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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

BOSS LITHO, INC., et al.,

Plaintiffs and Appellants,

v.

COSHIMA USA IMPORTS et
al.,

Defendants and
Respondents.

B269509

(Los Angeles County
Super. Ct. No. BC557641)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joseph R. Kalin, Judge. Reversed and remanded.

JDavid Law Practice and Jill S. David for Plaintiffs and Appellants.

Ahdoot & Wolfson and Theodore W. Maya for Defendants and Respondents.

* * * * *

Owned by plaintiff Jean Paul Nataf, plaintiff Boss Litho, Inc. (together Boss Litho), is in the design and printing business. Owned by defendant Annie Lin, defendant Coshima USA Imports doing business as Creative Ideas (together Coshima) sells gift wrapping supplies. In 2013, Boss Litho began preparing a catalog for Coshima as Boss Litho's predecessor had done in the past. The relationship turned acrimonious and the project fell apart, leading Boss Litho to sue Coshima to obtain payment for work done and Coshima to cross-complain for breach of contract and intentional infliction of emotion distress. After a bench trial, the trial court issued a statement of decision and judgment awarding damages to Coshima on its cross-complaint, subject to an "offset" for work performed by Boss Litho.

Unfortunately, we cannot resolve the merits of Boss Litho's challenges to the judgment because the statement of decision was deficient. Instead, we must reverse and remand the case for the court to issue an amended statement of decision that addresses material issues Boss Litho properly requested the court resolve.

BACKGROUND

In the past, Boss Litho's predecessor had produced three catalogs for Coshima. In June 2013, Lin approached Boss Litho to produce a new catalog. She and several Boss Litho employees who had worked with her in the past worked on the catalog for over a month into mid-July 2013. During that time, a nine-day photo shoot was conducted, and Lin directed edits to the catalog layout.

While this work was being done, the parties did not have an agreement. In Lin's experience with Boss Litho's predecessor, the parties would sign a proposal with pricing just before the catalog went to print. On July 12, 2013, salesperson Tim Chen

approached Lin about pricing. They met with Nataf, who gave a price of \$22,500. Lin asked Chen if he could talk to Nataf about reducing the price. She told Nataf she wanted to think about the price and left the office. Within a few hours Chen called her and told her the price was actually \$26,000. He later gave her another number of \$25,500.

The following Monday, July 15, 2013, Nataf angrily approached Lin and told her, “Hey, if you don’t like my price, take your business elsewhere.” Lin was reduced to tears and responded, “You’re telling me to take my business elsewhere, when the project was due in three days?” (She had previously told them she needed the catalog for an important Las Vegas trade show in early August 2013.) Nataf apologized, and Lin left the building.

On the morning of July 16, 2013, Chen informed Lin that Nataf wanted to apologize in person and agreed to the amount of \$23,000. Chen said if the price needed to be \$22,500, he would give her \$500 back once the project was over. She assumed the payment would be COD (collect on delivery of the catalog), since that was how she paid Boss Litho’s predecessor in the past. She went into Boss Litho’s offices that day to assist in editing the catalog. Nataf approached her in a “bubbly” and “happy” mood, telling her, “You know what? I’m going to be very nice to you today. I’m going to add all these special treatment [*sic*] to the cover of [the] catalog.” Lin did not really care about it since her goal was to get the catalog done in time.

That day, Chen presented Lin with a sales agreement for \$23,000, which Coshima claimed at trial constituted the parties’ binding contract. It contained the specifications for printing the catalog with “spot gloss UV” on the cover and “litho emboss” on

the logo, and the total price would be \$23,000 with the terms of \$5,000 down, \$9,000 “after approval proof and blue line,” and \$9,000 “COD.” In a meeting with Chen, Lin directed certain changes to the agreement, which Chen handwrote on the invoice. The changes specified there would be “spot gloss UV on logo, pictures & images,” there would be “no overage charge,” the \$5,000 down would be “with photo on disk,” and the remaining \$18,000 would be “COD.” Lin signed the agreement next to a line labeled “Accepted By.” There was fine print just under the signature line that said, among other points, “An acceptance of this proposal within 30 days from the date shown above shall constitute a contract between us.” Below that, Nataf’s name was typewritten under the word “Sincerely.”

Lin did not understand that Chen needed approval from Nataf to write in the changes. She believed when she signed this document, Boss Litho would print the catalog. Chen testified at trial he told her he would have to get approval from Nataf. He also testified he had no authority to change a sales quote.

The next morning, Lin met with Chen and Nataf. Nataf seemed “very upset.” According to Lin, he banged on the table and told her, “I have had enough. I’m losing money. If you don’t like my price, take your business elsewhere.” Lin was shocked; she had no idea what he was talking about because she had signed the agreement the previous day. Chen told her Nataf wanted her to pay for another set of proofs. She told Nataf his staff made many errors in the last set of proofs and it was not ready for print, but he did not care. He pounded on the table, stood up, and told her, “That’s enough. I don’t want to hear any of it. If you don’t get out of my office in two minutes, I’m going to have to shoot you.” At the same time, he made a gesture with his

hand to imitate a gun. Scared and embarrassed, Lin left the office and tried to retrieve her samples before she left the building. Nataf blocked her way into the pre-press office and told her, “You are not going in there until you pay me \$12,000 of cash.” Nataf kept “yelling and screaming” and kicked Lin out of the building. She later returned to Boss Litho’s offices with a police officer to retrieve her belongings.

Nataf confirmed at trial that at this meeting he presented an invoice of \$24,500, which included an additional \$1,500 for another set of proofs. Lin told him in response, “I’m not going to pay you nothing. I’m going to take my stuff and leave your office.” He said, “Great. Have a good day. Thank you very much,” and “Get out of my office before I shout at you.” Boss Litho argued at trial Lin misunderstood Nataf when he said the word “shout” because of his heavy French accent. On cross-examination, Lin admitted she told police and she wrote in a letter to Nataf that she believed he actually said “shot,” but she was certain he said “shoot.”

According to Chen’s trial testimony, at this meeting Lin said she was not going to pay the invoice. He denied Nataf threatened to shoot her.

After the incident, Chen offered to sell the photos to Lin for \$5,000 but she refused to purchase them. Lin never paid anything for Boss Litho’s work on the catalog. She eventually used another photographer and graphic designer, and she and her husband and other Coshima employees re-created the catalog in time for the trade show. Coshima claimed at trial it spent \$59,739.73 to produce the catalog.

Boss Litho filed a complaint against Coshima essentially to recover payment for the work done on the 2013 catalog. In the

operative second amended complaint, Boss Litho sought \$19,620 based on claims of quantum meruit, work and labor done, open book account, promissory fraud, and unjust enrichment. Coshima counter-claimed for breach of contract and intentional infliction of emotional distress.

The case went to a bench trial. After hearing the evidence, the court entered a minute order containing its resolution of the issues. We reproduce the court's reasoning here in full (all errors in original):

"Defendant Coshima Imports is a company that sells ribbons and gift wrapping supplies. Defendant Annie Lin is the President and CEO. Defendant's predecessor Modern Graphics had produced three catalogs for Lin. The 2013 catalog was the first catalog Boss Litho was to produce for Coshima. Boss presented Lin with a sales agreement on 7-16-13 for \$23,000.00 which was not signed by the parties.

"Boss employees performed work at the request of defendants, including hiring a photographer and worked with materials from defendant's photoshoot. Subsequently, the parties had disagreements regarding the amount and quality of the work performed by plaintiff. The parties had disputes as to revisions requested by defendant and payment for the work performed by plaintiffs.

"Defendant required it's catalog to be completed for an upcoming trade show in Las Vegas, Nevada. As the deadline for completion of the catalog approached, the parties relationship disintegrated. Defendant requested changes in the catalog with which plaintiff disagreed. Boss then offered Lin a sales agreement for \$24,500. Defendant Lin refused to sign.

Defendant refused to pay the amount requested or any amount in that the catalog was not completed.

“At plaintiff’s offices, Lin demanded all of the material of the catalog in the possession of plaintiff[.] The parties could not agree on a price for the partially completed catalog.

“As a result of the disagreement of the parties, defendant did receive parts of the not completed catalog and was required to seek a new company to complete the catalog in time for the Las Vegas trade show.

“The parties and witnesses for both sides disagree as to the facts of the dispute which took place between defendant Lin and cross defendant Jean Paul Natof. It is undisputed that Natof ordered Lin out of his office and demanded payment for the work performed by plaintiff. Plaintiff stated defendant refused to pay any money to plaintiff and never intended to pay for the job. Defendant stated she was ordered off the premises and that Natof threatened to shoot her and extended his hand in a manner as to appear to be a gun[.] Natof stated he did not threaten to shoot her but to shout at her. The court heard the testimony of the witnesses and the video recorded deposition of Natof and concludes that Natof use the word ‘shoot’.

“Plaintiff alleges cause of action for: Quantum Meruit, Services Rendered, Open Book Account, Promissory Fraud and Unjust Enrichment. The court finds for defendants as to plaintiff’s causes of action subject to a setoff against cross complainant’s causes of action for the work performed by plaintiff.

“The court finds that defendant and cross complainant was required to obtain a new vendor to complete the catalog in time for the Las Vegas Trade Show which because of the imminent

date of the show, required extra staff, overtime, and extra work. However, the cost of completion of the catalog alleged by defendant in the amount of \$59,739.73 is exaggerated.

“The \$59,739.73 is reduced to \$40,250.00 with an offset for work performed by plaintiff in the sum of \$12,500.00 or \$27,750.00 total.

“The court is not awarding money for loss of sales as the testimony does not justify such an award. The court finds cross complainant is awarded as tort damages for intentional infliction of emotional distress, the sum of \$7,500.00[.] Cross complainant is entitled to costs upon filing a memorandum of costs.”

Boss Litho filed a request for a statement of decision, asking the court to address 15 specific questions, including whether and how a contract was formed, what the terms were, how it was breached, what authority supported the damage award, and what evidence supported intentional infliction of emotional distress. Coshima did not object to the court entering its minute order as the statement of decision, but if the court decided to issue a statement of decision, Coshima proposed the court address issues including the formation of the contract, breach of the contract, damages, and the evidence supporting Coshima’s emotional distress claim. The court did not elaborate on its rulings and adopted its minute order as its statement of decision and entered judgment.

Boss Litho objected to the statement of decision along the same lines as the items in its request for statement of decision. It also moved to vacate the judgment on the ground the trial court did not subtract from the damage award the amount Coshima would have paid Boss Litho had the contract been fully

performed. The court denied the motion. Boss Litho timely appealed the judgment.

DISCUSSION

Boss Litho challenges the judgment in various respects on appeal. In seeking reversal, it contends we may not infer factual findings to support the judgment because it properly requested the trial court resolve them in its statement of decision and the court refused to do so. We agree, but Boss Litho's remedy is not reversal on the merits. Instead, because we cannot properly review Boss Litho's contentions without a comprehensive statement of decision, we must remand for the trial court to comply with statutory requirements and issue a complete statement of decision.

Code of Civil Procedure section 632¹ provides in pertinent part, "upon the trial of a question of fact by the court . . . [t]he court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision," and "[t]he request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision." (See Cal. Rules of Court, rule 3.1590.) "When a statement of decision does not resolve a controverted issue, or if the statement is ambiguous and the record shows that the omission or ambiguity was brought to the attention of the trial court either prior to entry of judgment or in conjunction with a motion under Section

¹ All undesignated statutory citations are to the Code of Civil Procedure unless otherwise noted.

657 or 663, it shall not be inferred on appeal or upon a motion under Section 657 or 663 that the trial court decided in favor of the prevailing party as to those facts or on that issue.” (§ 634.)

These statutes create a two-step process: “first, a party must request a statement of decision as to specific issues to obtain an explanation of the trial court’s tentative decision (§ 632); second, if the court issues such a statement, a party claiming deficiencies therein must bring such defects to the trial court’s attention to avoid implied findings on appeal favorable to the judgment (§ 634).” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1134.)

To comply with the statement of decision requirement, “a trial court is required only to state ultimate rather than evidentiary facts; only when it fails to make findings on a material issue which would fairly disclose the trial court’s determination would reversible error result. [Citations.] Even then, if the judgment is otherwise supported, the omission to make such findings is harmless error unless the evidence is sufficient to sustain a finding in the complaining party’s favor which would have the effect of countervailing or destroying other findings.” (*Hellman v. La Cumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224, 1230 (*Hellman*).) “The trial court need not discuss each question listed in a party’s request; all that is required is an explanation of the factual and legal basis for the court’s decision regarding the principal controverted issues at trial as are listed in the request.” (*Ibid.*)

Boss Litho followed the two-step statutory procedure here by requesting the court address a host of material issues for both of Coshima’s claims, and then by raising specific objections when the court failed to do so. While we might quibble as to whether

all of those requested findings were necessary to set forth the “ultimate rather than evidentiary facts” (*Hellman, supra*, 6 Cal.App.4th at p. 1230), there is little question that many of them were necessary to an understanding of the court’s decision.

For example, to find for Coshima on the breach of contract claim, the court was required to find (1) the existence of a contract; (2) performance by the nonbreaching party or excuse for nonperformance; (3) breach; and (4) damages. (*First Commercial Mortgage Co. v. Reece* (2001) 89 Cal.App.4th 731, 745.) Boss Litho requested the court explain whether and how a contract was formed, what the terms were, how it was breached, and what authority supported the damage award. The court failed to address any of these points, all of which were material, controverted at trial, and could have supported judgment for either party.

As should be clear from our recitation of the facts, the issues of formation and breach were far from simple, and there was evidence to support both parties’ positions. While Coshima contended at trial that the \$23,000 agreement constituted the parties’ contract, Lin made arguably material changes to that agreement before signing and Nataf rejected those changes the next day. Coshima suggested in the trial court that Chen had at least apparent authority to approve Lin’s changes without Nataf’s express approval, but Chen denied he had such authority and the court did not expressly address or resolve that issue. Indeed, the court expressly found the parties did not sign either the \$23,000 agreement or the \$24,500 invoice, which could be interpreted to support Boss Litho’s position that no contract was formed.

Likewise, on the issue of damages, other than deeming Coshima's original request for \$59,739.73 as "exaggerated," the court did not explain how awarding \$40,250 with a \$12,500 "offset" for "work performed" by Boss Litho put Coshima in "as good a position as [it] would have been had performance been rendered as promised." (*Brandon & Tibbs v. George Kevorkian Accountancy Corp.* (1990) 226 Cal.App.3d 442, 455.) If the \$23,000 agreement was a binding contract, Coshima would have been obligated to pay \$23,000 if Boss Litho had fully performed. To be placed in as good a position as under the contract, Coshima was only entitled to damages *beyond* \$23,000 to complete the catalog in time. Offsetting Coshima's damages by only \$12,500 gave Coshima a windfall in the form of a completed catalog for a little over half of what it would have had to pay if Boss Litho had fully performed. We cannot tell from the statement of decision whether the trial court considered this when awarding damages.

The court's findings on Coshima's claim for intentional infliction of emotional distress were similarly deficient. For that claim, the court was required to find " '(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff suffered severe or extreme emotional distress; and (3) the plaintiff's injuries were actually and proximately caused by the defendant's outrageous conduct.' " (*Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 533.) The court expressly resolved a key factual dispute between the parties when it concluded Nataf said the word "shoot" when he threatened Lin, but the court never went on to explain whether and how that qualified as outrageous conduct sufficient to support emotional distress damages or what facts supported a

conclusion Lin suffered “severe” emotional distress as a result. We need not set forth the evidence the court might have cited to find “severe” emotional distress, but we have reviewed the record and we note that issue was close.

Having complied the statutory prerequisites, Boss Litho was entitled to a statement of decision that explained the court’s resolution of these material issues. Yet, Boss Litho seems to want to capitalize on that error by seeking reversal on the merits. The statutes governing the statement of decision are intended to enable the parties to efficiently seek review of a judgment and facilitate appellate review of the trial court’s decision. (*In re Marriage of S.* (1985) 171 Cal.App.3d 738, 747; *Miramar Hotel Corp. v. Frank B. Hall & Co.* (1985) 163 Cal.App.3d 1126, 1129.) Because the evidence could support judgment for either party, we believe the proper remedy is to remand with directions for the trial court to issue a complete statement of decision. (*Espinoza v. Calva* (2008) 169 Cal.App.4th 1393, 1398 [“Normally, the court’s failure to provide a properly requested statement of decision results in a remand ordering the court to issue such a statement.”].)

On remand, the court is directed to issue an amended statement of decision expressly addressing the following issues: (1) How and when was a contract formed? (2) What were the material terms of the contract? (3) How and when was the contract breached? (4) What damages are warranted for breach of the contract? (5) What are the components of the damages award? (6) What constituted “outrageous conduct” for Coshima’s intentional infliction of emotional distress claim? (7) What evidence showed Lin suffered “severe” emotional distress? This list is not exhaustive. The trial court may allow the parties to

request additional findings on any other issue the trial court deems material to its judgment.

DISPOSITION

The judgment is reversed and remanded with directions as set forth herein. Appellants shall recover costs on appeal.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.