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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

LUCIANO CORAL et al., Plaintiffs and Respondents, v. DOUGLAS R. KELLOGG et al., Defendants and Appellants.	B261786 (Los Angeles County Super. Ct. No. VC062779)

APPEAL from judgments of the Superior Court of Los Angeles County, Raul Sahagun, Judge. Affirmed.

Law Offices of Robert Forgnone and Robert Forgnone for Defendants and Appellants.

Law Offices of Robert E. Weiss, Cris A. Klingerman and Joseph S. Perry for Plaintiffs and Respondents.

Two residential neighbors had a dispute. One complained

that trees planted by the other adjacent to the property line that divided their properties were creating a nuisance as a result of floral droppings onto the complainants' property. Eventually the offended neighbor brought a lawsuit to abate the nuisance. The suit was settled a few days before the scheduled trial date. The settlement provided for removal of trees specified in a formal survey document, with the cost of removal to be borne equally by the parties. The settlement agreement was formally entered into and the lawsuit was dismissed, with a provision by which the trial court retained jurisdiction to enforce its terms. But a dispute arose within days. The party who had planted the trees, and who was the defendant in the lawsuit, claimed that one of the specified trees (No. 3 on the survey) did not exist; it either never existed or already had been removed. The complaining party disagreed; while the survey marked the tree several feet closer to the boundary than it actually was, it did exist and its removal was part of the bargain. The trial court was asked to enforce the agreement. It received evidence in the form of declarations and, importantly, took a formal judicial view. It ruled that tree No. 3 did exist and its removal was part of the parties' bargain. The trial court's judgment reflected this finding.

There was another issue: whether the party that planted the trees was entitled to have the tree roots removed with the trees, and to have the removal accomplished by crane rather than by the "chop and drop" method, with all the costs shared equally between the parties. The court explicitly ruled that removal could be by crane but that the added costs of doing so would be borne by the defendant in the lawsuit. And, implicitly, that the agreement did not require removal of the root structure beneath the trees so that, if such removal were to occur, the added cost

would be borne by defendant.

Under the agreement, each party was to bear its own costs and fees, but "should any party hereto be required to enforce or compel performance under this Agreement, the prevailing party in such proceedings shall have the right to recover reasonable attorneys' fees and costs, from the non-prevailing party."

Defendant has appealed from the ensuing judgment.[1] Finding no error, we shall affirm.

FACTUAL AND PROCEDURAL SUMMARY

The parties to this case are Luciano Coral, individually and as trustee of a family trust, the plaintiffs below and respondents on appeal; and Douglas R. Kellogg individually and as trustee of the Kellogg family trust, defendants below and appellants on appeal. We refer to them here by their surnames or as appellant and respondent. The basic underlying facts are as we have summarized.

The parties each own adjacent property on the south side of Bronte Drive in the City of Whittier. Bronte Drive is an east-west street, rising in elevation as it proceeds from east to west in front of the parties' properties. Both properties are considerably below the grade of Bronte Drive. The survey, to which both parties refer, was made by a licensed land surveyor. The trees to be removed under the agreement of the parties as well as other plantings are marked in Arabic numbers, 1 to 7. All but two are

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[1] There are three appeals in the case, the first two, Nos. B261786 and B266300, reflect the trial court's augmented order, although in its revised judgment the trial court vacated the earlier order. The third appeal, No. B267579, is from the post-judgment award of attorney fees, which award was stayed during the pendency of this appeal.

pines, the other two are elms. (Two other trees were to be removed; there is no dispute as to whether they are covered by the agreement.) The disputed tree is marked as No. 3, a pine. The map describes that tree as "14", which we take to mean that the diameter of its trunk measures 14 inches. It is shown as "3.0 [inches] clear," which the parties agree is a notation that the tree is three feet east of the boundary line.

Shortly after the settlement agreement was signed and the lawsuit dismissed, counsel for Kellogg notified Coral's attorney that there were only four pines to be removed, not five as shown on the survey, because No. 3 did not exist. Coral's attorney argued that it did exist, although not at the precise location shown on the map. Instead, he said, it was sited some eight feet further east (i.e., from the boundary). Photographs were introduced showing this to be a 50 ft. tree, the northernmost pine on the property, the higher branches of which overhung Coral's driveway, and which dropped the fronds about which Coral had complained. Coral argued that the trunk of this tree veers toward the west before bending upward. Photographs depict such a tree, although the record does not include a declaration that this is No. 3. But other photographs, which are stated to be of No. 3, depict what appears to be a mature and substantial tall pine, clearly adjacent to the border fence. When Coral's attorney protested that this is the tree in question, Kellogg's counsel argued that, there is no such tree, and Coral was trying to have a "substitute tree" removed for which there had been no agreement for removal.

The trial judge decided to see for himself; he conducted a formal view of the property. While the record does not record an explicit ruling that the northernmost pine discussed is the tree

No. 3 on the survey, the court's stated ruling cannot be understood any other way. Certainly a tree of the size of this one, with branches overhanging the Coral property, could not have sprung up independent of the survey. At the least, the trial court could reasonably so conclude. Indeed, the parties do not dispute that the trial court so found; they disagree whether the evidence supports this finding.

The agreement provided that defendant shall remove the seven designated trees "and resulting stumps and cuttings." The revised judgment provides that defendants are to "remove seven trees, resulting stumps to grade and tree cuttings," that the pines to be removed, numbered 2 through 6, are those "closest to the Plaintiff's easterly lot line" and that the trees "identified and numbered on the survey may not be in the precise surveyed location." Their removal "shall not require use of a crane or entry of heavy equipment on Plaintiff's property." The trial court added the two final numbered provisions to the draft agreement submitted for its approval: "At the election of the Defendant, the stumps are to be removed at or below grade. The costs of the removal are to be shared equally" and "use of a crane in the removal may be made at the election of the Defendant. The Defendant shall pay for the additional cost of the crane."

DISCUSSION

The principal dispute between the parties is over the No. 3 tree. Appellant argues that tree, while shown on the survey, does not exist. Respondent argues it does exist, and is close to the boundary although several feet further than is noted on the survey. It was left to the trial judge to decide whether the disputed tree is the one depicted as No. 3 on the survey or

whether, as appellant argues, that tree did not exist at the time the case was litigated. That was a factual determination, which the trial court was entitled to make—indeed, charged to make. It did so after reviewing the submissions of the parties, including declarations, and, most importantly, what it saw when it conducted a view of the property. This, obviously, was a factual determination, and we are bound by the factual finding of the trial court unless it is shown to be unsupported. (See *In re Marriage of Assemi* (1994) 7 Cal.4th 896, 911 [in ruling on Code Civil Proc., § 664.6 motion for entry of judgment enforcing settlement agreement, issue on appeal is whether court's ruling is supported by substantial evidence]; *Lofton v. Wells Fargo Home Mortgage* (2014) 230 Cal.App.4th 1050, 1061 [judge hearing motion to enforce settlement under Code Civil Proc., § 664.6 may receive evidence, determine disputed facts, and enter terms of settlement agreement as judgment].) And ambiguities in the agreement, if they exist, are subject to resolution by the trial court. (*Corkland v. Boscoe* (1984) 156 Cal.App.3d 989, 994; *Steller v. Sears, Roebuck & Co.* (2010) 189 Cal.App.4th 175, 183.)

The evidence supports the implicit finding by the trial court that tree No. 3, as depicted on the survey, is the large pine the court viewed, northernmost on that document, and whose branches overhang plaintiff's property.

The agreement also provided for removal of the tree stumps. (The first judgment provided that they be removed "at or below grade" but after appellant sought a change, this was modified to read "to grade.") It is difficult to ascertain what appellant's complaint is about in this regard. If it is that roots also be removed, the short response is that this is not what the settlement agreement says, and nothing is offered to support

such a construction.

That leaves appellant's preference for use of a crane in removing the stumps. The agreement called for removal of the tree stumps, and bids were received for that purpose. The settlement agreement itself is quite detailed about the qualifications the contractor must possess, but says nothing about the mechanics of performing the task. Appellant presents no argument that he was entitled to have the removal be accomplished with use of a crane with half the added expense being borne by respondent. The only argument presented to support his position appears to be that the differential in cost is minor. That does not demonstrate that it is to be borne by both parties. The trial court explicitly ruled on this claim, and we see no basis to overturn its ruling.

DISPOSITION

The judgments from which appeals have been taken are affirmed, and the stay on the appeal of the award of costs is dissolved. Respondents to have their costs on appeal.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.