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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

LINCOLN PACIFIC BUILDERS, INC., Plaintiff, Cross-defendant and Respondent, v. ELECNOR BELCO ELECTRIC, INC., Defendant, Cross-complainant and Appellant.	B276956 (Los Angeles County Super. Ct. No. KC067245)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert A. Dukes, Judge. Affirmed.

Nano Law Group, Bennett W. Root, Jr., and Edward D. Baker for Defendant, Cross-complainant and Appellant.

Law Office of Mark Ravis & Associates and Mark Ravis for Plaintiff, Cross-defendant and Respondent.

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Plaintiff Lincoln Pacific Builders, Inc. (Lincoln) sued defendant Elecnor Belco Electric, Inc. (Belco) for breach of written contracts. Belco cross-complained against Lincoln for breach of oral contract, fraud, breach of fiduciary duty, common counts and breach of written contract. The trial court entered summary judgment for plaintiff and cross-defendant Lincoln on the cross-complaint. Defendant and cross-complainant Belco appeals. We affirm.

Lincoln was a subcontractor in the electrical transportation industry, providing services to general contractors that install street lights and traffic signals at intersections. Belco was in the general commercial electrical business and wanted to expand into the transportation electrical business. Lincoln wanted to get out of the business as soon as possible. The parties entered into four contracts for Belco to acquire Lincoln's transportation electrical work contracts (jobs), equipment and vehicles. After Belco acquired Lincoln's jobs, equipment and vehicles, it stopped paying Lincoln, prompting Lincoln to sue Belco, which denied liability to Lincoln and filed the cross-complaint which is the subject of this appeal.

1. The Four Contracts

The first contract was made on June 14, 2013. By this contract, Lincoln assigned to Belco all of Lincoln's rights, title and interests in seven jobs referenced in Attachment A, which listed the jobs by name/construction site address and contract value. The names/construction site addresses of the jobs were 12013 Loma Linda, Alton Parkway, 12017 Nogales, 130001 SF Springs, 13002 Titan Brea, 13003 134/101, and 13004 Highland. Among other terms, the contract provides: "This [contract] will be supplemented by the parties with a definitive agreement

covering the agreements made here and, without limitation, the parties[’] agreements that this is the sole and entire agreement among them, replacing any and all prior agreements, [and] that this may not be amended except by a writing executed by the parties."

The second and third contracts were made on September 10, 2013. The second contract terminated a lease agreement between the parties pursuant to which Belco had been leasing equipment from Lincoln and provided for the sale by Lincoln to Belco of 24 vehicles referenced in Attachment A, which listed the vehicles by model, model year, license number, VIN number, and other information. The third contract also terminated the lease agreement and provided for the sale by Lincoln to Belco of equipment and other materials referenced in Attachment A, which listed the equipment or other materials by description, model year, license number where applicable, VIN number where applicable, and other information.

Both the second and third contracts have identical integration clauses, providing "[This Agreement] is the complete and entire agreement of the parties respecting the matters covered herein and replaces and supersedes all prior agreements respecting same. This Agreement may not be amended except by a subsequent agreement in writing signed by all of the parties hereto."

The fourth contract was made on September 12, 2013. The contract was titled "Memorandum of Understanding re WIP Work Assignment Agreement and Transition Expenses." In the recitals, the parties agreed the contract was made to assign to Belco "certain work in progress previously contracted to Lincoln." The contract assigned to Belco all of Lincoln's rights, title and

interests in the job known as I-10/Cherry. This contract also provided the terms by which Belco would pay Lincoln for transition expenses Lincoln incurred related to the work in progress that Belco took over from Lincoln (the "takeover jobs"). The transition expenses claimed by Lincoln as of August 31, 2013, are referenced in Attachment A, which describes each item of expense by job name, date, account number, and name of payee. The takeover jobs for which Lincoln claimed the right to receive transition expenses from Belco as of August 31, 2013, were Cypress, Cherry, Clinton-Keith, Nisqualli, and Magnolia. This contract has the following integration clause: "[This Agreement] is the complete and entire agreement of the parties respecting the matters covered herein and replaces and supersedes all prior agreements respecting same. This Agreement may not be amended except by a subsequent agreement in writing signed by all of the parties hereto."

2. The Complaint and Cross-complaint

Lincoln sued Belco on October 27, 2014, for breach of the second, third and fourth contracts, alleging Belco made only partial payments to Lincoln and owed Lincoln a total of $513,668 for unpaid amounts due on the purchase of the vehicles, equipment and materials, and transition expenses. Belco denied it owed Lincoln anything and asserted various causes of action in a cross-complaint based on allegations that, in addition to the written contracts, the parties made an oral agreement to form a joint enterprise so that Belco could acquire the jobs on which Lincoln had not started to work and take over additional jobs on which Lincoln had performed but not completed the work. However, these takeover jobs were not profitable for Belco, as Lincoln "advance billed" and was paid for work it did not

complete. Belco maintained it was entitled to offsets based on Lincoln's advance billing of the takeover jobs.

The first cause of action of the cross-complaint alleged Lincoln breached the oral joint venture agreement by receiving payments from general contractors that were owed to Belco. The second cause of action alleged Lincoln fraudulently induced Belco to enter into the oral joint venture agreement by representing that the takeover jobs "had adequate value such that Belco would not suffer financially by agreeing to perform them." The third cause of action alleged Lincoln breached a fiduciary duty it owed to Belco by failing to disclose that Lincoln had received payments from general contractors for work Lincoln did not perform. The fourth cause of action was for common counts to recover sums paid to Lincoln that were intended to benefit Belco, which Lincoln held in constructive trust for Belco. The fifth cause of action alleged breach of the June 14, 2013 contract based on allegations that some of the jobs that were the subject of that contract were never transferred to Belco.

3. The Summary Judgment Motion

Lincoln moved for summary adjudication or summary judgment on the cross-complaint. Lincoln offered proof there was no oral joint venture agreement between the parties; any such agreement would be barred by the parol evidence rule; Lincoln owed no fiduciary duty to Belco; an action for common counts does not lie where the parties have entered written contracts; and Belco could not prove that any of the jobs was not transferred to Belco.

In opposition, Belco argued the parol evidence rule did not apply to the oral agreement concerning the takeover jobs because the jobs were not mentioned in the September 12, 2013 "work in

progress" contract. Moreover, Belco argued that there was evidence of a joint venture, citing to unspecified portions of the declaration of its Vice President, John Wong.

The court granted summary judgment on the cross-complaint. The court found the integration clauses in the contracts barred any claim resting on breach of an oral contract respecting the same matters covered in the written contracts; Belco offered no proof of any joint venture; with no proof of a joint venture, there was no proof that Lincoln owed Belco any fiduciary duty; there was no material dispute that Belco worked on and received the full benefit of all seven jobs assigned in the June 14, 2013 contract; and a quasi-contract claim for unjust enrichment does not lie where express binding agreements define the parties' rights.

Belco timely appealed.

DISCUSSION

1. Standard of Review

Our Supreme Court has made clear that the purpose of the 1992 and 1993 amendments to the summary judgment statute was " 'to liberalize the granting of [summary judgment] motions.' " (*Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 542 ; see also *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854.) It is no longer called a "disfavored" remedy. (*Perry*, at pp. 542-543.) "Summary judgment is now seen as a 'particularly suitable means to test the sufficiency' of the plaintiff's or defendant's case." (*Id.* at p. 542.) On appeal, "we take the facts from the record that was before the trial court. . . . ' "We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained." ' " (*Yanowitz v.*

L'Oreal USA, Inc. (2005) 36 Cal.4th 1028, 1037, citations omitted.)

2. There Are No Material Disputed Facts, and Summary Judgment Was Properly Entered as a Matter of Law.

a. The first cause of action for breach of an alleged oral joint venture agreement.

In its motion for summary judgment, Lincoln offered evidence of the four written contracts and the declaration of Lincoln Chan, Lincoln's founder and CEO, that he never entered into an oral agreement with Belco. Belco contends the declaration of Mr. Wong contains evidence of an oral joint venture agreement, and the parol evidence rule does not prohibit proof of an alleged oral joint venture agreement for Belco to assume the takeover jobs. Belco argues that "none of the Takeover Jobs is referenced or covered by the September written contracts," and the fourth concerns only transition expenses "and did not relate to the jobs themselves." This is not correct.

The first, second, third and fourth causes of action of the cross-complaint seek recovery of approximately $500,000 paid by general contractors to Lincoln for work Lincoln was supposed to perform before Belco assumed the takeover jobs, which Belco alleged Lincoln did not perform. There is no dispute between the parties that their fourth contract defined the transition expenses Belco agreed to pay Lincoln and itemized each expense as of August 31, 2013 by job, including the Cypress, Cherry, Clinton-Keith, Nisqualli and Magnolia jobs. There is also no dispute that the fourth contract, like the other three contracts, has an integration clause providing it is the complete and entire agreement covering the matters therein and that it may not be amended except by a subsequent agreement in writing.

The fourth contract defines the term "Transition Expenses" in the recitals, as follows: "To facilitate a smooth take over, Lincoln has paid certain necessary business expenses related to the work in progress taken over by Belco, or had expenses charged to Lincoln's business accounts, for which Belco will be receiving reimbursement or payment (the 'Transition Expenses'). Lincoln desires to be reimbursed for such charges or have them paid directly by Belco. Belco is willing to pay Lincoln and/or Lincoln's creditors for necessary and appropriate Transition Expenses to the extent provided herein." The agreement provides "Belco will pay Lincoln approved Transition Expenses as soon as reasonably practical after net payment related to the particular Transition Expense is received by Belco from jobs referenced on Attachment A." This sentence plainly states Belco agreed to pay Lincoln the transition expenses as soon as reasonably practical after Belco received payment from the general contractors for the jobs referenced on Attachment A.

Thus, it is manifestly not true that "none of the Takeover Jobs is referenced or covered by the September written contracts." They are all referenced in the fourth contract that was made on September 12, 2013. And it is equally untrue that the fourth contract "did not relate to the jobs themselves." Each itemized transition expense was listed in Attachment A by job site, and Belco agreed to pay Lincoln the transition expenses when Belco received payment for the jobs.

We agree with the trial court that the parol evidence rule prohibits Belco from alleging an oral agreement that alters, varies and adds to the fourth written contract that provides precisely what expenses Belco would pay Lincoln for work performed before Belco assumed the takeover jobs, upon Belco's

receipt of payment from the general contractors. (*Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* (2013) 55 Cal.4th 1169, 1174 (*Riverisland*) [the parol evidence rule "provides that when parties enter an integrated written agreement, extrinsic evidence may not be relied upon to alter or add to the terms of the writing"].)

Belco cites the Wong Declaration as offering a disputed fact that there was no written contract by which Lincoln assigned to Belco all of Lincoln's rights, title and interests in four jobs that Belco took over from Lincoln, including Nisqualli, Clinton-Keith, Magnolia and Cyprus Village. This fact is immaterial because the fourth contract between the parties contains the material terms by which Belco agreed to pay Lincoln for transition expenses Lincoln incurred related to the work in progress that Belco took over from Lincoln, including these four jobs.

On appeal, Belco argues at some length that the trial court erred by not applying the fraud exception to the parol evidence rule. (See *Riverisland*, *supra*, 55 Cal.4th at pp. 1174-1175 [evidence to prove a contract is void or voidable for mistake, fraud, duress, undue influence, illegality, alteration, lack of consideration, or another invalidating cause does not contradict the terms of an effective integration, because it shows that the purported instrument has no legal effect].) Belco argues a jury could find a genuine dispute as to fraud, referring to Lincoln having provided false financial information and its failure to disclose the need for overtime and "advanced billings" for work on the takeover jobs. But Belco fails to articulate a legal argument demonstrating how this evidence shows that any of the contracts was void or voidable for fraud. In the trial court, the sum total of Belco's argument regarding the fraud exception to the parol

evidence rule was the observation, "it should be noted that there are exceptions to the Parol Evidence Rule, such as fraud," without any citation of disputed facts demonstrating fraud. Understandably, the trial court did not decide the issue of the fraud exception to the parol evidence rule, and we decline to decide the question in the first instance in the absence of any cogent argument from Belco.

b. The second cause of action for fraudulent inducement to enter an oral joint venture agreement and third cause of action for breach of fiduciary duty.

Belco argues the declaration of John Wong contains evidence of a joint venture between the parties. Belco recites no other evidence in support of is contention that there is a material dispute whether the parties formed a joint venture. Belco does not specify which paragraph of the Wong declaration contains proof of a joint venture. We agree with the trial court that there is no evidence of a joint venture to be found in the Wong declaration.

Mr. Wong testified that he and Lincoln Chan "worked together so both Lincoln Pacific and Belco could enjoy the benefits of the June, 2013 TEC Work Assignment contract [(the first contract)]." Further, he testified that "Lincoln Chan and I worked together with the affected General Contractors to substitute Belco in for Lincoln Pacific on these specific jobs [(Nisqualli, Clinton-Keith, Magnolia and Cypress Village)]." Nothing else in the Wong declaration constitutes evidence from which we might infer the existence of a joint venture agreement. That Mr. Wong and Lincoln Chan worked together to effectuate their contracts does not demonstrate a material dispute whether the parties formed a joint venture. (See *April Enterprises, Inc. v.*

KTTV (1983) 147 Cal.App.3d 805, 818 [" 'A joint venture . . . is an undertaking by two or more persons jointly to carry out a single business enterprise for profit.' The elements necessary for its creation are: (1) joint interest in a common business; (2) with an understanding to share profits and losses; and (3) a right to joint control."].)

Belco does not contend there is any evidence that Lincoln owed Belco a fiduciary duty, instead simply arguing that each party to a joint venture owes a fiduciary duty to his partners, and since there is a dispute whether the parties formed a joint venture, likewise there is a dispute whether Lincoln owed a fiduciary duty. Belco has not demonstrated a material disputed fact whether Lincoln owed a fiduciary duty.

As to both causes of action, Belco points to testimony of Mr. Wong in his declaration and deposition to the effect that Lincoln gave Belco false financial information regarding the takeover jobs; Lincoln failed to disclose it had understaffed those jobs which required Belco to incur unanticipated overtime expenses to complete the jobs; and Lincoln "advanced billed" for work on the takeover jobs. Belco appears to argue these misrepresentations and omissions fraudulently induced Belco to accept the takeover jobs.

These facts are immaterial because Belco did not allege in the cross-complaint that it was fraudulently induced to enter into the fourth contract regarding the takeover jobs. Instead, Belco alleged in the second cause of action that it was fraudulently induced to enter into an oral joint venture agreement, and in the third cause of action that Lincoln breached a fiduciary duty owed to Belco by failing to disclose its advanced billings. Since Belco provided no evidence of any joint venture between the parties nor

any facts to support the allegations that Lincoln owed fiduciary duties to Belco, these facts are immaterial. (*Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74 ["the pleadings determine the scope of relevant issues on a summary judgment motion"]; *Hutton v. Fidelity National Title Co.* (2013) 213 Cal.App.4th 486, 493 [summary judgment defendant need only "negate plaintiff's theories of liability *as alleged in the complaint*; that is, a moving party need not refute liability on some theoretical possibility not included in the pleadings"].)

c. The fourth cause of action.

Belco characterizes the fourth cause of action of the cross-complaint as one for "unjust enrichment." The trial court found "A quasi-contract action for unjust enrichment does not lie where, as here, express binding agreements exist and define the parties' rights." Belco tells us it does not dispute this legal concept, but it does not apply here because there is no written contract that provides for Belco's acquisition of the takeover jobs or that defines the parties' rights as to those jobs. As explained above, we have found the parties' fourth contract provides the essential terms of Belco's acquisition of the takeover jobs. Therefore, Belco has not demonstrated there is a material dispute as to this cause of action.

d. The fifth cause of action for breach of the first written contract.

Belco alleged in this cause of action that Lincoln failed to transfer all the jobs that were the subject of the first contract, and therefore Belco was entitled to an offset of $110,678. In its motion for summary judgment, Lincoln offered the declaration of Lincoln Chan in which Mr. Chan testified "To the best of my

knowledge, each of the new contracts [identified in the first contract] was successfully assigned to Belco, accepted by Belco, worked on and invoiced by Belco."

Belco argues that paragraphs 11 through 15 of the Wong declaration contain evidence that the specific procedure for Belco to acquire the jobs that were the subject of the first contract was not followed. These paragraphs of Mr. Wong's declaration state that "consents to assignments were needed from the General Contractors"; he and Mr. Chan "worked together so both Lincoln Pacific and Belco could enjoy the benefits of the June, 2013 TEC Work Assignment contract"; certain contractors initially refused consent; Griffith Company conditioned its consent on Belco completing the Clinton-Keith job, and Riverside Construction conditioned its consent on Belco completing the Nisqualli job; and neither of those jobs was part of the first contract.

None of these facts, considered alone or in conjunction with other facts, demonstrate a material disputed fact as to whether the general contractors ultimately consented to the transfer to Belco of all the jobs listed in the first contract. That there may have been delays and conditions attached is not evidence that any of the jobs was not transferred and completed by Belco. Belco never specifically states in any of its opposition evidence that any of the seven jobs listed in Attachment A to the first contract was not transferred, or that Belco did not complete and receive payment for the work. We agree with the trial court that "Belco does not dispute that it worked on all [seven] contracts, and therefore, received the complete benefit of the written contract."

DISPOSITION

The judgment is affirmed. Lincoln Pacific Builders, Inc. is awarded costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.