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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

VILLA RIVIERA CONDOMINIUM ASSOCIATION, Plaintiff and Appellant, v. DAVID JAMES BERG III, Defendant and Respondent.	B269191 (Los Angeles County Super. Ct. No. NC058214)

APPEAL from an order of the Superior Court of Los Angeles County, Michael P. Vicencia, Judge. Affirmed.

Craton, Switzer & Tokar, Curt R. Craton and Robert E. Tokar for Plaintiff and Appellant.

Mauri L. Reese for Defendant and Appellant.

INTRODUCTION

Plaintiff Villa Riviera Condominium Association (the Association) appeals from a postjudgment award of attorneys' fees in an action against a former condominium owner, defendant David James Berg III, to collect unpaid assessments. The Association contends the trial court erred by awarding it less than one-third of the total attorneys' fees it requested without specifying reasons for the reduction. The Association also argues the court erroneously overruled its objections to Berg's evidence. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Berg owned a condominium unit at the Villa Riviera condominium project in Long Beach (Villa Riviera). Villa Riviera's governing Declaration of Covenants, Conditions and Restrictions (C.C. & R.'s) authorizes the Association to impose assessments against owners of condominium units, and provides that such assessments shall constitute a lien on the respective condominium unit.

In 2007, the Association retained legal counsel to collect past-due homeowner assessments owed by Berg. The Association's counsel initiated the process of foreclosing on the assessment lien and entertained settlement negotiations with Berg for partial satisfaction of his delinquency via a short sale of the unit. In September 2008, however, the holder of the first mortgage foreclosed, extinguishing Berg's and the Association's interests in the unit.

In October 2012, the Association filed the underlying lawsuit against Berg. In December 2012, Berg responded with an answer and cross-complaint against his former wife, Jennifer Barrera, to whom he had deeded an interest in the unit shortly

after purchasing it. In April 2013, the Association amended the complaint to add Barrera as a defendant.

In June 2014, the Association filed a motion for summary judgment against both defendants. Barrera opposed the motion on the ground that the Association's action was time-barred by the applicable statute of limitations. Berg did not file a separate opposition.

The trial court granted the summary judgment motion against Berg, and denied the motion as against Barrera. The Association and Barrera later settled the claim. In December 2014, the court entered judgment against Berg in the amount of $70,516 for the unpaid assessments, late fees, prejudgment interest, and other charges.

In March 2015, the Association filed a post-judgment motion for attorneys' fees pursuant to a prevailing party provision in the C.C. & R.'s. The motion sought a lodestar amount of $91,936, plus subsequent attorneys' fees incurred in connection with the motion. The Association supported the requested lodestar figure with a declaration by its lead counsel attesting to the firm's hourly rates and billing records setting forth the time spent on legal services performed in connection with the matter.

Berg opposed the attorneys' fee motion, arguing the requested amount was unreasonable and excessive. He maintained more than half the fees ($48,182) were incurred to unsuccessfully pursue the claim against Barrera, and argued he should not be required to pay fees for services rendered in relation to a claim, against another defendant, on which the Association did not prevail. In a supporting declaration, Berg's counsel asserted the Association knew as early as January 15,

2013 that Barrera was on the unit's title.[1] Counsel added that a title search in November 2007, when the Association began its collection efforts, would have revealed Barrera's ownership interest well before the limitations period expired. In addition to the tasks related exclusively to the claims against Barrera, Berg's counsel identified several other items in the Association's billing records that she maintained were "either unnecessary or excessive as to the amount of time expended." Berg's counsel also disclosed that the Association made a settlement demand of $40,000 early in the case, and suggested this amount stood in stark contrast to the Association's request for over $90,000 in attorneys' fees.

The Association filed written objections to Berg's counsel's declaration. It principally asserted the declaration disclosed inadmissible settlement negotiations and contained improper opinion testimony regarding the reasonableness of the legal services rendered.

On June 16, 2015, the court entered an order awarding the Association attorneys' fees in the amount of $31,375. The order stated the amount was "reasonable and necessary," without further explanation. The court also overruled the Association's evidentiary objections. Although the order states the attorneys' fee motion was "called" for hearing, the Association has not provided a transcript of the hearing nor a settled statement. Nor is there an indication in the record that the Association requested a statement of decision.

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[1] Berg's counsel did not identify the basis for her assertion. The billing records for the Association's counsel, however, show counsel reviewed Berg's "Cross-Complaint against *co-owner* Barrera" on January 15, 2013. (Italics added.)

DISCUSSION

1. *The Trial Court Properly Overruled the Association's Evidentiary Objection*

The Association contends the trial court erred by overruling its objection to the portion of Berg's counsel's declaration that disclosed the Association's early offer to settle the case for $40,000. It argues Evidence Code section 1154 bars admission of this evidence, and that its admission was prejudicial because "the trial court applied a near 70 percent across-the-board reduction to [the Association's] fee request." The argument is without merit.

A trial court's ruling on the admissibility of evidence generally is reviewed for an abuse of discretion. (*Caira v. Offner* (2005) 126 Cal.App.4th 12, 32.) But, "to the extent the trial court's decision depends on the proper construction of [a statute,] . . . the issue is a question of law, which we review de novo." (*Zhou v. Unisource Worldwide* (2007) 157 Cal.App.4th 1471, 1476.)

Evidence Code section 1154 makes evidence that a person has promised to accept a sum of money in satisfaction of a claim, as well as any statements made in negotiation thereof, "inadmissible to prove *the invalidity of the claim* or any part of it." (Italics added.) Berg did not offer evidence of the Association's settlement offer to prove the invalidity of the claim, which had already been resolved against him; rather, he appears to have offered it only to suggest that the fees incurred by the Association were disproportionate to the perceived value of its claim. By its terms, Evidence Code section 1154 does not apply.

Moreover, case law has recognized that a party's settlement offer may be relevant and admissible to attack the

reasonableness of an attorneys' fee request. In *Meister v. Regents of University of California* (1998) 67 Cal.App.4th 437 (*Meister*), the appealing plaintiff argued "the trial court's [attorneys' fee] calculation was not based on the lodestar method but was instead an arbitrary decision that attorney's fees incurred by plaintiff after defendants' December 1993 settlement offer had not been reasonably incurred and therefore were not recoverable." (*Id.* at p. 449.) The plaintiff maintained the court's "use of the oral settlement offer as a 'fees cut-off' was invalid because it 'subverted the public policy underlying [Code of Civil Procedure] [section] 998.' " (*Meister,* at p. 449.) The appellate court rejected the argument, holding Code of Civil Procedure section 998 did not apply and that "the inapplicability of section 998 did not prevent the trial court from allowing the underlying policy concerns addressed by that section to guide its exercise of its discretion in this case." (*Meister,* at p. 450.) The *Meister* court explained: "In this case, the trial court found that the hours expended after the December 1993 oral settlement offer were not 'reasonably spent' on the litigation because plaintiff could have obtained all of the relief he ultimately achieved, and more, by accepting that offer. Hence, plaintiff's attorneys achieved nothing by continuing to expend their time after that offer. The trial court's decision came within the lodestar framework because it was based on the court's assessment of whether the hours which plaintiff's attorneys claimed to have expended on this litigation were 'reasonably spent.' " (*Id.* at p. 449.)

The trial court did not err in overruling the Association's evidentiary objection. To the extent the court may have considered the evidence in setting the amount of the fee award, it did not abuse its discretion.

2. *The Trial Court Acted Within Its Discretion to Reduce the Lodestar Amount*

a. *Legal principles and standard of review*

"[A] court assessing attorney fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case.' " (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-1132 (*Ketchum*); *Serrano v. Priest* (1977) 20 Cal.3d 25, 48 & fn. 23 (*Serrano III*).) The trial court calculates the lodestar figure by "determining 'all the hours reasonably spent' and multiplying that total by 'the hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type.' " (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 394, italics omitted; *Ketchum,* at p. 1133.)

"[T]he lodestar method vests the trial court with the discretion to decide which of the hours expended by the attorneys were 'reasonably spent' on the litigation." (*Meister, supra,* 67 Cal.App.4th at p. 449; *Serrano v. Unruh* (1982) 32 Cal.3d 621, 635.) In referring to "reasonable" compensation, the Supreme Court has instructed that "trial courts must carefully review attorney documentation of hours expended; 'padding' in the form of inefficient or duplicative efforts is not subject to compensation." (*Ketchum, supra,* 24 Cal.4th at pp. 1131–1132.) "A fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether." (*Serrano v. Unruh*, at p. 635.)

"The amount of an attorney fee to be awarded is a matter within the sound discretion of the trial court. [Citation.] The trial court is the best judge of the value of professional services

rendered in its court, and while its judgment is subject to our review, we will not disturb that determination unless we are convinced that it is clearly wrong. [Citations.] The only proper basis of reversal of the amount of an attorney fees award is if the amount awarded is so large or small that it shocks the conscience and suggests that passion and prejudice influenced the determination." (*Akins v. Enterprise Rent–A–Car Co.* (2000) 79 Cal.App.4th 1127, 1134; *In re Tobacco Cases I* (2013) 216 Cal.App.4th 570, 587.)

b. *The record does not establish an abuse of discretion*

The Association contends the trial court committed reversible error by diverging from the lodestar formula. It emphasizes that the court reduced the award by nearly 70 percent from the requested lodestar figure, and stresses that the court "did not state whether it made its own calculation of the lodestar," "did not explain the reasons for reducing [the Association's] lodestar request," and "did not articulate its findings on the elements of the fee award." The argument seeks to exploit silence in the record to establish reversible error. Our standard of review mandates the opposite presumption. (See *Ketchum, supra,* 24 Cal.4th at pp. 1140-1141 [appellate courts presume the trial court's decision is correct when the record is silent; the appellant has the burden of showing an abuse of discretion by affirmatively demonstrating error]; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

Our Supreme Court's decision in *Maria P. v. Riles* (1987) 43 Cal.3d 1281 (*Maria P.*) is controlling. Like the Association, the appellants in *Maria P.* argued the trial court's fee award should be reversed because "the court did not make findings regarding

the 'lodestar' or 'touchstone' figure for attorney fees based on the time spent and reasonable hourly compensation for each attorney." (*Id.* at p. 1293.) The Supreme Court rejected the argument. The court emphasized that, before the attorneys' fee hearing, the parties alerted the trial court to the factors that should be considered in awarding such fees and the moving plaintiffs "supported their claim with affidavits from each attorney explaining the hourly rate claimed, the prevailing market rate for legal services in the community, the number of hours spent, and the tasks involved." (*Id.* at p. 1295.) The defendants submitted an opposition disputing the reasonableness of the plaintiffs' request. The trial court reduced the requested lodestar by 11 percent, stating only that the amount awarded constituted " 'reasonable attorney's fees.' " (*Ibid.*)

Addressing the appellants' contention, the Supreme Court acknowledged that the trial court's "failure to specify in its written order the basis of its calculation of the award, and the absence in the appellate record of a transcript of the fee hearing or a settled statement of that proceeding [citation] make it impossible for us to determine whether the trial court based its award on the lodestar adjustment method." (*Maria P., supra,* 43 Cal.3d at p. 1295.) Nonetheless, the court held it was "unnecessary . . . to remand this case to redetermine attorney fees." (*Ibid.*) The court explained: "It is the burden of the party challenging the fee award on appeal to provide an adequate record to assess error. [Citations.] Here, [the appellants] should have augmented the record with a settled statement of the proceeding. [Citations.] Because they failed to furnish an adequate record of the attorney fee proceedings, [the appellants'] claim must be resolved against them." (*Id.* at pp. 1295-1296; see

Rebney v. Wells Fargo Bank (1991) 232 Cal.App.3d 1344, 1349 (*Rebney*) [interpreting *Maria P.* to require only that the record show "attorney fees were awarded according to the 'lodestar' or 'touchstone' approach" and holding trial court "was not required to explain which of counsel's hours were disallowed, or how or whether any hours were apportioned"].)

Contrary to our Supreme Court's holding in *Maria P.*, the Association contends "the trial court is obliged to articulate its finding on the elements of the fee award." The cases the Association cites neither stand for this proposition nor articulate an apposite or compelling basis to diverge from *Maria P.* in this case. (See *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322-323 [record plainly showed trial court "did not use plaintiffs' lodestar figure nor engage in a *Serrano*-type analysis . . . which might justify modifying that sum"; instead, "the trial court devised its own arbitrary formula for determining the amount of fees"]; *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559-560 [evidence insufficient to support fee award where "[n]o documents, such as billing or time records, were submitted to the court, nor was an attempt made to explain, in more than general terms, the extent of services rendered to the client"]; *Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 101 [amount of attorneys' fee award appeared to have been "snatched whimsically from thin air," could not be rationally "justified by the plaintiffs' request, the supporting bills, or the defendant's opposition," and appellate court was "unable to ascertain a reasonable basis for the trial court's reduction of the lodestar amount"]; *Mountjoy v. Bank of America, N.A.* (2016) 245 Cal.App.4th 266, 281 [70 percent across-the-board lodestar reduction was arbitrary, where trial court simply relied on

conclusion that more than 70 percent of time entries were flawed without correlating reduction to number of hours claimed on the flawed entries]; see also *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 290 ["the trial court was not required to provide a detailed explanation of how it arrived at the fee award amount absent a request for a statement of decision"].)

In contrast to the cases cited by the Association, the record here allows the presumption that the trial court awarded attorneys' fees according to the lodestar approach, and the mere fact that the court did not explain which of counsel's hours were disallowed is insufficient to establish reversible error. (*Rebney, supra,* 232 Cal.App.3d at p. 1349.) As in *Maria P.*, the Association submitted a declaration from its lead counsel attesting to the firm's hourly rates, as well as billing records setting forth the number of hours spent on the matter and the tasks involved. Berg responded with an opposition brief and declaration by his counsel contesting the reasonableness of over half the fees because they were incurred in connection with the time-barred claim against Barrera, as well as other items in the Association's billing records that counsel asserted were unreasonably incurred. The trial court had discretion to accept Berg's assertions, and to make its own independent reasonableness determinations, based on its familiarity with the proceedings and observations of the services rendered in its courtroom. (*Serrano III, supra,* 20 Cal.3d at p. 49.) Absent a statement of decision or settled statement affirmatively establishing error, we must presume the experienced trial judge reasonably exercised his discretion in reducing the lodestar figure. (*Maria P., supra,* 43 Cal.3d at pp. 1295-1296; *Ketchum, supra,* 24 Cal.4th at pp. 1140-1141.)

DISPOSITION

The order is affirmed. Berg is entitled to his costs.

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CURREY, J.*

We concur:

EDMON, P. J.

LAVIN, 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.