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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

NEW LIFE OASIS CHURCH, Plaintiff and Respondent, v. CENTRAL KOREAN EVANGELICAL CHURCH et al., Defendants and Appellants.	B284456 (Los Angeles County Super. Ct. No. BC576279)

APPEAL from an order of the Superior Court of Los Angeles County, Mark V. Mooney, Judge. Reversed.

Law Offices of Steven C. Kim & Associates, Steven C. Kim and Gabriel Colorado, for Defendants and Appellants.

Law Offices of Timothy V. Milner, Timothy V. Milner, for Plaintiff and Respondent.

Defendants Central Korean Evangelical Church and Jang Kyun Park appeal from the trial court order awarding attorney fees to plaintiff New Life Oasis Church following the judgment in favor of plaintiff on its action to enforce its lease option to buy defendants' church property. We reverse the fees award because the parties' agreement did not include an attorney fee provision that applied to this dispute, and remand to the trial court with directions to enter a new order to that effect.

FACTS AND PROCEDURAL HISTORY

This is the fourth appellate decision arising from ongoing disputes over the ownership of a Koreatown church property. For our purposes, it is enough to state that Central Korean Evangelical Church (Central Korean) and its pastor, Jang Kyun Park (Park), were eventually determined to be the owners of the church building, while another organization, Pacific Southwest District of the Church, was found to own the adjacent parking lot.[1]

In October 2011, New Life Oasis Church (New Life) leased the church property from Central Korean. The lease agreement included an option to buy the property for $2.55 million. New Life put down $400,000 as a security deposit, which would be refunded when the lease expired or the property was sold to a third party. If New Life bought the property, the security deposit would be credited toward the purchase price.

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[1] A more detailed statement of the facts underlying this case can be found in our most recent decision concerning these disputes. (*New Life Oasis Church v. Central Korean Evangelical Church* (July 16, 2018, B281703) [nonpub. opn.] (*New Life I*).)

On the same day that the lease was executed, Central Korean and Park executed a trust deed on the property to secure repayment of New Life's security deposit. Under that deed, Central Korean was the trustor, New Life was the beneficiary, and a third party entity was the trustee. The section of the lease dealing with the security deposit concluded by stating, "Tenant shall have attached the Deed of Trust."

Relevant here is the absence of an attorney fee provision in the lease and the presence of one in the trust deed, with the latter stating that as part of Central Korean's duty to protect the trust security, it would ". . . appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary [New Life] or Trustee; and to pay all costs and expenses, including costs of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed."

New Life sued Central Korean and Park[2] for specific performance based on a breach of contract, fraud and fraudulent inducement, after they refused to honor New Life's exercise of its option to buy. Following a bench trial, the trial court found for New Life on its breach of contract claim, but not its fraud causes of action.[3] New Life then moved to recover its attorney fees pursuant to the fee provision in the trust deed. Appellants opposed the motion, contending that the fee provision related

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[2] We will sometimes refer to Central Korean and Park collectively as appellants.

[3] We recently affirmed that judgment in *New Life I, supra*, B281703.

solely to actions to enforce the trust deed and did not apply to New Life's breach of contract action, which was based on the lease and option agreement. The trial court found that the fee provision did apply and awarded New Life attorney fees of $285,025.[4]

DISCUSSION

1. *Applicable Legal Principles*

New Life contends it was entitled to recover its attorney fees on two grounds: (1) its action arose from and was therefore "on" the deed of trust; and (2) the deed of trust and its attorney fee provision were incorporated into the lease pursuant to Civil Code section 1642.

A determination of the legal basis for an award of attorney fees is a question of law. (*Carver v. Chevron U.S.A., Inc.* (2002) 97 Cal.App.4th 132, 142.) Because the material facts are not in dispute, our review is de novo. (*Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 Cal.5th 744, 751 (*Mountain Air Enterprises*).)

Under the American Rule, parties to a lawsuit bear their own litigation costs unless they have contractually agreed that the prevailing party shall recover its fees. (*Mountain Air Enterprises, supra,* 3 Cal.5th at p. 751.) If the action sounds in contract, then Civil Code section 1717 and its restrictions may come into play. (*Id*. at p. 752.) Under that provision, the prevailing party in a lawsuit shall recover its reasonable attorney

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[4] Appellants also contended that the fee motion was not timely and that even if New Life was entitled to fees, that right extended to only its contract causes of action. Because we reverse the fee award, we need not reach those issues.

fees if the contract provides for fees to only one party to a contract, or to the prevailing party, in an action that is sufficiently connected to the contract. (*Ibid.* & fn. 2.)

This determination calls into play the traditional rules of contract interpretation. "Accordingly, we first consider the mutual intention of the parties at the time the contract providing for attorney fees was formed. (Civ. Code, § 1636.) Our initial inquiry is confined to the writing alone. [Citations.]" (*Mountain Air Enterprises, supra,* 3 Cal.5th at p. 752.) Unless the parties employed terms with a technical or special meaning, contract terms are interpreted according to their clear and explicit meaning in light of their ordinary and popular sense. (*Ibid.*) In other words, "if the meaning a layperson would ascribe to contract language is not ambiguous, we apply that meaning." (*Ibid.*, internal citations and quotations omitted.) Further, "'a contract must be understood with reference to the circumstances under which it was made and the matter to which it relates.'" (*Ibid.*)

Determining whether an action is "on a contract" containing a fee provision requires an examination of the complaint and the basis of the cause of action. (*Brown Bark III, L.P. v. Haver* (2013) 219 Cal.App.4th 809, 821.) We must examine the pleaded theories of recovery, the evidence produced at trial, and any other evidence submitted as part of the attorney fee motion to identify the legal basis of the prevailing party's attorney fee claim. (*Hyduke's Valley Motors v. Lobel Financial Corp.* (2010) 189 Cal.App.4th 430, 435–436.) We look to the gravamen of the cause of action to determine whether the action was on the contract. (*Id.* at p. 436.)

Several contracts relating to the same matter are to be construed together. (Civ. Code, § 1642.) Although this provision expressly refers to "contracts," it has been interpreted to apply to instruments or writings that are not on their own contracts. (*R.W.L. Enterprises v. Oldcastle, Inc.* (2017) 17 Cal.App.5th 1019, 1027 (*R.W.L*).) Although typically applied to writings executed at the same time, it is also applicable to agreements executed at different times if the later document is part of the same transaction. (*Ibid.*)

Determining whether a document is incorporated into a contract turns on the parties' intent at the time of contracting. (*R.W.L. Enterprises, supra,* 17 Cal.App.5th at p. 1027.) In order to incorporate the terms of one document into another, the reference must be clear and unequivocal. (*Id.* at pp. 1027–1028.) The contract does not have to expressly state that it incorporates another document so long as it guides the reader to the incorporated document. (*Id.* at p. 1028.) In order to be construed together, the separate documents must be so interrelated that they are considered one contract. (*Ibid.*) Although multiple contracts relating to the same matters are to be construed together, it does not follow that they constitute one contract for all purposes. (*Mountain Air Enterprises, supra,* 3 Cal.5th at p. 759.)

2. *Attorney Fees Were Not Recoverable Through The Trust Deed*

New Life contends it was entitled to its attorney fees under Civil Code sections 1642 and 1717 as interpreted in three decisions: *R.W.L., supra,* 17 Cal.App.5th 1019; *Mepco Services, Inc. v. Saddleback Valley Unified School Dist.* (2010) 189 Cal.App.4th 1027 (*Mepco*); and *Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316 (*Kachlon*).

In *Mepco*, general contractor Mepco sued a school district for breach of contract in connection with work it had performed on a school modernization project. The district cross-complained against Mepco for breach of contract and against both Mepco and its performance bond surety for breach of that bond. Mepco prevailed in both actions. Although the construction contract did not include an attorney fees provision, the surety bond did: a one-sided provision that allowed the district to recover fees in any action by the district to enforce the bond. (*Mepco, supra,* 189 Cal.App.4th at pp. 1029–1030, 1045.)

Civil Code section 1642 and its attendant doctrine of construing several contracts together is not mentioned at all in the *Mepco* decision. Instead, the *Mepco* court based its holding affirming the attorney fee award on the reciprocity principles of Civil Code section 1717 because the school district's cross complaint was effectively an action to enforce the performance bond. (*Mepco, supra,* 189 Cal.App.4th at pp. 1047–1049.)

The plaintiff in *R.W.L.* was a distributor of landscape supplies that entered into a 2001 agreement with Oldcastle, a manufacturer of masonry and concrete products, to be its exclusive dealer in San Diego County. That agreement did not contain an attorney fee provision. At the time, the distributor was known as All Masonry. The relationship between All Masonry and Oldcastle soured between 2009 and 2011 when Oldcastle began distributing its products through other San Diego County dealers. (*R.W.L.*, *supra*, 17 Cal.App.5th at p. 1023.)

In 2010, All Masonry changed its name, requiring it to update its credit information with Oldcastle in a credit application that included two attorney fee provisions: (1) "'If suit or action by an attorney is instituted, we agree to pay reasonable

attorney fees in said suit or action'"; and (2) that All Masonry would pay Oldcastle's attorney fees in "'any legal action or proceeding to enforce payment under this CONTRACT, . . .'" (*R.W.L.*, *supra*, 17 Cal.App.5th at p. 1026.) R.W.L. later sued Oldcastle for breach of the exclusive dealership agreement and lost at trial. Oldcastle was awarded its attorney fees pursuant to the fee provision in the 2010 credit application. (*Id.* at pp. 1023–1025.)

The *R.W.L.* court reversed the fee award because Civil Code section 1642 did not apply. The fee provision in the credit application by its terms became part of the purchase order contract between the parties. However, the 2001 dealer agreement that All Masonry sued to enforce was not a purchase order contract. (*R.W.L., supra,* 17 Cal.App.5th at p. 1028.) The court was not swayed by R.W.L.'s reliance on language in the 2001 contract requiring it to maintain a current account with Oldcastle because a mere reference to maintaining a current account did not clearly and unequivocally demonstrate the intent to incorporate future credit arrangements into the dealer agreement. (*Ibid.*) "[T]he position that essentially any topic a contract mentions is incorporated therein is unsupported by any authority and would lead to absurd results.' [Citations.]" (*Id.* at p. 1029, internal citations and quotation marks omitted.)

The *R.W.L.* court also relied on the narrow wording of the attorney fee provision itself, which applied only to litigation to enforce payment under the credit application contract or to recover damages for breach of that agreement. The wording and context of the provision "reveals no manifest intent to extend the recovery of attorney fees to litigation over the 2001 dealer

agreement." (*R.W.L., supra,* 17 Cal.App.5th at p. 1029.)[5]

In *Kachlon, supra,* 168 Cal.App.4th 316, we upheld an award of attorney fees to the prevailing trustor in its action against the beneficaries and the trustee for wrongfully initiating nonjudicial foreclosure proceedings under a trust deed. The trustor claimed the underlying promissory note secured by the trust deed had been satisfied. The trustor prevailed on its equitable claims for declaratory and injunctive relief and to quiet title, and was awarded attorney fees pursuant to fee provisions in the note and trust deed. (*Kachlon*, at pp. 329–332.)

We did not address Civil Code section 1642 and confined ourselves to the issue whether the prevailing party's action had been on the contract for purposes of Civil Code section 1717. In that context, we construed the attorney fee provision in the trust deed, which was virtually identical to the fee provision in the trust deed in this case. As we described it, that provision gave the trust beneficiary a right to attorney fees "in any action affecting the security of the deed of trust or the rights or powers of [the trust beneficiaries]," entitling the prevailing trustor to a reciprocal right to recover if he *"prevailed in an action on the note or deed of trust.*" (*Kachlon, supra,* 168 Cal.App.4th at p. 347 italics added.) We held that the trustors were entitled to recover their fees because they sought a declaration that the trust deed had to be reconveyed and sought an injunction to enforce the terms of the trust deed. (*Id.* at pp. 347–348.)

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[5] The *R.W.L.* court also relied on the fact that the 2001 agreement contained an integration clause and the nine-year time difference between that agreement and the credit application. (*R.W.L., supra*, 17 Cal.App.5th at p. 1031.)

We do not believe these decisions assist New Life. Our starting point is the attorney fee provision itself, which provides that Central Korean would ". . . appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary [New Life] or Trustee; and to pay all costs and expenses, including costs of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed."

This clause provided for recovery of attorney fees by only New Life against appellants under certain conditions. The provision is set off by certain punctuation marks, which, as we now discuss, play some role in our interpretive analysis. (*Dow v. Lassen Irrigation Co.* (2013) 216 Cal.App.4th 766, 783.)

The first portion of the fee provision required appellants to "appear in and defend" any action purporting to affect the security, rights, or powers of the beneficiary. The beneficiary, of course, was New Life. As we read it, by calling for appellants to appear in and defend actions that affected the security itself or the rights of the beneficiary, that part of the fee provision applies only to actions that affected New Life in its capacity as trust beneficiary. This is consistent with our previous interpretation of the same language. (*Kachlon, supra,* 168 Cal.App.4th at p. 347 [trustor's causes of action based on violations of the terms of the trust fell within reciprocal scope of fee provision].)

The next portion, set off by a semi-colon from the first, contains the actual attorney fee provision. It states that Central Korean would have to pay New Life's attorney fees "in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed."

The phrase "any such action" where the beneficiary may appear must, grammatically, refer back to the first portion of the provision—those actions that affect the security itself or the beneficiary's rights and powers. The final portion, once more set off from the rest by a comma, defines another type of action covered by the fee provision: "any suit brought by Beneficiary to foreclose this Deed."

New Life's action met none of these criteria. New Life sued appellants to enforce its option to buy under the lease, and neither its original complaint or its first amended complaint mentioned the trust deed. New Life's action did not affect the security itself or threaten its rights and powers as the trust beneficiary. Certainly nothing about that action called for appellants to appear in and defend New Life's rights under the trust deed. Neither was this an action by New Life, as beneficiary of the trust deed, to foreclose the deed. Instead, New Life sued to enforce its option to buy the church property, which was part of its lease, an agreement that included no attorney fee provision. In short, New Life's action was not "on the contract" that contained the attorney fee provision.

Finally, we turn to our decision in *Paul v. Schoellkopf* (2005) 128 Cal.App.4th 147 (*Paul*), where we reversed an attorney fee award for the prevailing seller of real property in his action against the buyer. The parties executed three documents as part of their transaction—the purchase agreement, an addendum, and escrow instructions. Only the escrow instructions included an attorney fee provision, which allowed the escrow to recover its reasonable attorney fees incurred in the event the parties failed to pay the escrow's fees or expenses. (*Paul*, at pp. 150–151.)

The trial court awarded attorney fees based on the escrow provision, but we reversed because "the parties agreed to a limited attorney fees provision in the . . . escrow instructions . . . [that] addressed the rights and obligations of the *escrow holder* as to the buyer and seller, and vice versa. There was no attorney fees clause in the remainder of the documents, which described the rights and obligations as between *buyer and seller*." (*Paul, supra,* 128 Cal.App.4th at p. 153.)

As discussed, the attorney fees provision in the trust deed at issue here was limited to actions concerning New Life's rights and status as the trust beneficiary and had no application to New Life's action to enforce its option to buy. In short, New Life's action was not on the contract for purposes of recovering its attorney fees.

The same is true as to New Life's incorporation of agreements theory under Civil Code section 1642. New Life contends the parties intended to incorporate the trust deed into the lease because the clause governing the security deposit stated that "Tenant shall have attached the Deed of Trust." That the parties made some mention of the trust deed is not surprising, given that it played some role in their lease transaction. However, the statement that New Life shall attach the trust deed is ambiguous at best, and falls far short of being clear and unequivocal in that regard. (*R.W.L. Enterprises, supra,* 17 Cal.App.5th at pp. 1027–1028.)

By contrast, the trust deed states that versions of the deed recorded in designated counties throughout the state "are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length . . . ." In other words, the parties knew how to expressly incorporate other documents into

their agreements when they wanted to, militating against New Life's interpretation of the contract language. (*Vons Companies, Inc. v. United States Fire Insurance Co.* (2000) 78 Cal.App.4th 52, 59 ["words used in a certain sense in one part of a contract are deemed to have been used in the same sense elsewhere"].)

We believe this case is more like *R.W.L., supra,* 17 Cal.App.5th 1019. As in that case, the lease merely refers to the trust deed, which by itself does not lead to the conclusion that it was incorporated into the lease. (*R.W.L*, at p. 1029.) The attorney fee provision in the trust deed is also narrow and applies to only litigation that affects New Life's rights and powers as the trust beneficiary. The wording and context of that provision therefore "reveals no manifest intent to extend the recovery of attorney fees to litigation over the" lease option. (*Ibid*; accord, *Mountain Air Enterprises, supra,* 3 Cal.5th at p. 759 [even though multiple contracts relating to the same matter are construed together, it does not follow that they are one contract for all purposes].) Accordingly, New Life was not entitled to recover its attorney fees.

DISPOSITION

The order awarding New Life its attorney fees is reversed and the matter is remanded to the trial court with directions to enter a new order denying New Life's motion for attorney fees. Appellants shall recover their appellate costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MICON, J.*

We concur:

WILLHITE, Acting P.J.

MANELLA, J.

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*Judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.