) As noted previously, no such procedures were invoked here.

p. 618.) Ajis took no such actions here, and again, because the judgment on the CLRA and Song-Beverly Act causes of action was not against Foreman, Foreman had little incentive to challenge the judgment.

Ajis argues that the trial court was entitled to determine the prevailing party in deciding the fees motion. She cites Code of Civil Procedure section 1032, subdivision (a)(4), which states, in relevant part, “ ‘Prevailing party’ includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. If any party recovers other than monetary relief and in situations other than as specified, the ‘prevailing party’ shall be as determined by the court.” Ajis does not explain how section 1032 applies to fee awards pursuant to the CLRA and Song-Beverly Act. (See Wegner et al., Cal. Practice Guide: Civil Trials & Evidence (The Rutter Group 2017) Ch. 17, ¶ 17:153.1, pp. 17-128 to 17-129 [statutory attorney fee provisions “are not subject to the definition of ‘prevailing party’ ” in section 1032].)

Ajis also invokes Civil Code section 1717, subdivision (b)(1), concerning awards of attorney fees and costs in contract actions, which states that “[t]he court . . . shall determine who is the party prevailing on the contract [T]he party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract.” But no judgment was entered against Foreman in any “action on the contract,” because its sole liability was for a statutory violation of the Rosenthal Act. Civil Code section 1717 is unavailing to Ajis.

III. The Trial Court Abused Its Discretion In Not Limiting The Fees Award To Those Incurred In Prosecuting The Rosenthal Act Cause Of Action.

In addition to the erroneous finding regarding Foreman’s liability as an assignee, the trial court found that limiting

Foreman's liability to those fees incurred in prosecuting the Rosenthal Act claim was "impossible" because of "the similarity and interrelatedness of the issues presented in this matter." In so ruling, the trial court abused its discretion.

The Rosenthal Act's attorney fee provision states, in relevant part, that "[i]n the case of any action to enforce any liability under this title, the prevailing party shall be entitled to costs of the action. Reasonable attorney's fees, which shall be based on time necessarily expended to enforce the liability, shall be awarded to a prevailing debtor." (Civ. Code, § 1788.30, subd. (c).) Thus, in awarding fees the trial court must limit the amount to those incurred *to enforce the liability* under the Rosenthal Act. (See *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133 ["When a cause of action for which attorney fees are provided by statute is joined with other causes of action for which attorney fees are not permitted, the prevailing party may recover only on the statutory cause of action"].)

It is well established, however, that "fees need not be apportioned when incurred for representation on an issue common to both causes of action in which fees are proper and those in which they are not. [Citation.] Apportionment is not required when the claims for relief are so intertwined that it would be impracticable, if not impossible, to separate the attorney's time into compensable and noncompensable units." (*Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 687 (*Bell*).) Whether and how to apportion attorney fees "rests within the sound discretion of the trial court." (*Ibid.*) Nevertheless, a trial court abuses its discretion by failing to "ma[k]e a serious and good faith attempt to apportion fees and costs consistent with the statutory mandate" when the claim subject to an attorney fee

provision is “separate and distinct” from the claims that are not. (See *id.* at p. 688.)

Bell is instructive. There, a school board removed the plaintiff from his assignment as a high school football coach. (*Bell, supra*, 82 Cal.App.4th at p. 679.) The plaintiff filed suit against the school district and various administrators, asserting 11 causes of action for tort damages on a variety of theories including wrongful termination, intentional infliction of emotional distress, and defamation. (*Id.* at p. 680.) The plaintiff also asserted four causes of action for violation of the Brown Act (Gov. Code, § 54950 et seq.), alleging that the school district had failed to provide 24-hour notice before the meeting at which the board disciplined him. (*Bell, supra*, at pp. 678, 680.) In a bifurcated proceeding, the trial court ruled in favor of the plaintiff on the Brown Act claims and awarded \$157,674.81 in costs and attorney fees pursuant to Government Code section 54960.5. (*Bell, supra*, at pp. 680-681.) The remaining 11 tort causes of action were set for a separate trial but were ultimately settled. (*Id.* at p. 681.)

The defendants appealed, arguing that the trial court abused its discretion by failing to exclude from the award the fees and costs unrelated to the Brown Act violation. (*Bell, supra*, 82 Cal.App.4th at p. 686.) The Court of Appeal agreed. It stated that the “case only involve[d] a single violation of the Brown Act,” namely failure to give proper notice, whereas “the primary economic focus of the litigation” concerned the tort claims arising from the plaintiff’s termination. (*Id.* at p. 688.) “Although the Brown Act violation may have procedurally facilitated the wrongful termination or retaliatory firing, it did not substantively beget it. Simply stated, they constitute two

separate and distinct claims, one entitled to statutory fees and the other not.” (*Ibid.*)

The *Bell* court further concluded that “[a] cursory review of [the plaintiff’s] attorney’s submitted billing and supporting declaration reveals not only that apportionment was required here, but also that neither counsel nor the court endeavored to do so.” (*Bell, supra*, 82 Cal.App.4th at p. 689.) For example, the plaintiff’s counsel had “spent weeks” opposing individual defendants’ demurrers that mostly pertained to the tort claims, and had conducted two depositions that “were of no benefit as to the Brown Act violation.” (*Ibid.*) Because the attorney’s submitted billing consisted of “blocked-billing entries,” it was “virtually impossible to break down hours on a task-by-task basis between those related to the Brown Act violation and those that are not.” (*Ibid.*) The court directed the trial court on remand to “assign[] a reasonable percentage to those entries, or simply cast them aside” if the plaintiff’s attorney could not “further define his billing entries.” (*Ibid.*) The court reversed the fees and costs award and remanded to the trial court “to recalculate the award following reasonable apportionment consistent with this opinion.” (*Id.* at p. 692.)

As in *Bell*, the sole cause of action for which Foreman was responsible for attorney fees was “separate and distinct” from the other causes of action. (*Bell, supra*, 82 Cal.App.4th at p. 688.) The first three causes of action, for which Teo’s alone was found liable, were based on Teo’s selling a deficient vehicle to Ajis. The eighth cause of action for which Foreman was found liable was based on Foreman sending billing statements to Ajis for a nonexistent loan. The first three causes of action depended on evidence of the condition of the vehicle and the

misrepresentations Teo's made as to that condition; the eighth cause of action simply required proof that Foreman had sent billing statements without having issued a loan to Ajis. In other words, with the exception of uncontested background facts, Ajis could prove the eighth cause of action without referring to any of the evidence in support of the first three causes of action. Accordingly, apportionment was required.

It also appears from "[a] cursory review of [Ajis's] attorney's submitted billing" that apportionment is readily possible. (*Bell, supra*, 82 Cal.App.4th at p. 689.) Foreman notes that many of the time entries appear to relate to claims for which judgment was not entered against Foreman, identifying some in an appendix to its opening brief. For example, there are entries pertaining to demand letters, settlement negotiations, and preparation of the original complaint, all of which took place before Foreman was added as a defendant or Ajis asserted the Rosenthal Act claim. There are entries pertaining to consulting with and preparing expert witnesses; the only expert at trial testified regarding the condition of the vehicle and offered no testimony pertinent to the Rosenthal Act claim. There are a number of entries pertaining only to International Fidelity, which had no apparent connection to the Rosenthal Act claim.

We do not intend this to be an exhaustive list, nor do we hold definitively that none of the above entries relates to the Rosenthal Act claim, an issue the trial court must determine on remand. We provide these examples only to demonstrate that apportionment is both appropriate and achievable. The trial court and counsel must endeavor to do so. (*Bell, supra*, 82 Cal.App.4th at p. 689.)

Ajis asserts that apportionment is inappropriate in this case because Foreman’s “involvement permeates all claims upon which Ajis prevailed.” Ajis claims that Foreman was involved in her early efforts to cancel the contract, was uncooperative when served with a subpoena, and that Foreman’s owner “intentionally attempted to blur the issue, and significance, of the contract assignment.” She also claims that Foreman “authorized Teo’s to sell the BMW [citation] though it was unsafe [citation] and unmerchantable,” and “sent Ajis a collection notice after the Complaint and Cross-Complaint were filed.” But even accepting that Foreman was involved to some degree in the events underlying all of the claims on which Ajis prevailed, the fact remains that judgment was not entered against Foreman on those claims, apart from the Rosenthal Act claim. Insofar as judgment was not entered against Foreman, Ajis did not prevail, and she cannot recover attorney fees from Foreman regardless of Foreman’s connection to the events giving rise to those claims.

IV. The Trial Court Erred In Ordering Foreman To Pay Ajis’s Expert Witness Fees.

Foreman argues that expert witness fees are not recoverable as costs under the Rosenthal Act and the trial court was wrong to award Ajis those fees against Foreman. We agree.

The Rosenthal Act provides that “the prevailing party shall be entitled to costs of the action,” but does not define “costs.” (Civ. Code, § 1788.30, subd. (c).) “Where a statute authorizes an award of fees and costs, but is silent as to which costs are to be awarded, Code of Civil Procedure section 1033.5 provides the courts with guidance as to those costs that may or may not be recovered in a civil action.” (*Bell, supra*, 82 Cal.App.4th at p. 691.) Section 1033.5, subdivision (b)(1) states that “[f]ees of

experts not ordered by the court” are “not allowable as costs, except where expressly authorized by law.” Because the Rosenthal Act does not “expressly authorize” expert witness fees as costs, Ajis was not entitled to recover those fees from Foreman.

Ajis’s only argument to the contrary is that expert fees are allowable as costs under the Song-Beverly Act. Given our holding that judgment was not entered against Foreman under that law, Ajis’s argument is without merit.

DISPOSITION

The order is reversed, and the matter is remanded for the trial court to apportion attorney fees consistent with this opinion. The trial court is directed to strike \$7,400 in expert witness fees from the costs awarded to Ajis. Foreman is awarded its costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.