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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

RONALD S. CASWELL, Plaintiff and Respondent, v. JERRY JAMGOTCHIAN, Defendant and Appellant.	B271389 (Los Angeles County Super. Ct. No. BC543065)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Terry A. Green, Judge. Affirmed and remanded with directions.

Liner and Kim Zeldin; Browne George Ross, Maribeth Annaguey and Kathryn McCann; Andrade Gonzalez and Sean A. Andrade for Defendant and Appellant.

Ronald S. Caswell, in pro. per.; Law Offices of Kyle P. Kelley and Kyle P. Kelley for Plaintiff and Respondent.

Jerry Jamgotchian appeals from the trial court's grant of a motion to compel arbitration in Ronald S. Caswell's lawsuit against him, and the court's award of attorney fees to Caswell. We affirm.

BACKGROUND

In 2005, Jamgotchian hired Caswell to represent him in a lawsuit against a racing steward, alleging the steward wrongfully took and raced Jamgotchian's racehorse. Caswell drafted a three-page retainer agreement (the original retainer agreement) which he and Jamgotchian signed on December 14, 2005. The original retainer agreement contained this arbitration clause: "Arbitration; Choice of Law and Forum. While we look forward to a mutually beneficial and enjoyable relationship with you, as you know, one of the jobs of a lawyer is to provide for the unanticipated. Accordingly, should any fee dispute arise between us, we mutually agree that such dispute will be subjected to binding arbitration in Los Angeles, California, pursuant to the JAMS/Endispute arbitration program, and that the arbitrator may award reasonable attorneys' fees to the prevailing party in such proceedings. YOU ACKNOWLEDGE THAT YOU ARE AWARE OF THE FACT THAT BY AGREEING TO ARBITRATION, YOU WAIVE ANY RIGHT YOU HAVE TO A COURT OR JURY TRIAL. This entire agreement shall be governed by the laws of the State of California and the sole venue for any dispute arising hereunder, including the site of arbitration, shall be Los Angeles, California."

Caswell filed the lawsuit and the trial court granted summary judgment against Jamgotchian in December 2007. Caswell represented Jamgotchian on appeal, and this court reversed the trial court's grant of summary judgment.

(*Jamgotchian v. Slender* (2009) 170 Cal.App.4th 1384.) The case settled, and the trial court granted Jamgotchian's motion to dismiss in February 2010.

Meanwhile, in early 2007 while the racehorse litigation was ongoing, Jamgotchian asked Caswell to represent him after Jamgotchian's former attorney sued him for unpaid legal fees (the Zimmermann fee dispute). Caswell drafted a retainer agreement dated January 18, 2007, including an arbitration clause identical to the clause in the original retainer agreement. Jamgotchian refused to sign the second retainer agreement, saying another retainer agreement was unnecessary, and all Caswell's subsequent representation of Jamgotchian would be governed by the original retainer agreement.

The Zimmermann fee dispute went to Judicial Arbitration and Mediation Services, Inc. (JAMS) arbitration. Caswell advised Jamgotchian, made a formal appearance in the JAMS proceedings, and negotiated a settlement agreement. Just before the arbitration, Caswell sent Jamgotchian an email on March 3, 2008: "A long time ago you had asked me to do a retainer agreement for the Zimmermann [fee dispute] case. Do we need it since we have a prior retainer agreement and I represent you on many, many matters?" Jamgotchian answered: "No, just set-up another account." Caswell billed Jamgotchian for his work on the Zimmermann fee dispute (including negotiating and revising the settlement agreement), and Jamgotchian paid him 10 months later.

Over the years, Caswell continued to represent Jamgotchian and entities he owned or in which he had an interest in a total of 34 separate matters, always under the terms of the original retainer agreement and without objection from Jamgotchian. Caswell always billed Jamgotchian personally. Jamgotchian paid in cash or by personal check from his personal account.

In November 2011, Jamgotchian called to tell Caswell he would not pay his overdue balance in 11 matters ($213,960.23, or $76,346.54 after courtesy reductions). Jamgotchian had decided to end his relationship with Caswell and would not pay him a penny more; he had given all of his legal work to another firm with lower rates.

Caswell notified Jamgotchian that he had a right to request arbitration of the fee dispute under Business and Professions Code section 6200 et seq., but Jamgotchian did nothing. On August 5, 2013, Caswell filed a demand for JAMS arbitration. The arbitrator denied Jamgotchian's motion to remove the case from arbitration on April 9, 2014.

Motion to compel arbitration

Caswell filed a complaint in superior court on April 18, 2014, alleging causes of action for breach of contract, quantum meruit, open book account, and account stated, and requesting a stay pending the outcome in the JAMS arbitration. Jamgotchian failed to appear at a preliminary arbitration hearing on April 21. On April 30, Jamgotchian filed a complaint against Caswell in superior court for declaratory relief, seeking a declaration that the original retainer agreement did not apply to subsequent representation and Caswell could not force Jamgotchian into binding arbitration. Caswell filed a motion to compel arbitration

on May 6, 2014, and the trial court deemed Jamgotchian's declaratory relief lawsuit related. Jamgotchian opposed the motion to compel, and Caswell replied.

At the initial hearing on the motion to compel on July 14, 2014, Caswell was present and represented by Kyle Kelley. The court heard argument from both sides and then placed Caswell under oath and questioned him, allowing Jamgotchian's counsel to ask additional questions on cross-examination. (Jamgotchian was not present.) The hearing was not transcribed. The court continued the hearing to August 8, 2014, and allowed supplemental declarations from the parties.

At the August 8 hearing, following a statement by Caswell, counsel for Jamgotchian stated that Jamgotchian (who was present) would like to correct Caswell's "misstatements." The trial court responded: "[O]nly counsel speak and counsel is counsel. [Caswell] may be a party, but he's also a counsel." The court observed that Jamgotchian and Caswell had an ongoing "successful relationship, which suddenly at the end sadly turns sour." Jamgotchian "is very sophisticated as a business person and as a consumer of legal services. And I think on this one I have to agree with the plaintiff."

In an amended order filed September 24, 2014, the court concluded Caswell was credible, and Jamgotchian had refused to sign the second retainer agreement. Finding "an oral modification of the original retainer agreement to provide that it would cover the Zimmermann litigation and any subsequent matters Caswell was requested to handle," the court continued: "Caswell has met his burden of demonstrating the existence of a written agreement to arbitrate any fee dispute between him and Jamgotchian. That written agreement was orally modified to

cover subsequent matters which Jamgotchian asked Caswell to handle, and this oral modification is permitted under CCP § 1280(f)." The court rejected Jamgotchian's argument that the original retainer agreement was unconscionable, and agreed with Caswell that the 11 matters with unpaid fees were the same general kind as the matters Caswell previously handled for Jamgotchian. The court also concluded that matters involving Jamgotchian's limited partnership and his family trust did not require new written retainer agreements and were subject to the arbitration clause. The court granted the motion to compel arbitration and stayed the related cases.

Jamgotchian filed a motion for reconsideration. In a supporting declaration disputing Caswell's "false and inflammatory" testimony, he stated that after all the briefs had been filed he "obtained evidence" that he had refused to pay a $5,000 retainer in the Zimmermann fee dispute or to sign the second retainer agreement "because I could resolve the Zimmermann matter by myself," and he had reached a settlement without Caswell's involvement. Jamgotchian attached as an exhibit the settlement agreement in the Zimmermann fee dispute signed by him and by the Zimmermann firm but not by Caswell. Caswell filed a motion for sanctions accusing Jamgotchian of perjury, attaching as an exhibit to a declaration by Scott Zimmermann the fully executed settlement agreement bearing Caswell's signature and faxed to the Zimmermann firm from Caswell's law office.

At the hearing on the motion for reconsideration, the court stated: "Caswell is counsel in this matter. And as counsel in this matter, he has a right to speak, especially in response to the questions of the court." Jamgotchian's counsel argued that

allowing Caswell to testify at the first (unrecorded) hearing violated due process, when Jamgotchian "had completely different facts to tell you." The court answered that Jamgotchian had put those facts forward: "I have Mr. Caswell's version of the evidence, I have Mr. Jamgotchian's version of the evidence. And the only difference was that Mr. Caswell was cross-examined and your client isn't. . . . [T]hat actually is a good thing for Mr. Jamgotchian."

After reconsidering all the evidence, the court made these factual findings: "Mr. Jamgotchian went to Mr. Caswell for representation in the [racehorse litigation] and signed a retainer agreement." When Jamgotchian approached Caswell about representing him in the Zimmermann fee dispute, Jamgotchian "refused to sign . . . the second retainer agreement. . . . He said, 'Let's make the first one be our retainer.' " Relying not on Caswell's testimony but on the documents and declarations, the court concluded: "[A]ll parties then wanted the initial agreement to cover all future litigation that Mr. Jamgotchian brought, as the client, to Mr. Caswell." Jamgotchian paid Caswell a lot of money over the years for numerous cases, "all the same nature. They were all civil litigation," and the 11 matters remaining were all of the same kind under the Business and Professions Code. The court did not believe Jamgotchian's assertion that he had settled the Zimmermann fee dispute without Caswell's assistance, referencing Jamgotchian's submission of the unsigned settlement agreement, and Caswell's subsequent submission of the signed agreement faxed from Caswell's law office.

The trial court explicitly rejected Jamgotchian's argument that because the original retainer agreement contained an arbitration clause, the parties could not orally agree to modify the

retainer agreement to cover subsequent litigation: "That would mean the law that says the initial retainer can live on really doesn't mean that the initial retainer can live on; it means for certain terms of the initial retainer you need an initial retainer each time." On December 1, 2014, the trial court denied Jamgotchian's motion for reconsideration and Caswell's motion for sanctions.

Arbitration took place on July 8, 2015, and the arbitrator issued a final award in favor of Caswell on September 8, 2015. Caswell had claimed a balance of $79,194.89 due and owing for his legal services on a number of subsequent matters in which Jamgotchian was a named party, two cases in which El Segundo Plaza Associates, LP (ESPA) was a named party, and one case in which Jamgotchian and his wife Patricia were named as parties in their representative capacities as trustees of the Jerry and Patricia Jamgotchian Revocable Family Living Trust. The arbitrator found that Caswell and Jamgotchian orally modified the original retainer agreement to cover subsequent matters, and Jamgotchian was personally liable for $78,154.49 in outstanding fees for all the cases, including those naming ESPA and the family trust. The arbitrator awarded Caswell $78,154.49 in damages and $28,154.15 in prejudgment interest. Under the original retainer agreement, as the prevailing party Caswell was also entitled to attorney fees of $126,406.25 for Kelley's representation in the arbitration and $36,681.57 in arbitration costs, for a total of $269,396.46.

Jamgotchian did not file a petition to vacate the arbitration award. Caswell filed a petition to confirm the arbitration award on December 23, 2015, which Jamgotchian opposed. At the hearing on February 3, 2016, the trial court stated, "we've heard

every conceivable objection known to mankind . . . . And I just think there's nothing new here." Jamgotchian's counsel argued that the arbitration clause could not be orally modified, and the court responded: "I don't think that it is the arbitration agreement that was modified; it was just [the] retainer that [was] modified. . . . The arbitration agreement remained exactly the same, and has remained exactly the same." When Jamgotchian's counsel stated, "Your Honor held that you could modify an arbitration agreement," the court responded, "No. Modify the retainer agreement, but that's okay." The court granted the motion to confirm the decision and entered judgment, adding $11,217.60 in prejudgment interest to the arbitrator's award for a total judgment of $280,614.60. Notice of entry of judgment was filed on February 16, and Jamgotchian filed a timely notice of appeal.

Motion for attorney fees

On March 21, 2016, Caswell filed a motion for $133,362.50 in attorney fees for Kelley's representation of Caswell in superior court regarding the motion to compel arbitration and the motion to confirm the arbitration award. Jamgotchian opposed the motion, and Caswell replied.

At the hearing on April 13, 2016, the trial court noted that the arbitrator had awarded fees to Caswell for the arbitration, "leaving for another day and another forum" the determination of fees for the judicial proceedings to compel arbitration and to confirm the award. Caswell was the prevailing party in the arbitration, and Jamgotchian's "speed bumps and roadblocks, for the sake of speed bumps and roadblocks, have consequences," one of which was attorney fees as called for in the original retainer agreement. The trial court again remarked on Jamgotchian's

"disappointing" submission of the settlement agreement in the Zimmermann fee dispute unsigned by Caswell (followed by Caswell's prompt submission of the signed settlement agreement faxed from Caswell's office): "That is very outside the written and unspoken rules of how we conduct ourselves in litigation." Noting Jamgotchian's decision to conduct "scorched earth litigation," the court found Kelley's $450 hourly rate "a bargain" and the fee amount requested "not even remotely unreasonable." "Are the number of hours reasonable? Yes. Is the billable hour rate reasonable? Absolutely yes." The trial court granted Caswell's motion for fees in the full amount of $133,362.50 with costs of $3,417.28. Jamgotchian filed a timely notice of appeal.

We consolidated the two appeals.

DISCUSSION

I. We deny Caswell's motion to dismiss the appeal.

Caswell filed a motion to dismiss the appeal, arguing that Jamgotchian's violation of a postjudgment court order requiring him to respond to Caswell's judgment debtor discovery justifies application of the disentitlement doctrine. We informed the parties we would consider the motion to dismiss the appeal.

We have the inherent power under the disentitlement doctrine to dismiss an appeal filed by a party who refuses to comply with a trial court order. (*Stoltenberg v. Ampton Investments, Inc.* (2013) 215 Cal.App.4th 1225, 1229 (*Stoltenberg*).) Such a dismissal is a " ' "discretionary tool that may be applied when the balance of equitable concerns make it a proper sanction" ' " for willful disobedience or destructive tactics, and does not require a formal finding of contempt. (*Id.* at p. 1230.) The merits of the appeal are irrelevant. (*Ironridge*

Global IV, Ltd. v. ScripsAmerica, Inc. (2015) 238 Cal.App.4th 259, 265.)

Caswell served Jamgotchian with judgment debtor interrogatories and document demands on December 14, 2016. Jamgotchian responded on January 10, 2017, that he was headed to Fresno, where his 91-year-old mother had been hospitalized, and would engage counsel and work on a response upon his return. A long series of objections and requests for extension followed as Jamgotchian engaged new counsel and continued to assert his mother was extremely ill. On March 20, 2017, counsel and the court signed a stipulated order extending Jamgotchian's deadline to respond to Caswell's production requests to April 10, 2017.

On April 18, 2017, Jamgotchian's new counsel provided a hyperlink to document production (which Caswell characterizes as nonresponsive and outdated). On April 25, days before a deadline for additional responses and production, Jamgotchian informed Caswell his mother had been released from the hospital "to die in peace at home and I will be with her until the end." Jamgotchian's mother died in the hospital on April 28. Caswell made numerous unsuccessful attempts to serve Jamgotchian at the hospital during the month of April.

Kelley continued to correspond with Jamgotchian's new counsel as deadlines passed. Jamgotchian filed an ex parte application for an order continuing his responses to motions for a charging order and assignment order, and the judgment debtor examination, all scheduled for June 2017; the court denied his application. On June 13, the trial court granted Caswell's motion for a charging order against Jamgotchian's interest in the

company that owned a downtown Los Angeles sports bar and strip club.

Before the judgment debtor examination began on June 14, Jamgotchian turned over 382 additional pages of documents without an index or inventory. At the hearing, Jamgotchian's answers were generally unresponsive and vague. When asked what assets he had to pay the judgment, Jamgotchian answered: "Well, I don't think that's going to be a problem, because I don't think [Caswell's] going to prevail on the appeal." The next day, the court granted Caswell's motion for an assignment order.

In his August 28, 2017 declaration in opposition to the motion to dismiss the appeal, Jamgotchian states that his mother became sick in October 2016 and was in and out of the hospital many times. He drove back and forth to Fresno from Manhattan Beach on a weekly basis to help his mother and manage her care, and he had limited cell phone reception and no computer access in the hospital. After his mother's death at the end of April 2017, his family observed an Armenian Apostolic Church 40-day mourning period ending June 11, 2017. Jamgotchian maintains he eventually provided full and complete discovery and was paying Caswell almost $40,000 a month on the judgment, pursuant to the charging order.

In *Gwartz v. Weilert* (2014) 231 Cal.App.4th 750, 752, 758, the judgment debtors appealing a large fraud verdict did not deny that they violated a trial court order forbidding the transfer of assets by making 47 such transfers while the appeal was pending. In *Stoltenberg*, *supra*, 215 Cal.App.4th at page 122, the appellants were under a postverdict subpoena to produce financial documents but refused to do so even after they were found in contempt. In *Blumberg v. Minthorne* (2015)

233 Cal.App.4th 1384, 1391-1392, a former trustee disobeyed two court orders to provide an accounting and to quitclaim real property and "was utterly dishonest with the court."

All of those cases applied the disentitlement doctrine to dismiss the appeal of an appellant who blatantly disobeyed a trial court order. Here, the March 20, 2017 stipulated order signed by the court gave a discovery deadline of April 10, 2017. Jamgotchian failed to comply with that deadline while his mother was dying. He eventually provided discovery to Caswell; the quality of his production is not relevant to determining whether to dismiss this appeal. Although Jamgotchian's compliance was, at best, late and, at worst, nonresponsive, it does not sink to the level of "stand[ing] in contempt of the legal orders and processes of the superior court." (*Stone v. Bach* (1978) 80 Cal.App.3d 442, 444.)

We deny Caswell's motion to dismiss the appeal.

II. Substantial evidence supports the trial court's determination that a valid agreement to arbitrate existed.

"A party who claims that there is a written agreement to arbitrate may petition the superior court for an order to compel arbitration. (Code Civ. Proc., §1281.2.)" (*Banner Entertainment, Inc. v. Superior Court* (1998) 62 Cal.App.4th 348, 356.) The petitioner has the burden to establish the existence of a valid agreement to arbitrate, and the opposing party bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. (*Ibid.*) "The trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination on the issue of arbitrability." (*Id.* at pp. 356-357.) "On appeal, if substantial

evidence supports the trial court's determination that a valid agreement to arbitrate exists, an appellate court will affirm that determination." (*Id.* at p. 357.)

On appeal, Jamgotchian does not dispute outright the trial court's conclusion that he and Caswell orally agreed to modify the original retainer agreement so that its terms, including the arbitration clause, would apply to all subsequent representation by Caswell. Instead, he argues that *written agreements to arbitrate* may not be orally modified, and recharacterizes the court's finding as concluding that the arbitration clause, rather than the retainer agreement, was orally modified.

"An oral agreement to arbitrate is not ordinarily enforceable. The statutory scheme for the enforcement of arbitration agreements applies only to written agreements. (Code Civ. Proc., § 1281 et. seq.)" (*Magness Petroleum Co. v. Warren Resources of Cal., Inc.* (2002) 103 Cal.App.4th 901, 907 (*Magness*).)[1] In this case, a written arbitration clause is included in the original retainer agreement. "[T]he statute expressly describes the circumstances under which a written agreement to arbitrate is deemed to include an oral or implied provision. The term 'written agreement' 'shall be deemed to include a written agreement which has been extended or renewed by an oral or

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[1] In *Magness*, a written arbitration agreement required arbitration before the American Arbitration Association, but the parties had orally agreed to JAMS arbitration. The court refused to enforce the oral modification of the terms of the arbitration agreement. (103 Cal.App.4th at pp. 903-904, 907-908.)

implied agreement.' (Code Civ. Proc. § 1280, subd. (f).)" [2] (*Id.* at pp. 907-908.)

When Jamgotchian and Caswell orally modified the original retainer agreement so that it would apply to all subsequent representation by Caswell, they did not modify the arbitration clause. That clause remained identical in the second retainer agreement that Jamgotchian refused to sign in favor of applying the original retainer agreement to subsequent cases. Caswell and Jamgotchian orally agreed to modify not the arbitration clause, but "the overall contract in which that agreement to arbitrate is contained." (See *Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street* (1983) 35 Cal.3d 312, 322.) That clause remained identical in the second retainer agreement that Jamgotchian refused to sign in favor of applying the original retainer agreement to subsequent cases. The unmodified written arbitration clause, as part of the retainer agreement, thus applied to "any fee dispute" in subsequent cases.

The trial court explicitly made this distinction and rejected Jamgotchian's argument, stating, "it is [not] the arbitration agreement that was modified; it was just [the] retainer that [was] modified . . . . The arbitration agreement remained exactly the same, and has remained exactly the same." When Jamgotchian's counsel insisted that the court had found that the arbitration clause had been orally modified (as Jamgotchian continues to insist on appeal), the court responded: "No. Modify the retainer agreement, but that's okay." Like the trial court, we reject Jamgotchian's attempt to recharacterize the court's finding.

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[2] Unless otherwise indicated, all subsequent statutory references are to the Code of Civil Procedure.

Substantial evidence supports the trial court's conclusion that Jamgotchian and Caswell orally modified the original retainer agreement to apply to subsequent cases, including the unmodified arbitration clause. The trial court properly granted Caswell's motion to compel arbitration.

III. Substantial evidence supports the trial court's conclusion that the entire fee dispute was arbitrable.

Jamgotchian argues that the trial court erred in applying the original retainer agreement and its arbitration clause to the two subsequent cases in which Caswell represented Jamgotchian's limited partnership and the one in which Caswell represented his family trust. He maintains that Caswell's representation of those entities was services provided to third parties and therefore not of the same general kind as the racehorse litigation, so that in the absence of a new written retainer agreement for each, none of the three matters was subject to the arbitration clause. We disagree.

Business and Professions Code section 6148, subdivision (d)(2) states that the requirement of a written retainer agreement for a case in which attorney fees are reasonably likely to exceed $1,000 does not apply to "[a]n arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client." Subdivision (c) provides: "Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee."

The trial court concluded that Business and Professions Code section 6148 did not require new retainer agreements. First, all the matters were civil litigation and thus "of the same

general kind" as the racehorse litigation. Second, the fee dispute over civil litigation involving Jamgotchian's limited partnership and his family trust was arbitrable, because Caswell argued that Jamgotchian owed those fees as an individual: "Whether or not Jamgotchian bears responsibility for those fees is a question which goes to the merits of Caswell's claim, not the arbitrability of the claim. Caswell is claiming unpaid fees on those matters, and Jamgotchian disputes liability. This is, therefore, a 'fee dispute' between Jamgotchian and Caswell, and thus, subject to arbitration under the parties' agreement to arbitrate 'any fee dispute.' "

The arbitrator found Jamgotchian never segregated those cases, never requested billing to the limited partnership or family trust, always received the bills at his personal address, and paid the bills with no regard for accounting formalities. Payments were credited to the oldest invoices first in most matters, sometimes with cash to Caswell or by direct deposit. The arbitrator concluded Jamgotchian was thus personally liable for fees in the two matters involving the limited partnership and the matter involving the family trust, and included those matters in the award.

"Arbitration awards are final and conclusive because the parties have agreed they should be so. . . . [O]nly limited judicial review is available. Courts may not review the merits of the controversy, the validity of the arbitrator's reasoning, or the sufficiency of the evidence. [Citation.] Indeed, an arbitrator's decision is not generally reviewable for errors of fact or law, even if the error appears on the face of the award and causes substantial injustice." (*Jordan v. California Dept. of Motor Vehicles* (2002) 100 Cal.App.4th 431, 443.) Judicial review of the

merits is available only on a motion to vacate. (*Ibid.*) Jamgotchian did not file a motion to vacate the arbitration award or to have the original retainer agreement declared void (which would entitle Caswell to a reasonable fee).

We quickly dispatch Jamgotchian's argument that Caswell violated the Rules of Professional Conduct, rule 3-310(F) by failing to execute a separate written retainer agreement for the three cases. Jamgotchian did not raise this issue in the trial court or in the arbitration, and we have concluded separate written retainers were not necessary.

Substantial evidence supports the trial court's conclusion that the arbitration clause applied to the entire fee dispute.

IV. The trial court was correct to award attorney fees to Caswell and the amount was not an abuse of discretion.

A. The contract language authorized the fee award.

The arbitration clause in the retainer agreement provides that any fee dispute will be subjected to binding arbitration, and "the arbitrator may award reasonable attorneys' fees to the prevailing party in such proceedings." Jamgotchian argues this language authorized only the arbitrator to award fees, and did not authorize the trial court to award Caswell attorney fees and costs for the motion to compel and the motion to confirm in superior court. We disagree.

Section 1293.2 provides: "The court shall award costs upon any judicial proceeding under this title as provided in Chapter 6 (commencing with section 1021) of Title 14 of Part 2 of this code." "[A]ny judicial proceeding" includes a petition to compel arbitration and a petition to confirm an arbitration award. (§§ 1281.2, 1285.) Attorney fees, if authorized by contract, are

allowable as costs. (§ 1033.5, subd. (a)(10)(A).) "The award of costs pursuant to section 1293.2, including attorney fees when authorized by contract, is mandatory." (*Marcus & Millichap Real Estate Investment Brokerage Co. v. Woodman Investment Group* (2005) 129 Cal.App.4th 508, 513.)

In *Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 538 (*Ajida*), the contract contained an arbitration clause "requir[ing] the parties to submit disputes to binding arbitration and empower[ing] the arbitrators to determine and award attorneys' fees and costs." An arbitration panel issued an award in a dispute, and awarded attorney fees and costs under the contract. (*Id.* at p. 538.) The award stated the provisions in the agreement for arbitration and fees " 'shall be applicable to any dispute arising under or related to' " the final award, although the parties' contract had terminated before the arbitration began. (*Id.* at pp 538, 539, fn. 2.) On the petition to confirm the award, the appellant asked the trial court to correct the award by eliminating the attorney fees clause. The court disagreed and determined that inclusion of the attorney fees clause in the arbitration award was within the arbitrators' powers. (*Id.* at p. 539.) The Court of Appeal agreed and affirmed the arbitration award. (*Id.* at pp. 544-545.)

The respondent sought attorney fees on appeal not under the arbitration award, but under the contract. (*Ajida*, *supra*, 87 Cal.App.4th at p. 551.) The appellant had already paid the fees awarded for the arbitration proceedings, but argued against an award of attorney fees on appeal. (*Ibid.*) The Court of Appeal reiterated that it had affirmed the arbitration award's extension of the obligation to pay fees to future disputes. (*Ibid.*) The court then held the intention of the contractual provision permitting

the arbitrators to award attorney fees justified an award of fees on appeal: "The contractual provision permits an award of attorneys' fees in the arbitrators' discretion. Although that clause clearly is directed at the arbitration proceeding itself, it is broad enough to cover fees on this appeal. . . . [A] contract provision that permits the recovery of fees in arbitration is broad enough to include fees in related judicial proceedings, including an appeal from the judgment confirming the award. 'This dispute was to enforce the terms of the contract; the arbitration award was to enforce the terms of the contract; and this action to confirm the award is also to enforce the terms of the contract. [The prevailing party] is entitled to a reasonable amount for its attorney's fees in this action . . . and this appeal.' [Citations.] 'The rationale for the broad interpretation in these cases is to give meaning to the parties' intentions in agreeing to an attorney fees clause.' " (*Id.* at p. 552.)

Here, the contractual provision (the arbitration clause in the original retainer agreement) similarly permits the arbitrator to award reasonable attorney fees to the prevailing party. We agree with *Ajida*, *supra*, 87 Cal.App.4th at page 552, that such a contractual provision is "broad enough to include fees in related judicial proceedings," including the motions to compel arbitration and to affirm the award. The trial court properly awarded fees as costs under section 1293.2.

B. The fee amount was not an abuse of discretion.

Jamgotchian argues that the trial court abused its discretion by awarding Caswell the full amount of requested fees, $133,362.50. The court was not required to make specific findings reflecting its calculations; the record need only show that the court awarded fees according to the lodestar approach.

(*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254.) "A trial judge's determination of a reasonable amount of attorney fees will not be disturbed on appeal unless the appellate court is convinced that it is clearly wrong." (*Id.* at p. 255.) We reject each objection to the fee amount in turn.

Jamgotchian argues the trial court should have stricken Caswell's attorney Kelley's invoices because Kelley billed in quarter-hour increments. He cites a federal district court decision reducing an attorney fee award because Skadden, Arps billed in quarter-hour increments, which did not reasonably reflect the number of hours actually worked. (*Lopez v. San Francisco Unified School Dist.* (N.D.Cal. 2005) 385 F. Supp.2d 981, 993.) California cases do not disallow an award of fees to an attorney who has billed in quarter-hour increments. (See *Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 100.) Kelley's declaration explained that he billed Caswell in quarter-hour increments because "[f]or sole practitioners, it is bad business to charge clients for small, discrete tasks such as reading a short email. . . . Consequently, unless a task takes at least fifteen minutes, I do not capture the time. Likewise, I *round my time down* to the nearest quarter hour. . . . By billing in this manner, I believe I accurately capture the majority of my time and fairly bill my clients." The trial court was entitled to accept this explanation and to conclude that Kelley's invoices reasonably reflected the number of hours he worked for Caswell.

Jamgotchian next argues Kelley's $450 hourly billing rate was unsupported. Kelley's declaration stated that he billed Caswell at $400, $425, and eventually $450 an hour, his rates

were reasonable and consistent with other California attorneys[3] of similar experience, and his rates had been approved as reasonable by the arbitrator, who found that Kelley's appropriate hourly rate was at least $450. The court noted that it remembered Kelley from his work in another case, thought his rates were "a bargain then" and "a bargain now," and was "very impressed with the quality of work." The trial court "should also consider the experience, skill, and reputation of the attorney requesting fees [and] may rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate." (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009 (*Heritage*).) The trial court did not abuse its discretion in concluding that given its knowledge of the local legal market and its personal experience with Kelley's work, his hourly billing rates were reasonable.

Jamgotchian argues the trial court should have reduced the fee award amount because Kelley used block billing (combining multiple tasks in one entry). "Trial courts retain discretion to penalize block billing when the practice prevents them from discerning which tasks are compensable and which are not. [Citations.] The trial court identified no such problem here, and [the appellant] has completely failed to show that block billing occurred or that [the number of] hours billed for litigation was unreasonable." (*Heritage*, *supra*, 215 Cal.App.4th at p. 1010.)

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[3] In the trial court, Jamgotchian did not argue that Kelley's rates were unreasonable in California, but argued that Kelley should have billed at Texas rates because he currently lived in Austin, Texas. The appropriate market rate is based on the rates in the community where the court is located. (*Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 699.)

Jamgotchian argues the trial court should have stricken all entries for "associated clerical work," pointing to "[v]ague billing entries" without explaining how any of the entries bill for clerical work. He has not shown that any clerical time was requested or awarded. He also disputes the award of fees for time spent on the motion for sanctions Caswell brought accusing Jamgotchian of perjury regarding the execution of the Zimmermann settlement agreement. The court denied the motion for sanctions, but was profoundly troubled by Jamgotchian's submission of an early, partially executed agreement to argue that Caswell had not participated, which was clearly untrue given that Caswell promptly submitted the fully executed agreement bearing Caswell's signature and faxed from his office. "[A] party who ultimately prevails on a contract action is entitled to all of its fees, including fees incurred during the lawsuit in proceedings where it did not prevail." (*Frog Creek Partners, LLC v. Vance Brown, Inc.* (2012) 206 Cal.App.4th 515, 546.)

Finally, Jamgotchian argues the trial court should have reduced the award because the arbitrator did not award Caswell the full amount of fees he requested. Jamgotchian made this argument to the arbitrator regarding the award of fees to Caswell for the arbitration proceedings, and the arbitrator rejected it. In the judicial proceedings for which Caswell requested fees in the trial court, Caswell was the prevailing party and entitled to recover his fees and costs.

V. Caswell is entitled to his fees on appeal.

Caswell requests his attorney fees on appeal. "[A] contract provision that permits the recovery of fees in arbitration is broad enough to include fees in related judicial proceedings, including an appeal from the judgment confirming the award." (*Ajida*,

supra, 87 Cal.App.4th at p. 552.) Caswell is the prevailing party on this appeal, and he is entitled to attorney fees in an amount to be determined by the trial court on petition.

DISPOSITION

The judgment and order are affirmed. The case is remanded to the trial court to determine and award Ronald S. Caswell's reasonable appellate attorney fees and costs upon petition.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.*

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