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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

ROBERT CARO, Plaintiff and Respondent, v. MPN-14 LIMITED PARTNERSHIP, Defendant and Appellant.	B265940 (Los Angeles County Super. Ct. No. VC063402)

APPEAL from a judgment of the Superior Court of Los Angeles County. Brian F. Gasdia, Judge. Affirmed.

S. C. Johnson & Associates, Stephen C. Johnson and Arlene M. Turinchak for Defendant and Appellant.

Schiada & Caballero and John H. Caballero for Plaintiff and Respondent.

In this breach of contract case, appellant MPN-14 Limited Partnership (MPN) appeals from the judgment in favor of respondent Robert Caro. MPN and Caro are parties to a "Parking Agreement" that governs their rights and obligations with respect to the parking lot located on Caro's commercial property. When MPN refused to reimburse Caro for capital improvements made to the parking lot, Caro sued MPN for breach of the Parking Agreement. After a court trial, the trial court held MPN was liable for its share of the capital improvements and awarded damages to Caro. On appeal, MPN argues the evidence does not support either the trial court's finding that Caro sought advance approval for the capital improvements or the trial court' damages award. We disagree on both counts and affirm.

BACKGROUND

1. Events Preceding Lawsuit

a. 1967 Easement

The parking lot at the center of this case contains 40 parking spaces and is part of the real property owned by Caro located at 8444 Secura Way in Santa Fe Springs, California (8444 property). In 1967, an easement was recorded that irrevocably encumbered the 8444 property with a parking easement in favor of the neighboring property owned by MPN located at 8427 Secura Way (8427 property). The easement gave the owner of the 8427 property the exclusive right to use 27 of the parking spaces located in the 8444 parking lot.

b. Parking Agreement

In 2003, the then-owners of the 8444 and 8427 properties executed a Parking Agreement to clarify their rights and

obligations with respect to the 1967 easement. Under the Parking Agreement, the 8444 owner must maintain, repair, and replace the parking area (which includes the parking lot as well as driveways to and from the parking lot) "to a standard that is normal and customary for parking lots and driveways" of this type. Unless additional parking spaces are added, the 8444 owner must pay 32.5 percent of the maintenance costs for the parking lot and the 8427 owner must pay the remaining 67.5 percent of the maintenance costs. However, the costs of maintenance to parking improvements other than to the parking lot itself are to be shared equally by the parties.

Paragraph 2.3 of the Parking Agreement governs the 8444 owner's right to reimbursement from the 8427 owner for repair, maintenance, and replacement costs. To be reimbursed, the 8444 owner must send an invoice detailing the amount and nature of any parking lot repair, maintenance, or replacement costs to the 8427 owner. The 8427 owner must pay its share of those costs within 30 days of receiving the invoice. With respect to improvements "of a capital nature," however, the 8427 owner need not reimburse the 8444 owner unless such improvements were "approved in advance by the 8427 Owner, which approval shall not be unreasonably withheld, conditioned or delayed."

Although neither Caro nor MPN were signatories to the Parking Agreement or owned the relevant properties at the time the Parking Agreement was executed, the Parking Agreement runs with the land and, therefore, governs the parties who now own the relevant Secura Way properties.

c. In November 2011, Caro purchased the 8444 property and undertook steps to operate a foundry at the site.

Caro purchased the 8444 property in November 2011. That same month, MPN officer Everet Miller sent a letter to Caro seeking to confirm the parking arrangement under the Parking Agreement. In his November 2011 letter, Miller indicated Caro could communicate with Jason Jameson, the real estate agent leasing the 8427 property for MPN.

Caro planned to operate a foundry at the 8444 property and, therefore, began to prepare for construction, including obtaining necessary government approvals for his plans. In January 2012, Caro submitted an application for a conditional use permit with the City of Santa Fe Springs. Relevant here, the application for a conditional use permit stated the following work would be done to the parking lot: "new slurry sealing and stripping [*sic*] for the parking lot" and "restriping and re-sealing the parking lot." The application did not otherwise discuss the parking lot. In April 2012, the City of Santa Fe Springs approved Caro's application for conditional use permit. Caro did not send a copy of either the application for conditional use permit or the conditional use permit to MPN.

d. Caro's Construction Plans and MPN's May 23, 2012 Letter

In May 2012, Caro provided construction plans to Jameson. Caro's architect had prepared the plans and the City of Santa Fe Springs Building Department had approved them. Those construction plans are not in the record on appeal.

Jameson forwarded the plans to Miller. On May 23, 2012, in response to receiving the construction plans, Miller sent a

letter to Caro stating: "Thank you for sharing your contractor proposal for work at your property. It appears some significant portion of the work is related only to your occupancy and requirements imposed by the City of Santa Fe Springs. We would not be responsible for work unrelated to the maintenance of the parking areas. [¶] The proposal you send [*sic*] lacks detail, we wish to have an opportunity to have a contractor of our choice inspect the lot and determine the most cost effect [*sic*] method of effectuating any necessary repairs. We will forward that proposal to you so we can then have a meaningful discussion of the costs and reimbursements due."

e. August 6, 2012 Letter

MPN did not hire a contractor of its choice to inspect the parking lot and did not forward a proposal to Caro. The parties did not have a discussion of the costs and reimbursements due. It does not appear the parties communicated at all between May 23, 2012, and August 6, 2012, when Caro sent a letter to Miller. In his August 6 letter, Caro asked Miller about the proposal Miller had mentioned in his May 23 letter. Specifically, Caro stated: "The city is requesting that the easement be built the way you received the drawings. You are not responsible for the trash enclosure that is for my use only. If you want to have your contractor submit a bid, I will be glad to look at it." MPN did not respond to Caro's August 6 letter. MPN did not submit a bid to Caro and did not approve any of the work eventually done by Caro.

f. Caro made capital improvements to the parking lot and sought reimbursement from MPN.

In light of the severely deteriorated state of the parking lot and related safety concerns, Caro's construction team recommended the parking lot be replaced. Accordingly, sometime in the second half of 2012, Caro had the parking lot removed and replaced. Caro did not believe the work done was a capital improvement. The trial court held the opposite, however, finding Caro had made a capital improvement to the parking lot. Caro does not dispute that finding on appeal.

In May 2013, Caro sought reimbursement under the Parking Agreement from MPN for its portion of the work done to the parking lot. On May 15, 2013, Caro sent MPN a "billing worksheet" reflecting a total of $190,204.74 in costs for "rework of entire parking area as need to meet parking requirements as set down by City of Santa Fe Springs, Planning Department for building across the alley way." The billing worksheet was prepared by Caro's contractor, Mark Gaylord, after all the parking lot work was completed. Other than the billing worksheet, Caro offered no documentation of payments made for the parking lot improvements. MPN refused to reimburse Caro for any parking lot costs.

2. Caro sues MPN for breach of contract.

On August 15, 2013, Caro filed a one-count complaint against MPN for breach of contract. Caro alleged MPN breached the Parking Agreement by failing to reimburse Caro for MPN's share of costs associated with the work done to the parking lot.

a. Trial

A court trial was held in December 2014. The trial court heard testimony and received evidence.

At trial, Miller testified the construction plans Caro sent for MPN's review contained very little to no detail and Caro did not include any correspondence with the plans. Although Miller testified he did not know the scope of the work or exactly what Caro intended to do, he believed Caro "was going to make some improvements to his building and the site. And it appeared to me that most of it, just from looking at the plans, seemed to me the kind of things you would do when you were going to rehab or fix up a building and they looked like they were all going to be capital improvements." He repeated it appeared to him "that it looked pretty much like it was all capital improvements." Miller stated his intent in writing the May 23 letter to Caro was "to make a clear distinction that it appeared everything I was looking at looked to me to be capital improvements, which if he wanted us to reimburse, would require our approval. I couldn't tell if any of the work was repair or maintenance." Miller also testified that, after reviewing the construction plans and sending the May 2012 letter to Caro, Miller did not call Caro, did not visit the property, and did not send a contractor to the property to assess the work to be done. Similarly, after receiving Caro's August 6 letter, Miller did not call Caro, did not instruct anyone at MPN to contact Caro, and did not send a contractor to the property to assess the work to be done.

Caro also testified at trial. He testified he gave the construction plans to MPN in May 2012 because he was asking for MPN's approval as to the repairs he intended to make to the parking lot. He explained, "that's what the easement says" to do.

Caro wanted MPN to see what Caro intended to do to the parking lot. He stated he expected MPN to pay for their portion of the repairs to the parking lot as specified in the easement. And, while Miller clearly understood the work to be done to the parking lot was capital in nature, Caro testified he believed the work constituted repairs only for which he did not need MPN's consent. Caro also testified, however, that he did not know what a capital improvement was and did not know the difference between a capital improvement and a repair. Caro's expert opined the work done to the parking lot was not capital in nature.

The trial court also heard testimony regarding the billing worksheet Caro sent to MPN. Mark Gaylord, the general contractor, testified the billing worksheet was compiled after the parking lot work was done and represented "the breakout of the total concrete bill for the parking lot." He also stated the work done was based on the plans that the city previously had approved. An expert for Caro testified the charges reflected on the billing worksheet were reasonable. Caro testified he did not have a written contract with Gaylord and no estimates for costs were prepared or discussed before construction began. He paid Gaylord with cash and by check. And, although Caro stated he had receipts and canceled checks reflecting payments made, he did not give them to his attorney and none was presented at trial. Caro could not remember what amount he paid to Gaylord for the parking lot work.

b. Statement of Decision

On May 26, 2015, the trial court filed its statement of decision. The trial court noted the parties did not dispute the existence or terms of the Parking Agreement. Rather, the dispute centered on whether the parties had performed their

obligations under the Parking Agreement. The trial court explained that, when there are repairs of a capital nature, a "condition precedent" exists before MPN is required to reimburse Caro for those repairs. Specifically, "if the replacement is of a capital nature, then the reimbursement obligation becomes conditional upon advance approval having first been sought."

First, the trial court found the repairs at issue were of a capital nature. Although in his application for a conditional use permit, Caro stated he would simply seal and restripe the parking lot, the work ultimately done was much more than that. The trial court noted that, after the application for a conditional use permit was submitted and before work began on the parking lot, Caro's contractors determined replacement was necessary because of the deteriorated and unsafe condition of the parking lot. The court determined the work actually done was of a capital nature. That finding is not challenged on appeal.

Because the work was of a capital nature, the condition precedent to reimbursement, i.e., MPN's prior approval, was triggered. Although the trial court agreed with MPN that the Parking Agreement "specifically excludes the requirement of reimbursement if a capital improvement is effectuated without the prior approval of the owner of 8427" (i.e., MPN), the court noted the Parking Agreement also required that MPN not " 'unreasonably withhold, condition, or delay' its approval." To determine whether (i) Caro sought advance approval, and (ii) MPN unreasonably withheld, conditioned, or delayed its approval, the trial court looked to the letters between Caro and Miller. "Ultimately, the court finds that the letters between the parties controls whether advance approval was sought as required by the plaintiff, and whether approval was

unreasonably withheld, conditioned or delayed in the response that was required of the defendant."

The trial court held Caro sought advance approval from MPN for the work done to the parking lot. The court found the May 23, 2012 letter from Miller to Caro was "absolute confirmation that advance notice was substantially given prior to any parking lot construction." The trial court determined Miller's November 2011 letter to Caro notified Caro of the Parking Agreement. Caro then sent his construction plans to Miller, thus notifying Miller of the intended work, to which Miller responded with his May 2012 letter.

The trial court then determined Miller unreasonably delayed in responding to Caro's advance notice of the parking lot repairs. The court stated: "It is not in any way a reasonably timely response for the CFO of the defendant, Mr. Miller, involved in the management of a number of commercial properties, not doing what he said he was going to do to get his own construction parking lot bid (see Exh. 11) and by failing to make any response to Caro's August 6, 2012 letter whatsoever. The testimony shows that he did not go to the property, he did not send a contractor to the property, and he did not in any way respond to [the] August letter by telephone, in writing, or in person." Thus, although MPN had not approved the parking lot repairs, the trial court nonetheless held MPN was liable for its share of reimbursement costs because MPN unreasonably delayed in responding to Caro.

Having found "the repairs were in the nature of capital improvement, that advance approval was required and was sought, and that the defendant unreasonably delayed its response," the trial court turned to the amount of reimbursement

MPN was required to pay Caro. MPN argued Caro failed to prove its damages at trial. The trial court disagreed, stating, "The exact amount of damages need not be proven. . . . 'Where the fact of damages is certain as here the amount of damages need not be calculated with absolute certainty. The law requires only that some reasonable basis of computation be used, and the result reached can be a reasonable approximation.' " The court found the billing worksheet coupled with testimony at trial provided sufficient evidence and a reasonable measure of damages. Using the Parking Agreement as a guide, the trial court calculated damages using the figures listed in the billing worksheet. Of the $190,204.74 in total costs listed on the billing worksheet, the court found MPN was responsible for $35,580.50 of those costs.

c. Judgment and Appeal

On July 1, 2015, the trial court filed judgment in favor of Caro in the amount of $35,580.50. The trial court later awarded Caro $39,510 in attorney fees and $3,278 in costs. On August 4, 2015, MPN filed a notice of appeal from the judgment.

DISCUSSION

MPN makes two arguments on appeal. First, MPN contends there is no evidence to support the finding that "Caro sought MPN's approval for capital improvements." Second, MPN argues the trial court's damages award is similarly unsupported by the evidence. We address each issue in turn.

1. Standard of Review

As the parties correctly agree, we review the trial court's factual findings for substantial evidence. If the trial court's factual findings are supported by substantial evidence, we will affirm those findings. "When a trial court's factual determination

is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873–874.) What the parties did, and whether their actions satisfied contract terms, are questions of fact subject to the substantial evidence standard of review.

We review pure issues of law, including the interpretation of contracts, de novo. (*Taylor v. Nu Digital Marketing, Inc.* (2016) 245 Cal.App.4th 283, 288 (*Taylor*) [issues of contract interpretation reviewed de novo absent admission of extrinsic evidence].)

2. Notice and Approval of Capital Improvements

Almost all the material facts are undisputed. Specifically, the parties do not dispute the following: (***a***) the Parking Agreement governs the parties' conduct with respect to Caro's parking lot at 8444 Secura Way (the parking lot); (***b***) under the Parking Agreement, Caro is entitled to reimbursement from MPN for its share of parking lot repair, maintenance, and replacement costs; (***c***) for capital improvements to the parking lot, however, Caro is not entitled to reimbursement from MPN unless MPN approves the capital improvements in advance; (***d***) MPN may not unreasonably withhold, condition, or delay approval for capital improvements to the parking lot; (***e***) MPN was aware of its obligations under the Parking Agreement;

(***f***) Caro made capital improvements to the parking lot;[1] (***g***) prior to making capital improvements to the parking lot, Caro sent Miller plans for the work to be done at Caro's property; (***h***) on May 23, 2012, Miller sent a letter to Caro acknowledging receipt of the construction plans and stating he would like to have his contractor prepare a proposal for the work contemplated and then have a "meaningful discussion [with Caro] of the costs and reimbursements due;" (***i***) Miller believed the work to be done to the parking lot included capital improvements; (***j***) on August 6, 2012, Caro sent a letter to Miller stating the work would be done "the way you received the drawings" and indicating MPN still could submit its own contractor bid which Caro would consider; (***k***) other than Miller's May 23 letter to Caro, MPN took no other action with respect to the anticipated work to the parking lot; (***l***) MPN did not approve the work done to the parking lot; (***m***) the work done to the parking lot was necessary to keep the parking lot safe.

MPN states the one point of contention is whether Caro sought approval from MPN prior to making capital improvements to the parking lot. The trial court found he did. MPN challenges that finding, arguing not only that the evidence shows Caro did not seek advance approval from MPN for the parking lot work, but also that Caro could not have sought advance approval because he never understood or believed he had to.

MPN frames the issue too narrowly. To be clear, Caro did not explicitly ask MPN for approval of the work to be done to the parking lot. But the Parking Agreement does not require Caro to

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[1] Although at trial Caro disagreed that capital improvements were made to the parking lot, he does not now challenge that finding on appeal.

make an explicit request for approval. Rather, the only reference to "approval" in the relevant section of the Parking Agreement is the provision that MPN is not required to reimburse Caro for capital improvements unless MPN first approves the capital improvements and that its approval shall not be unreasonably withheld, conditioned, or delayed. Although the trial court phrased MPN's reimbursement obligation for capital improvements as being conditioned on Caro seeking advance approval, that is not entirely accurate. MPN's reimbursement obligation for capital improvements is more accurately described as being conditioned on MPN's advance approval of those improvements. (*Taylor*, *supra*, 245 Cal.App.4th at p. 288 [contract interpretation is legal issue reviewed de novo].) Of course, if MPN is unaware that capital improvements are contemplated, it would be reasonable for MPN to withhold approval or not approve those improvements. However, if MPN knows capital improvements are being contemplated, MPN must act reasonably in either approving or not approving the capital improvements.

Here, it is clear Caro—whether intentionally or not—put MPN on notice that capital improvements would be made to the parking lot.[2] Whether or not Caro believed or understood the anticipated work would include capital improvements, Miller did.

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[2] At one point, Caro testified that, by giving the construction plans to Jameson, he was seeking MPN's approval for "repairing the parking lot" because "that's what the easement says." At other times, however, he seemed to contradict himself by stating he did not believe he needed MPN's approval because he was not making capital improvements. In any event, MPN was on notice capital improvements were contemplated.

He stated repeatedly at trial that, after reviewing the construction plans in May 2012, he believed all the contemplated work would be capital improvements. It is also clear Miller was familiar with the Parking Agreement and knew that, when capital improvements were involved, the Agreement required MPN to act reasonably. Indeed, Miller's May 23 letter to Caro reflects his understanding of MPN's obligations under the Parking Agreement. In that letter, Miller stated that MPN not only wished to have its own contractor "inspect the lot and determine the most cost effect [*sic*] method of effectuating any necessary repairs," but also would "forward that proposal to [Caro] so that we can then have a meaningful discussion of the costs and reimbursements due." And, at trial, Miller stated his May 23 letter was meant "to make a clear distinction that it appeared everything I was looking at looked to me to be capital improvements, which if [Caro] wanted us to reimburse, would require our approval."

Given that Miller believed capital improvements would be made, knew such work required MPN's approval, and affirmatively told Caro MPN would forward its own contractor's proposal to Caro so that they could discuss appropriate costs and reimbursements, it is difficult to understand how MPN can argue it was reasonable for it to do absolutely nothing else. Even after Caro sent his August 6 letter indicating he would be glad to consider a proposal by an MPN contractor, MPN did not send a contactor to inspect the parking lot, did not send a proposal to Caro, and did not discuss costs and reimbursements with Caro. Indeed, after Miller's May 23 letter and despite knowing significant work of a capital nature would be taking place, MPN did nothing with respect to the parking lot. Thus, despite the fact

Caro did not explicitly seek or even understand whether he should seek approval from MPN, we nonetheless conclude substantial evidence supports the trial court's finding that "advance notice was substantially given prior to any parking lot construction." Thus, it was then MPN's obligation under the Parking Agreement to act reasonably in either approving or not approving the capital improvements, which MPN failed to do.

3. Damages

MPN next challenges the trial court's award of damages. MPN does not challenge the manner in which the trial court calculated damages. Rather MPN argues there was a complete failure of proof with respect to damages and, therefore, the trial court erred in awarding any damages.

As the trial court noted, when the fact of damages is certain, as it is here, a court will not deny an award of damages for failure to prove the amount of damages with exact precision. "Where the *fact* of damages is certain, as here, the *amount* of damages need not be calculated with absolute certainty. The law requires only that some reasonable basis of computation be used, and the result reached can be a reasonable approximation." (*Acree v. General Motors Acceptance Corp.* (2001) 92 Cal.App.4th 385, 398, fn. omitted.) " 'As long as there is available a satisfactory method for obtaining a reasonably proximate estimation of the damages, the defendant whose wrongful act gave rise to the injury will not be heard to complain that the amount thereof cannot be determined with mathematical precision.' " (*DuBarry Internat., Inc. v. Southwest Forest Industries, Inc.* (1991) 231 Cal.App.3d 552, 562.)

At trial, Caro presented only one document to support his damages claim. Specifically, Caro presented the billing worksheet, which his contractor, Mark Gaylord, prepared after all the work had been completed. Gaylord testified the billing worksheet represented "the breakout of the total concrete bill for the parking lot." Caro's expert testified the charges listed in the billing worksheet were reasonable. And, although Caro testified he could not remember the exact amount he paid to Gaylord for the parking lot work, he said he paid him with cash and checks. MPN countered that, other than Caro's testimony, there was no proof Caro paid Gaylord anything.

The trial court held Caro presented sufficient proof of damages. We agree. As noted above, MPN unreasonably withheld its approval of the capital improvements to the parking lot. Thus, under the Parking Agreement, MPN is liable for its share of the parking lot costs. The fact of damages being certain, Caro did not need to prove the amount of damages with absolute certainty. (*Acree*, *supra*, 92 Cal.App.4th at p. 398.) The trial court examined in detail the billing sheet and various options for calculating damages, eventually determining MPN was responsible for $35,580 of the almost $200,000 listed. We conclude the billing worksheet together with the testimony regarding damages was sufficient to demonstrate the amount of damages suffered.

In connection with its reply brief on appeal, MPN requested, and we granted, judicial notice of the complaint and answer filed in *Gaylord v. Caro*, Los Angeles Superior Court case number VC065431. MPN argues these documents demonstrate Caro did not pay Gaylord at all for the capital improvements to the parking lot and, therefore, Caro is not entitled to any award

of damages. We are reticent to reverse the trial court's damages award based on pending litigation in a separate case. Moreover, even assuming Caro did not pay Gaylord the total amount of damages awarded or any amount at all, that does not exclude other methods of compensation. And, indeed, if as MPN argues the pending litigation in *Gaylord v. Caro* proves Caro never paid Gaylord for the work done, then it would seem Caro will be held accountable for his end of the bargain in that case and ordered to pay or otherwise compensate Gaylord. Finally, it is undisputed MPN is a beneficiary of the work done to the parking lot and would be unjustly enriched if it did not bear its portion of the capital improvement costs. (See *Hernandez v. Lopez* (2009) 180 Cal.App.4th 932, 938–939.)

DISPOSITION

The judgment is affirmed. Respondent Robert Caro is awarded his costs on appeal.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

CHANEY, Acting P. J.

JOHNSON, J.