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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CALDER GROVE INVESTMENTS,  
LLC,

Plaintiff and Appellant,

v.

ROBERT HOSSEINI et al.,

Defendants and Respondents.

B276442

(Los Angeles County  
Super. Ct. No. SC123567)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa Hart Cole, Judge. Affirmed.

Law Offices of Jon H. Freis and Jon H. Freis for Plaintiff and Appellant.

Robert Hindin & Associates, Robert Marc Hindin and Snow Vuong for Defendants and Respondents.

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## **INTRODUCTION**

Appellant Calder Grove Investments, LLC appeals from a judgment confirming an arbitration award against it and in favor of respondents Robert Hosseini and Mojgan Hashemi. Appellant contends the trial court erred in holding an evidentiary hearing to determine the existence and validity of an arbitration agreement before granting respondents' motion to compel arbitration. As discussed below, we find no error. Accordingly, we affirm the judgment.

## **FACTUAL BACKGROUND & PROCEDURAL HISTORY**

On December 24, 2014, appellant filed a complaint for damages against respondents, alleging causes of action for breach of contract and specific performance. The complaint alleged that in violation of a residential purchase agreement (RPA), respondents (1) refused to allow appellant to conduct a "final inspection" of the real property and (2) provided "incomplete and inaccurate disclosures regarding the condition of the property and the various repairs or improvements made to the property."

On May 27, 2015, respondents filed a motion to compel arbitration of the claims asserted in the complaint. In their motion, respondents argued the RPA contained an arbitration clause encompassing the asserted claims. A copy of the RPA was attached to the motion to compel arbitration. Next to the arbitration clause in the RPA were the initials of the purchaser and of respondent Mojgan Hashemi, one of the co-owners and sellers. The initials of the other co-owner and seller, respondent Robert Hosseini, did not appear next to the clause.

Appellant opposed the motion to compel arbitration. The sole basis for the opposition was that the arbitration clause in the

RPA was unenforceable because it was not initialed by all parties.

In reply, respondents acknowledged attaching an incomplete copy of the RPA to their motion. They attached a fully-executed copy of the RPA to their reply, containing the initials of all parties next to the arbitration clause. Respondents explained that the RPA was executed in parts and at different times and locations, and thus multiple copies of the same document were signed. Respondents asserted that when the lack of a fully-executed agreement was brought to their attention following appellant's opposition to the motion to compel arbitration, they discovered that respondent Hosseini's real estate broker was in possession of a fully-executed and initialed copy of the RPA.<sup>1</sup>

On July 24, 2015, the trial court continued respondents' motion to compel arbitration for an evidentiary hearing on whether the copy of the RPA submitted with the reply was "genuine." The court noted that "[u]nless Plaintiff is provided an opportunity [to] challenge this [copy of the RPA], it cannot be considered, because it was submitted for the first time on reply. More importantly, Defendants made several factual claims in connection with discovery of this new copy of the [RPA], none of which are substantiated by supporting evidence. Defendant Hosseini claims his broker Teri Heravi 'found' this new copy when he contacted her about Plaintiff's arguments in opposition. Neither Hosseini nor Heravi submitted declarations corroborating these facts."

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<sup>1</sup> Hosseini and Hashemi were represented by different brokers, as they were divorced at the time.

The trial court held an evidentiary hearing, at which Hosseini and Heravi testified. Following the hearing, the court found that Hosseini initialed the arbitration clause prior to the entry of escrow. The court granted respondents' motion to compel arbitration and stayed the instant action pending arbitration.

Subsequently, an arbitrator determined that appellant, not respondents, breached the terms of the RPA. The arbitrator ordered the \$112,500 deposited by the purchaser, plus any accrued interest, be released to respondents. On May 27, 2016, the trial court confirmed the arbitration award. It also awarded respondents attorney fees and costs. Judgment against appellant and in favor of respondents was entered the same day. Appellant timely appealed.

## **DISCUSSION**

Appellant contends the trial court was precluded from holding an evidentiary hearing and considering the testimony of Hosseini and Heravi under the parol evidence rule. He argues that because the copy of the RPA used to open escrow did not contain Hosseini's initials, the court could not "contradict" that fact via testimony from Hosseini and Heravi. We disagree.

The parol evidence rule is codified in Code of Civil Procedure section 1856, subdivision (a).<sup>2</sup> That statute provides that the "[t]erms set forth in a writing intended by the parties as a final expression of their agreement with respect to the terms included therein may not be contradicted by evidence of a prior agreement or of a contemporaneous oral agreement." The parol

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<sup>2</sup> All further statutory citations are to the Code of Civil Procedure, unless otherwise indicated.

evidence rule “determines the enforceable and incontrovertible terms of an integrated written agreement.” (*Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 345.) Under the rule, extrinsic evidence may not add to, detract from, or vary the terms of that agreement. (*Ibid.*) However, here, the parol evidence rule is inapplicable, as the terms of the arbitration agreement were not at issue. The parties did not dispute the meaning of the terms in the arbitration clause, but rather, whether an arbitration agreement existed and was valid. “Where the validity of the agreement is the fact in dispute, [section 1856] does not exclude evidence relevant to that issue.” (§ 1856, subd. (f).) In short, the parol evidence rule did not bar the trial court from holding an evidentiary hearing and considering Hosseini’s and Heravi’s testimony.

Additionally, the trial court did not abuse its discretion in holding the evidentiary hearing. Under section 1281.2, before granting a motion to compel arbitration, “the court itself must determine whether the agreement exists and, if any defense to its enforcement is raised, whether it is enforceable.” (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413.) Although a trial court may resolve evidentiary conflicts relating to the agreement without hearing live testimony, “the better course would normally be for the trial court to hear oral testimony and allow the parties the opportunity for cross-examination.” (*Id.* at p. 414.) Indeed, some appellate courts have held that where there is a significant dispute between the parties about the existence and/or validity of an arbitration agreement, the trial court abuses its discretion if it does not hold an evidentiary ruling. (See *Ashburn v. AIG Financial Advisors, Inc.* (2015) 234 Cal.App.4th 79, 98 [trial court abused its discretion in

not holding an evidentiary ruling where there was a “significant dispute about what appellants signed, how they came to sign it, and what they signed said”]; *Hotels Nevada v. L.A. Pacific Center, Inc.* (2006) 144 Cal.App.4th 754, 765 [trial court erred in failing to hold an evidentiary hearing before ruling on the motion to compel arbitration where defendant alleged the existence of a valid arbitration agreement and plaintiff asserted the agreement was procured by fraud].)

Here, respondents alleged the existence of a valid arbitration agreement, appellant argued the agreement was not enforceable because it was not initialed by all parties, and respondents then produced a fully-executed and initialed document. There was thus a significant dispute between the parties about the existence and validity of the arbitration agreement. The trial court exercised its discretion to hold an evidentiary hearing to determine whether the version of the agreement, produced with the reply, was enforceable. The court was authorized to hold such a hearing, and its decision to do so was well within the bounds of reason. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478 [“The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason.”].) Thus, there was no error in holding the evidentiary hearing. As appellant does not otherwise challenge the trial court’s orders compelling arbitration and confirming the arbitration award, we affirm the ensuing judgment.

### **DISPOSITION**

The judgment is affirmed. Respondents are awarded their costs on appeal.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.