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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

APHECTION, INC.,

Plaintiff and Respondent,

v.

BLVD SUPPLY, LLC,

Defendant and Appellant.

B275362

Los Angeles County

Super. Ct. No. BC564709

APPEAL from a judgment of the Superior Court of Los Angeles County, Malcolm H. Mackey, Judge. Affirmed.

Kenner Law Group and Jason J.L. Yang for Defendant and Appellant.

Marh & Associates and Simon H. Langer for Plaintiff and Respondent.

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## **INTRODUCTION**

Plaintiff Aphection, Inc. (Aphection) entered into a two-year manufacturing contract with defendant Blvd Supply, LLC (Blvd Supply), through which Aphection agreed to be the exclusive manufacturer of clothes and apparel bearing Blvd Supply's designs. Aphection spent about \$600,000 on fabric, rent, and employees' salaries in preparing to perform under the contract. While the contract was still in effect, Blvd Supply used a different manufacturer to produce clothing bearing the company's designs. Aphection later sued Blvd Supply for breach of contract. Following a bench trial, the trial court entered judgment in Aphection's favor, awarding the company \$138,000 in reliance damages. On appeal, Blvd Supply contends insufficient evidence supports the court's award of damages. We affirm.

## **FACTS AND PROCEDURAL BACKGROUND**

### **1. The manufacturing contract**

Chuon Guen Lee is the president of Aphection, a company that manufactures shirts, tank tops, and other clothing items. Blvd Supply owns certain "designs, copyrights, patents, trade secrets and trademarks for use on clothing, apparel, accessories and other fashion items." Between late-2012 and mid-2013, Aphection manufactured clothing items for several companies, including Blvd Supply and a group of companies also owned by Lee.

In March 2013, Lee agreed to borrow \$300,000 from a person named Yun-oak Moon. Lee borrowed the money in his own name.

In May or June 2013, Aphection produced around 30,000 units of clothing for Blvd Supply, with a gross revenue between \$300,000 and \$400,000. According to Lee, Aphection's profits from this shipment equaled about 40 percent of the cost to manufacture the clothes.

On June 13, 2013, Aphection and Blvd Supply signed a two-year manufacturing agreement (the Contract), effective July 1, 2013, through which Blvd Supply agreed to use Aphection as its exclusive manufacturer for shirts and other clothing items carrying Blvd Supply's designs. Under the Contract, Blvd Supply agreed to pay Aphection the cost for manufacturing clothes and apparel bearing Blvd Supply's designs, plus 20 percent of that cost.

Lee claims Aphection spent about \$600,000, which includes the \$300,000 Lee borrowed from Moon in March 2013, to prepare for the company's expected output of clothes and apparel under the Contract. Specifically, Aphection spent: (1) about \$300,000 on fabric; (2) about \$100,000 on four employees' salaries; and (3) between \$180,000 and \$200,000 on rent and utilities.<sup>1</sup>

After the parties signed the Contract, Blvd Supply ordered, and Aphection produced and shipped, about 1,000 to 2,000 items of clothing. Blvd Supply paid for, but later rejected, the shipment because the items were defective. Aphection never returned Blvd

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<sup>1</sup> At times during his testimony, Lee seemed to suggest that he personally incurred these expenses. His testimony, however, could also be interpreted as establishing that he acted on behalf of the company. Lee also testified that Aphection purchased several sewing machines for \$47,932. The invoice for that purchase shows the machines were purchased in March 2013, several months before the parties entered into the Contract.

Supply's payment. After rejecting the shipment, Blvd Supply did not place any additional orders with Aphection.

At some time in 2013 or 2014, apparently after Blvd Supply rejected Aphection's shipment, one of Aphection's employees went to Blvd Supply's facility. The Aphection employee saw about 100,000 units of clothing bearing Blvd Supply's designs that were not manufactured by Aphection.

## **2. The lawsuit**

In November 2014, Aphection sued Blvd Supply for breach of the Contract. In March 2016, following a bench trial, the court found Blvd Supply breached the Contract and awarded Aphection \$138,000 in reliance damages. The court calculated the damages award as follows: one-half of the \$300,000 that Lee borrowed from Moon in March 2013 and later invested into Aphection, minus \$12,000, which the court apparently attributed as the amount Aphection never returned after Blvd Supply rejected Aphection's shipment of defective goods. The court entered judgment in Aphection's favor on May 18, 2016.

Blvd Supply filed a timely notice of appeal from the judgment.

## **DISCUSSION**

### **1. Applicable law and standard of review**

To establish a claim for breach of contract, a plaintiff must prove that: (1) a contract exists; (2) the plaintiff performed, or was excused from performing, under the contract; (3) the defendant breached the contract; and (4) the defendant's breach caused the plaintiff's damages. (*Agam v. Gavra* (2015) 236 Cal.App.4th 91, 104 (*Agam*).) The only issue Blvd Supply raises

on appeal is whether sufficient evidence supports the amount of damages the court awarded Aphection.

Generally, the measure of damages for a breach of contract “is the amount which will compensate the party aggrieved for all the detriment proximately caused [by the breach], or which, in the ordinary course of things, would be likely to result” from the breach. (Civ. Code, § 3300.) “No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin.” (Civ. Code, § 3301.)

One measure of damages in a breach of contract claim is reliance damages, which consists of the plaintiff's “ ‘ ‘reasonable outlay or expenditure toward performance.’ ” (Agam, *supra*, 236 Cal.App.4th at p. 105.) In other words, the plaintiff may recover the amount of money it reasonably spends in reliance on the contract. (*Ibid.*) Once the plaintiff presents evidence establishing how much it spent to prepare to perform under the contract, the burden “shifts to the defendant to show (1) the amount of plaintiff's expenses that were unnecessary and/or (2) how much the plaintiff would have lost had the defendant fully performed (i.e., absent the breach). The plaintiff's recovery must be reduced by those amounts.” (*Id.* at p. 107.)

We review the record in the light most favorable to the judgment to determine whether substantial evidence supports the trial court’s award of damages for breach of contract. (*Ajaxo Inc. v. E\*Trade Group Inc.* (2005) 135 Cal.App.4th 21, 55.) An appellant has the burden not only to show error but prejudice from that error. (Cal. Const., art. VI, § 13.) If an appellant fails to satisfy that burden, his argument will be rejected on appeal. (*Century Surety Co. v. Polisso* (2006) 139 Cal.App.4th 922, 963.) “[W]e cannot presume prejudice and will not reverse the

judgment in the absence of an affirmative showing there was a miscarriage of justice. [Citations.]” (*Ibid.*)

**2. Substantial evidence supports the court’s damages award.**

Blvd Supply contends insufficient evidence supports the amount of reliance damages the court awarded to Aphection. We disagree.

At trial, Aphection presented evidence that it spent at least \$600,000 in reliance on the Contract, a value that exceeds the \$138,000 in damages the court awarded Aphection. Lee testified that, in preparing to perform under the Contract, Aphection spent the \$300,000 that Lee borrowed from Moon in March 2013, as well as an additional \$300,000, to purchase fabric and to pay rent and four employees’ salaries.

Blvd Supply argues Lee’s testimony is insufficient to establish the amount of money Aphection spent in reliance on the Contract. Specifically, Blvd Supply asserts Aphection failed to prove the amount of damages it suffered because it did not present: (1) any documents confirming that Lee actually received the \$300,000 from Moon; or (2) any documents or other evidence identifying what portion of the \$600,000 Aphection spent that should be attributed to the work the company reasonably expected to perform under the Contract versus what amount of that money should be attributed to the work the company performed, or expected to perform, for other clients during the two-year period of the Contract.

With respect to Blvd Supply’s first argument, it is immaterial whether Aphection presented documents corroborating Lee’s testimony that he received the money he agreed to borrow from Moon. Lee testified that he received that

money and spent it on behalf of Aphection to prepare for the work the company expected to perform under the Contract. (See Evid. Code, § 411; *Greenwich S.F., LLC v. Wong* (2010) 190 Cal.App.4th 739, 767-768 [“The testimony of one witness may provide substantial evidence.”].) As to Blvd Supply’s second argument, Lee testified that Aphection spent \$600,000 on materials, rent, and salary for the specific purpose of performing under the Contract. Through Lee’s testimony, Aphection met its burden of proving the amount of money it spent in reliance on the Contract.

We also reject Blvd Supply’s argument that the court improperly shifted the burden of proof when it asked Blvd Supply to show how much of the money Aphection spent in preparing to perform under the Contract should be reduced in calculating the damages award. Once Aphection established the amount of money it spent in reliance on the Contract, the burden shifted to Blvd Supply to show either: (1) how much of Aphection’s expenditure was unnecessary for its performance under the Contract or (2) how much money Aphection would have lost regardless of whether Blvd Supply did not breach the Contract. (See *Agam, supra*, 236 Cal.App.4th at p. 107.) Blvd Supply did not present any evidence on these issues.

In sum, because Aphection presented Lee’s uncontested testimony establishing that the company spent at least \$600,000 in reliance on the Contract, the court’s award of damages is supported by substantial evidence.<sup>2</sup>

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<sup>2</sup> To the extent Blvd Supply challenges the method the court used to calculate the specific amount of damages it awarded Aphection (i.e., \$138,000), Blvd Supply has failed to demonstrate how it was prejudiced. Indeed, based on the evidence presented at trial, the court

## **DISPOSITION**

The judgment is affirmed. Aphection shall recover its costs on appeal.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

CURREY, J.\*

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could have awarded Aphection a significantly higher sum (i.e., at least \$600,000).

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