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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

BRIAN MAGINNIS, Plaintiff and Appellant, v. JAMES TONY MURRAY et al., Defendants and Appellants.	B269432 (Los Angeles County Super. Ct. No. VC063949)

APPEAL from a judgment of the Superior Court of Los Angeles County. Patrick T. Meyers, Judge. Affirmed.

Mark Beale Simpkins for Plaintiff and Appellant.

The Zacher Firm and Dieter Zacher for Defendants and Appellants.

James Tony Murray and American Truck and Tool Rentals, Inc. (American Rentals) (collectively "Murray") appeal from a judgment entered after a court trial on claims of breach of contract, specific performance, conversion, unjust enrichment, unfair competition, unlawful detainer, and claim and delivery brought against Murray by Brian Maginnis (Maginnis).

Murray also appeals from the attorney fee award, arguing it was not warranted.

Maginnis cross-appeals, arguing that the trial court abused its discretion in making an award of attorney fees substantially lower than Maginnis's attorney fee request.

We find no error and affirm the judgment.

BACKGROUND

The agreements

On May 1, 2004, Murray entered into two agreements with Maginnis: a stock purchase agreement ("buy-out" agreement) and a commercial lease agreement. The two agreements together constituted a "global transaction" for the purchase and sale of American Rentals. The buy-out agreement contains an attorney fee clause that extends to "any litigation or arbitration between the parties."

Murray initially purchased 20 percent of the stock of American Rentals. The remaining stock was acquired by Murray five years later.

The option to purchase lawsuit

A previous lawsuit in this matter involved an option to purchase real property included in the lease. Murray sued Maginnis for breach of contract and specific performance, seeking to enforce the alleged purchase option. Judgment was granted in favor of Maginnis, and Maginnis filed a postjudgment motion to recover attorney fees, which was granted. The trial court held that although the action arose out of the lease, and not the buy-

out agreement, the attorney fee provision in the buy-out agreement applied. The court explained:

"Throughout this litigation and in the related case . . . , [Murray] has taken the position that the two contracts must be read together because the transaction involved a 'global agreement' between the parties. He cannot now oppose the request for attorney's fees by arguing the buy-out agreement is separate, or that his claims were not premised on the notion of a global agreement inclusive of that agreement. The Court finds that [Maginnis] is entitled to reasonable attorney's fees."

Murray appealed from the judgment and order awarding attorney fees, and both were affirmed.

This lawsuit

Maginnis filed this lawsuit in April 2014. He alleged causes of action against Murray for breach of contract, specific performance, conversion, unjust enrichment, unfair competition, unlawful detainer and claim and delivery.

Maginnis alleged that Murray was in default on the commercial lease agreement. The monthly lease payment for the months of March and April 2014 had not been paid. Maginnis also alleged that Murray had failed to pay the real and personal property taxes owed on the lease premises when due, as required by the lease.

The complaint set forth paragraph 6 of the lease, which included the following sentence: "'All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Premises by Tenant thereafter, shall remain Landlord's property free and clear of any claim by Tennant (*sic*).'" Maginnis alleged that in violation of his obligations under this paragraph of the lease, Murray removed personal property, equipment, machinery, trade fixtures and temporary installations from the leased premises,

including but not limited to "'a large office trailer which was on the leased premises when [Murray] entered into the lease, and two paint booths which were affixed to the ground, and which were connected to permanent utilities on the leased premises.'" The alleged removal of this property, along with "'utilities, telephone, and computer lines,'" was allegedly carried out for the wrongful purpose of obstructing and interfering with Maginnis's right to operate a competing business on the premises after Murray vacated the premises.

Maginnis attached to his complaint a large "3-Day Notice to Pay Rent or Quit" directed to Murray, which, he claimed, constituted "a written demand to [Murray] that they cure the aforementioned breaches." Maginnis also attached a "3-Day Notice for Specific Performance," with a proof of service, to "restore all personal property, equipment, machinery, trade fixtures and temporary installations" to the premises.

Among other things, Maginnis sought compensatory damages; a decree of specific performance requiring Murray to fulfill his obligations under the lease; punitive and exemplary damages in connection with the tort claim of conversion; and an injunction enjoining Murray from removing fixtures and other property from the premises.

The ex parte temporary restraining order and order to show cause

A day after commencing this action, Maginnis applied ex parte for a temporary restraining order (TRO) against Murray and for an order to show cause (OSC) why a preliminary injunction should not be granted with respect to the removal of fixtures and other property from the leased premises. The superior court granted the TRO and set a hearing on the OSC for April 23, 2014.

On April 23, 2014, the court heard oral argument and granted in part and denied in part Maginnis's request for preliminary injunction. The order provided:

> "1. Defendants, and each of them, and their principals, employees, agents, assigns, and anyone acting for, or on their behalf, are hereby restrained and enjoined from removing any of the following from the property located at 9130 Rosecrans Ave., Bellflower, California and 10500 S. Atlantic Ave., South Gate, California:
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> "a. Concrete batch plants (any and all components remaining on the premises);
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> "b. Water Recycling Systems;
>
> "c. Clarifier Systems;
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> "d. All plumbing, electrical and utility services in operational condition;
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> "2. The following items are not subject to the preliminary injunction:
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> "a. Office Trailer
>
> "b. Air Compressor."

Trial and statement of decision

The matter came on for trial on May 11, 2015, and continued on May 20, 21 and 22. On May 22, 2015, the trial court took the matter under submission.

The court issued its proposed decision on August 12, 2015. The parties filed objections on September 1, 2015. The court filed its statement of decision in favor of Maginnis and against Murray on September 9, 2015, before becoming aware of the objections.

After considering the objections, the court issued an amended statement of decision on October 30, 2015.

The court found that Maginnis proved that Murray breached the commercial lease agreement. The court pointed to paragraph 6 of the lease agreement, which was set forth beneath a boldface heading reading "Alterations and Improvements." Paragraph 6 provides, in its entirety:

> ""Tenant, at Tenant's expense, shall have the right following Landlord's consent to remodel, redecorate, and make additions, improvements, and replacements of and to all or any part of the leased Premises from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials and permitted by the city. Tennant (*sic*) shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Premises by Tenant thereafter, shall remain Landlord's property free and clear of any claim by Tennant (*sic*)."'

The trial court found that "[t]he expansive, acquisitive and grasping purpose of the last sentence in paragraph 6 was and is evident and not reasonably susceptible to misinterpretation." The court found that Murray "chose to disregard the last sentence in paragraph 6 of their agreement with Maginnis and to engage in conduct contravening the parties' express agreement in such respect." The court further found that Murray chose to disregard the terms governing the security deposit provision of

the lease agreement. As a result, "Maginnis was constrained to incur costs of repairs to the subject properties without recourse to the security deposit held by him 'as security for the performance by Tenant of Tenant's covenants and obligations under [the] Lease.'"

The trial court noted that the measure of losses and damages was complicated because "[t]he estimated values of personalty proffered by each side and principally from Maginnis and Murray range drastically from the inflated estimates of Maginnis for older, used and/or worn out 'assets' as if they were 'brand-new' to Murray's consistent valuation of claimed 'assets' as essentially worthless." The court meticulously reviewed the evidence, noting its opinions as to the weight it attributed to such evidence, before determining that $37,312 was an appropriate award for Murray's breach.

As to Maginnis' claim for conversion, the trial court found that Maginnis proved that Murray wrongfully extended control over personal property that Maginnis had a right to own, possess or control. After considering the parties' valuations of the property in question, the court awarded $29,000 to Maginnis as a result of such conduct. The court specifically noted that its $29,000 award for the tort of conversion "partakes to the extent of such amount in the previous award of damages for breach of contract" and "is not a duplicate, cumulative and otherwise additional amount of damages."

The court rejected Maginnis's claims that he was entitled to equitable remedies under his second and fifth causes of action for specific performance and unfair competition pursuant to Business and Professions Code section 17200 et seq. The court also found that Maginnis failed to prove by clear and convincing evidence that Murray engaged in conduct constituting malice, oppression

or fraud within the meaning of Civil Code section 3294, thus Maginnis was not entitled to punitive damages.

The court found that Maginnis was the prevailing party under Code of Civil Procedure section 1032, subdivision (a)(4), thus was entitled to receive allowable costs pursuant to Code of Civil Procedure section 1033.5 and California Rules of Court, rule 3.1700.

Judgment was entered in favor of Maginnis for a total amount of $37,312 on the first cause of action for breach of contract. The conversion award of $29,000 was "subsumed" in the previous award. The court also awarded allowable costs of $1,542.22.

On December 28, 2015, Murray appealed from the judgment.

Attorney fee proceedings

On November 12, 2015, Maginnis filed a motion for contractual attorney fees. The motion was accompanied by a request for judicial notice and two declarations, and sought attorney fees in the amount of $58,950.

Murray opposed the motion on the ground that there was no applicable attorney fee provision between the parties. He argued that res judicata and collateral estoppel did not apply, and that Maginnis did not meet his burden of establishing the time spent.

The matter came on for hearing on January 4, 2016. On March 29, 2016, the trial court issued an order granting in part and denying in part Maginnis' motion. The court held that Maginnis' action was predominantly brought on a contract pursuant to Civil Code section 1717, subd. (a), but exercised its discretion to apportion the time expended on the contract action from the time expended on the noncontract (conversion) action. After reviewing the evidence extensively, and determining that

insufficient evidence supported certain attorney fees, the court made a final award of $25,875 in attorney fees to Maginnis.

On May 27, 2016, Murray appealed from the order awarding attorney fees.

On April 21, 2016, Maginnis cross-appealed from the order awarding attorney fees.

Consolidation

This court ordered Murray's appeal from the judgment and the parties' appeals from the attorney fee award to be consolidated.

DISCUSSION

I. Murray's direct appeal

A. Standards of review

Following a court trial, we review factual determinations for substantial evidence. "The trial court's factual findings . . . are subject to limited appellate review and will not be disturbed if supported by substantial evidence. [Citation.]" (*Williams v. Saunders* (1997) 55 Cal.App.4th 1158, 1162.)

The trial court's interpretation of a contract is "subject to de novo review where the interpretation does not turn on the credibility of extrinsic evidence. [Citations.]" (*People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2003) 107 Cal.App.4th 516, 520.)

Where the matter involves a mixed question of fact and law, the first step is to "establish what, if any, . . . facts are in dispute." (*Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, 1128). The next step is to identify the applicable rule of law using a de novo standard of review. "If application of the rule of law to the facts requires an inquiry that is essentially factual -- one that is founded on application of the factfinding tribunal's experience with the mainsprings of human conduct -- the concerns of judicial administration will favor the

trial court, and the substantial evidence standard will apply. [Citation.]" (*Ibid.*) "If, on the other hand, the question requires that the court consider legal concepts in the mix of fact and law and exercise judgment about the values that animate legal principles, the de novo standard will apply. [Citations.]" (*Ibid.*)

B. The personal property

The first issue Murray raises in his direct appeal involves the personal property that he removed from the leased premises. Murray's arguments involve two spray booths, portable concrete batch plants, a water recycling system and a phone system. Murray disputes the trial court's determination that these items were owned by Maginnis. He argues that Maginnis does not have any right, title or interest in any of the personal property located at the premises, and that paragraph 6 of the lease is not relevant. As support for his argument, Murray points to certain asset lists which were admitted as evidence at trial. However, the testimony at trial was that such lists were "not intended to show legal ownership of the assets listed thereon but rather intended to track revenue and rental income." This testimony supports the trial court's determination that the disputed items were not the property of Murray or American Rentals.

Murray does not dispute the trial court's determination that paragraph 6 of the lease can only be interpreted to mean that all the property in dispute remained, or became, Maginnis's property free and clear of any claim by Murray. Contractual provisions governing the ownership of property on a leasehold are enforceable. (*Goldie v. Bauchet Properties* (1975) 15 Cal.3d 307, 313 ["Although 'trade fixtures' are normally removable by the tenant upon termination of the lease, provisions to the effect that fixtures, including trade fixtures, will belong to the landlord on termination of the lease for breach by the tenant are valid and controlling"]; *Peiser v. Mettler* (1958) 50 Cal.2d 594, 609 ["The

parties' intention, as expressed by their written agreement, is controlling and, under their agreement 'reasonable minds cannot but agree' that the improvements here involved were covered by the provisions of the lease"].)

Instead of addressing paragraph 6 of the lease, Murray argues that case law governs the dispute. He cites *Kruse Metals Mfg. Co. v. Utility Trailer Mfg. Co.* (1962) 206 Cal.App.2d 176 (*Kruse*) for the proposition that a tenant's right to remove personalty relates to the degree the personal property has been integrated into the real property. However, the *Kruse* court emphasized that "generally the intent of the parties is a controlling criterion" in determining whether property becomes attached to the land or remains personalty. (*Id.* at p. 183.) Here, the parties' intent is set forth clearly in the lease agreement between the parties.

Murray further argues that equity favors permitting removal of fixtures based on the theory that the tenant did not intend the item to become a fixture. (*Kruse, supra,* 206 Cal.App.2d 176; *Roberts v. Mills* (1922) 56 Cal.App. 556; *O. L. Shafter Estate Co. v. Alvord* (1906) 2 Cal.App. 602.) None of the cases cited involve a contract action where, as here, the parties have agreed that the personalty and fixtures shall become the property of the lessor. Where a contract between the parties exists, the contract controls ownership of property remaining on leased premises, not general property law. (*Realty Dock & Improv. Corp. v. Anderson* (1917) 174 Cal. 672, 676 ["We are not here considering the rights arising by operation of law only between landlord and tenant as to the articles placed upon the lease premises by the latter. On the contrary, these rights are to be determined from the terms of the lease under which the parties undertook to fix them"].)

Murray claims that he testified that it was not his intention that the subject items be forfeited to Maginnis under the lease. However, Murray has failed to support this factual argument with citations to the record. Therefore we consider it to be waived. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 ["'[i]f a party fails to support an argument with the necessary citations to the record, . . . the argument [will be] deemed to have been waived.' [Citation.]"].)

As to the concrete batch plants in particular, Murray argues that Maginnis removed them from the property. Thus, Murray argues, Maginnis is not entitled to an award of damages based on the batch plants, since he has them. However, Murray testified that he disassembled and removed necessary components of the batch plants, rendering them unusable. This evidence supports the trial court's decision that Murray engaged in conversion with respect to parts of the concrete batch plants.

Paragraph 6 of the lease is not ambiguous. Pursuant to paragraph 6, the disputed items were Maginnis's property. The trial court did not err in determining that Murray breached the lease and engaged in conversion by removing the these items from the property.

C. Damages for personal property

Murray next argues that the damages in this matter were speculative because there was no reliable evidence as to the current value of the subject items of personal property. Murray cites *Piscitelli v. Friedenberg* (2001) 87 Cal.App.4th 953 for the proposition that damages which are speculative cannot serve as a legal basis for recovery.

The trial court acknowledged that the evidence regarding the value of the disputed items was dramatically inconsistent. The court noted that Maginnis presented drastically "inflated"

estimates, but Murray consistently valued the claimed assets as "essentially worthless."

The court then devoted approximately 10 pages of its written decision to a careful review of the damages evidence presented at trial. For example, the evidence as to the value of the two spray paint booths ranged from a total combined value of $40,000 to under $10,000. The court reasonably awarded damages to Maginnis in the amount of $10,000 for both paint booths. The court's consideration of the other items for which it awarded damages was equally logical and reasonable.

Murray offers no specific examples of alleged speculation. We find that the court's detailed amended decision leaves little to speculation in terms of its damage evaluations. A trial court's calculation of damages need not be performed with absolute certainty, but must be reasonable. (*GHK Associates v. Mayer Group, Inc.* (1990) 224 Cal.App.3d 856, 876 [the law only requires that a reasonable basis of computation of damages be used, and the damages may be an approximation].) Here, although the damages may have been based on approximations, the trial court's lengthy discussion of the evidence and the rationale for its valuations provides a reasonable basis for the damages awarded.

D. Duplicative damages/economic loss rule

Murray next makes two arguments concerning the trial court's decision to award Maginnis damages on both his breach of contract cause of action and his tort (conversion) cause of action.

First, Murray argues that Maginnis cannot recover duplicative damages under both contract and tort. Murray is correct. "'"If a given state of facts entitles one to recover damages upon the theory of tort, and the same state of facts entitles him to recover upon the theory of contract, it would seem plain that recovery could not be twice had simply because the facts would support recovery upon either theory."' [Citations.]" (*DuBarry*

Internat., Inc. v. Southwest Forest Industries, Inc. (1991) 231 Cal.App.3d 552, 564.)

However, both the trial court's amended decision and the judgment in this matter show that the trial court did not award duplicative damages under both contract and tort. First, the trial court considered and calculated damages for Maginnis's breach of contract cause of action. These damages totaled $37,312.[1]

The court then addressed the conversion cause of action, finding that Murray "engaged in conduct constituting conversion with respect to removal of the spray paint booths, parts of the concrete batch plants, the water recycling system and the telephone system." The court awarded Maginnis damages of $29,000, explaining that this damage award "partakes to the extent of such amount in the previous award of damages for breach of contract herein and is not a duplicate, cumulative and otherwise additional amount of damages thereto."

The trial court repeated this explanation in the judgment, ordering:

> "1. Plaintiff Brian Maginnis shall recover from defendant James Anthony Murray and defendant American Truck and Tool Rentals, Inc., jointly and severally, economic damages solely in the total amount of thirty-seven thousand three hundred twelve dollars and no cents ($37,312.00) under said plaintiff's First Cause of Action for breach of contract of his complaint;
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> "[¶] . . . [¶]

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[1] Specifically, the trial court awarded Maginnis damages of $9,000 for asphalt and paving work; $312 for fence repair; $10,000 for the two spray paint booths; $11,000 for the water recycling system; and $7,000 for the used telephone system.

> "3. Plaintiff Brian Maginnis shall recover from defendant James Anthony Murray and defendant American Truck and Tool Rentals, Inc., jointly and severally, economic damages solely in the total amount of twenty-nine thousand dollars and no cents ($29,000.00), which amount of damages is subsumed to the extent of said amount in the previous award of damages in paragraph 1 above and is not a duplicate, cumulative, and otherwise additional amount of damages thereto, under said plaintiff's Third Cause of Action for conversion of his complaint.
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> "[¶] . . . [¶]
>
> "5. The damages awarded to plaintiff Brian Maginnis in paragraph 1, in which the amount of damages awarded in paragraph 3 are wholly subsumed, shall bear interest at an annual rate of ten percent (10%) from the date of entry of this judgment until paid."

As explained above, the $29,000 is included within, and not duplicative of, the $37,312 breach of contract award.[2]

In a related claim, Murray argues that the economic loss rule precludes the imposition of damages for conversion in this case. We reject this argument because, as set forth above, no separate damages for conversion were awarded. Instead, such damages were wholly subsumed within the breach of contract

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[2] The trial court confirmed the noncumulative nature of the award for the tort of conversion in its memorandum and order granting in part and denying in part Maginnis's motion for attorney fees, explaining: "Maginnis recovered damages in the total amount of $37,312 on his First Cause of Action for breach of contract and a lower, non-cumulative amount of damages on his Third Cause of Action for conversion."

award. Further, the economic loss rule is not relevant to this matter.[3]

II. Appeal and cross-appeal on attorney fees

After hearing and considering Maginnis's motion for $58,950 in attorney fees, the trial court granted the motion in part, awarding Maginnis $25,875. Both Murray and Maginnis appealed from the trial court's order on attorney fees.

A. Standard of review

Except as provided by statute, "the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties." (Code Civ. Proc., § 1021.)

Civil Code section 1717 provides that reasonable attorney fees authorized by contract shall be awarded to the prevailing party. (Civ. Code, § 1717, subd. (a).) Reasonable attorney fees shall be "fixed by the court." (*Ibid.*) "'The trial court has broad discretion to determine the amount of a reasonable fee, and the award of such fees is governed by equitable principles. [Citation.]'" (*Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 92 (*Gorman*).) Thus, the standard of review for an attorney fee award after trial is normally abuse of discretion.

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[3] "[T]he economic loss rule provides: '"[Where a purchaser's expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only "economic" losses."'. . .' [Citation.]" (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 988.) "The economic loss rule requires a purchaser to recover in contract for purely economic loss due to disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual promise. [Citation.]" (*Ibid.*) This matter does not involve the purchase and sale of goods, but a breach of lease.

(*Carver v. Chevron U.S.A., Inc.* (2002) 97 Cal.App.4th 132, 142 (*Carver*).)

"[T]o determine whether an award of attorney fees is warranted under a contractual attorney fees provision, the reviewing court will examine the applicable statutes and provisions of the contract." (*Carver, supra*, 97 Cal.App.4th at p. 142.) Where no factual dispute is involved, "such review is conducted de novo. [Citation.]" (*Ibid.*)

B. Murray's appeal

Murray makes two arguments: (1) that there is no applicable attorney fee provision between the parties; and (2) that the trial court abused its discretion in doing Maginnis's work for him by going over the court file to correct Maginnis's errors in failing to identify details regarding billing and fees. We address each argument separately below.

1. Applicable attorney fee provision

Murray argues that there is no written agreement providing for attorney fees in this case. Murray explains that the buy-out agreement contained an attorney's fees provision, but this case deals only with the lease agreement. Murray argues that Maginnis is attempting to bootstrap the attorney fee provision from the buy-out agreement, although Maginnis was not trying to enforce the buy-out agreement in this lawsuit.

There is no dispute that the buy-out agreement contained an attorney fee provision and the lease agreement did not. However, the record shows that in prior litigation on the lease -- specifically, Murray's lawsuit to enforce the option to purchase contained in the lease -- Murray made this identical argument and lost.[4]

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[4] The trial court in this matter noted that in its view, "the respective parties showings herein have substantially

The Court of Appeal in the prior litigation found that throughout the related litigation Murray had "'taken the position that the two contracts must be read together because the transaction involved a "global agreement" between the parties.'" The court found that Murray was estopped from opposing the request for attorney's fees by arguing the buy-out agreement was separate, or that his claims were not premised on the notion of a global agreement inclusive of that agreement. In addition, the Court of Appeal held that Murray's admissions in his pleadings estopped Murray from "arguing in opposition to the attorney fees motion that the lease agreement should be read separate and apart from the stock purchase agreement."

In this matter, Murray made the same admissions that he made in the previous litigation. In his opposition to Maginnis's ex parte application for a TRO, Murray provided a declaration. In the declaration, Murray described the May 1, 2004 transaction as "a 'global' sale of the business set forth in two agreements, which, should be read as one complete agreement." In his opposition to the ex parte application, Murray cites Civil Code section 1642 for the proposition that "'Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.'" In that same pleading, Murray argues, "This was a 'global' sale of the business and the land. All the documents relating to this transaction should be read together and the true intention of the parties observed." Further, Murray prayed in his answer for "'defense costs, including reasonable attorney fees, pursuant to the agreement.'"

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recapitulated, recycled and/or rehashed essentially the same and/or similar issues of fact and law raised in Maginnis' prior motion for attorney fees and opposition thereto of Murray . . . in [the prior litigation]."

Based on these admissions, we find that Murray is estopped from arguing that the attorney fee provision in the buy-out agreement is inapplicable. (*Food Safety Net Services v. Eco Safe Systems USA, Inc.* (2012) 209 Cal.App.4th 1118, 1126-1127 [holding that a complaint's factual allegations "'are conclusive concessions of the truth of a matter,'" and that this principle "encompasses allegations that a contract incorporates specified terms or clauses"].)

Further, even if Murray had not admitted that the two contracts must be read together, the contractual language of the attorney fee provision in the buy-out agreement is sufficiently broad to encompass the present litigation. The clause states:

> "In the event of any litigation or arbitration between the parties hereto, the prevailing party shall be entitled to recover his costs and attorney's fees in addition to any other relief to which he may be entitled."

This language is sufficiently broad to encompass litigation on the concurrently-signed lease agreement. It is not restricted to litigation on any one specific contract, but instead covers "any litigation or arbitration."

Under the circumstances, we find that the trial court did not err in determining that the attorney fee provision in the buy-out agreement is applicable in this matter.

2. Abuse of discretion in awarding fees

Murray next argues that Maginnis did not meet his burden of producing complete and accurate time records documenting the fees requested. (See, e.g., *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1020 (*ComputerXpress*) [party seeking fees and costs bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates].) Murray argues that it was error for the trial court

to do Maginnis's counsel's work by reviewing the court file and history of litigation in this case. Murray contends that none of the information on which the trial court based its award was provided in the moving papers.

Murray provides no legal authority suggesting that it was an abuse of discretion for the trial court to review the record and litigation history before making its final award. The trial court has broad discretion to determine the amount of any such award. (*Gorman, supra*, 178 Cal.App.4th at p. 92.) Where insufficient supporting documentation is provided, the trial court "may require [the moving party] to produce records sufficient to provide '"a proper basis for determining how much time was spent on particular claims."' [Citation.]" (*ComputerXpress, supra*, 93 Cal.App.4th at p. 1020.) However, the court is not required to do so.

The trial court in this matter cited *Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 623-624, for a list of factors that the trial court should consider in fixing reasonable attorney fees: '"the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case."' The court agreed that Maginnis's claimed attorney hours were marginally supported and lacked corroboration. Based on the absence of sufficient corroborating documents, the court chose to disbelieve Maginnis's attorney's pronouncements regarding hours expended. The court also noted several entries that were unfounded and raised doubt in the court's mind. The court broke down the number of hours it found to be appropriate, then exercised its discretion to reduce and apportion those hours. We find no abuse of discretion in the trial court's actions.

C. Maginnis's cross-appeal

Maginnis cross-appealed from the attorney fee award, arguing that the trial court abused its discretion when it reduced the calculated amount of fees from $58,950 to $25,875. Maginnis argues that his attorney fee request included all discovery, a motion for summary judgment, trial preparation and four days of trial.

As set forth above, the trial court has broad discretion to determine the amount of a contractual attorney fee award. (*Gorman, supra*, 178 Cal.App.4th at p. 92.) After determining the lodestar amount, the court must then consider "'"'whether the total award so calculated under all of the circumstances of the case is more than a reasonable amount and, if so, shall reduce the . . . award so that it is a reasonable figure.'". . ."' (*Ibid.*)

The court did so in this case. The court stated that Maginnis had presented "little evidence to prove that he has incurred attorney fees for reasonably necessary legal services," and noted that it was Maginnis's burden to produce such evidence. The court referred to the declaration of Maginnis's attorney as "conclusionary and perfunctory" and noted that although the attorney billed at a "'discounted rate of $300/hour' . . . no originals or copies of . . . bill(s), billing statement(s) and/or invoice(s)" were provided to the court.

The court took issue with several specific portions of the request for attorney fees. As an example, the court noted that an estimated four hours to prepare and file a reply to the opposition of Murray on the motion for attorney fees and to attend the hearing was exaggerated. The court noted that no such reply was filed and the hearing lasted "well under 15 minutes."

The court concluded, "[h]aving evaluated Maginnis' showing on the instant motion for attorney fees, the court finds that he did not carry his burden of proof as to a minimum of

approximately 24 hours claimed to have been expended for legal services on Maginnis' behalf." The court also exercised its discretion to disallow certain hours that appeared duplicative or excessive.

Finally, the court exercised its discretion to apportion the time expended on the contract action and the time expended on the noncontract causes of action. Maginnis prevailed on his causes of action for breach of contract and for conversion. (Civil Code, § 1717, subd. (a).) The court thus awarded fees for one-half the reduced total time for a final award of $25,875.

We reject Maginnis's argument, asserted for the first time in his reply brief on attorney fees, that the trial court was not permitted to apportion the fees between contract and noncontract causes of action where, as here, the governing attorney fee provision covered "any litigation" between the parties, not just litigation on the subject contract. First, we need not consider points raised for the first time in a reply brief. "'Points raised for the first time in a reply brief will ordinarily not be considered,'" for obvious reasons of fairness. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764.)

Further, the apportionment was within the trial court's discretion. "Once a trial court determines entitlement to an award of attorney fees, apportionment of that award rests within the court's sound discretion. [Citations.]" (*Carver v. Chevron U.S.A., Inc.* (2004) 119 Cal.App.4th 498, 505.) Here, the court determined that the action was brought "on a contract" within the meaning of Civil Code section 1717, subdivision (a). Maginnis does not challenge this finding. The court further found that: "Maginnis recovered damages in the total amount of $37,312 on his First Cause of Action for breach of contract and a lower, non-cumulative amount of damages on his Third Cause of Action for conversion. He failed to prove his causes of action for

specific performance and unfair business practices . . . and otherwise just abandoned his various remaining causes of action/remedies. The sweeping success repeatedly asserted by Maginnis as prevailing party . . . is unsupported by the record herein."

Thus, the trial court emphasized that Maginnis did not achieve complete victory and did not attain any additional monetary award on the tort claim. While it was not necessary for the trial court to apportion fees, (see *Maynard v. BTI Group, Inc.* (2013) 216 Cal.App.4th 984, 993), it was within the court's discretion to do so. Under the circumstances, the trial court did not exceed the bounds of its discretion in apportioning the award.

"'We will reverse a fee award only if there has been a manifest abuse of discretion.'" (*Gorman, supra*, 178 Cal.App.4th at p. 92.) Maginnis has failed to point to a manifest abuse of discretion. Instead, Maginnis reargues the various factors that the trial court has already considered in calculating the award. Here, the trial court has set forth a reasonable basis for all of its deductions and had the authority to make the final apportionment. No abuse of discretion occurred.

DISPOSITION

The judgment is affirmed. Maginnis is awarded his costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT