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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FIVE

ABM SECURITY SERVICES, INC., Plaintiff and Respondent, v. FIGUEROA TOWER-II, LP, et al., Defendants and Appellants.	B267979 (Los Angeles County Super. Ct. No. BC510977)

APPEAL from judgment of the Superior Court of Los Angeles County, Dalila Corral Lyons, Judge. Affirmed.

Resch Polster & Berger, Michael C. Baum, Andrew V. Jablon, and Michael E. Byerts, for Defendants and Appellants.

Law Offices of Michael D. Leventhal and Michael D. Leventhal, for Plaintiff and Respondent.

Plaintiff and respondent ABM Security Services, Inc. provided security services at Figueroa Tower, a downtown Los Angeles office building co-owned by three limited partnerships. The limited partnerships engaged a property management company, Milbank Holdings, Inc., dba Milbank Real Estate Services, Inc., to handle building operations and maintenance. Milbank missed some payments to ABM in late 2010 and 2011. The two companies discussed ways Milbank could reduce security costs. Facing a potential foreclosure action from a secured lender, the limited partnerships sought protection under Chapter 11 of the Bankruptcy Code. The bankruptcy filings identified ABM's unsecured claim for $243,627.39. After the bankruptcy case was dismissed without discharge, ABM sued the limited partnerships for payment and obtained a judgment in its favor.

Defendants and appellants Figueroa Tower-II, LP and FT-II GP, LLC appeal from the judgment. The primary contentions on appeal are (1) the judgment was based on factual findings that varied materially from ABM's complaint, and (2) the judgment is not supported by substantial evidence. Finding no merit to these contentions, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Figueroa Tower's owners

Three limited partnerships owned Figueroa Tower as tenants in common. The entities are distinguishable from each other based on roman numerals in their names. Each limited partnership has as its general partner a limited liability company (LLC) with a name that corresponds to the limited partnership, and each LLC has a different manager. Solyman Yashouafar is the manager for FT-I GP, LLC, and the general partner of Figueroa Tower-I, LP (collectively, Fig I). Simon Barlava is the manager of FT-II GP, LLC, and the general partner of Figueroa Tower-II, LP (collectively, Fig II). Massoud Yashouafar is the manager of FT-III GP, LLC, and the general partner of Figueroa Tower-III, LP (collectively, Fig III).

Property manager

Milbank was the property manager for the building. Under a management agreement signed by the three limited partnerships, "Milbank acts as the [entities'] exclusive managing agent for the Property. In accordance with the Management Agreement, Milbank, among other things, procures and negotiates lease agreements with tenants for the Property, collects rents from tenants in the Property and

disburses funds to pay the operating expenses related to the Property." Operating expenses included, "among other things, insurance, utilities, parking, security services, janitorial services," and other costs associated with the property. Milbank provided monthly income and expense reports outlining rental and parking income, as well as expenses with line items such as "Janitorial," "Electricity" and "Security Service." Fig II reviewed the accounting and did not raise any concerns or objections about the line item labeled security service. According to a declaration by Barlava, "the Property has been successfully managed and leased by Milbank" since 2004.

Security services

ABM provided 24-hour security services at Figueroa Tower, and provided monthly invoices to Milbank. Invoices were based on time records that were maintained at the building, and were reviewed by ABM's accounting department. Beginning in March 2009, Milbank would sometimes pay less than the invoice amount, or not pay the invoice at all.

Correspondence between Milbank and ABM from late 2010 and early 2011 demonstrate that the two companies were discussing ways to reduce costs to assist Milbank in paying past due invoices. They explored options for reducing security costs by, inter alia, shifting to non-union security guards and reducing hours. The purpose of reducing costs

was to make funds available to pay outstanding invoices. After Milbank failed to make agreed payments on outstanding invoices, ABM sent a payment demand on March 10, 2011.

Bankruptcy proceedings

In the summer of 2011, all three limited partnerships filed for bankruptcy protection. The debtors' sole secured creditor was a bank that held a deed of trust securing a multi-million dollar loan on the building. The filings included a list of creditors holding the 20 largest unsecured claims. The entry for ABM listed a claim of $243,627.39 for security services. The box for a debtor to "[i]ndicate if claim is contingent, unliquidated, disputed, or subject to setoff" remained unchecked. Fig II's schedule was signed under penalty of perjury by Simon Barlava in his capacity as manager of FT-II, GP LLC. Schedules filed later in the bankruptcy proceedings continued to list the same amount for ABM's claim. The claim was not described as contingent, unliquidated, or disputed.

In the fall of 2012, ABM was one of eight unsecured creditors that voted to accept a proposed reorganization plan. Debtors' counsel prepared the analysis of ballots for the reorganization plan, and included a footnote as follows: "ABM Security Services submitted a ballot accepting the Plan, which ballot lists an allowed claim in the amount of $251,408.66. However, the Debtors believe that ABM

Security Services has an allowed claim in the lower amount of $243,627.39. The Debtors reserve their right to object to ABM Security Services' claim to the extent it is asserted to be higher than $243,627.39." The bankruptcy court dismissed the Debtors' bankruptcy proceeding on May 10, 2013, vacating any previously entered discharge. The proposed reorganization plan never took effect.

ABM's lawsuit and trial

One month later, on June 4, 2013, ABM filed a complaint against all three limited partnerships and LLCs, alleging common counts for (1) account stated, (2) work, labor, and services rendered, and (3) open book account. The complaint did not name Milbank as a defendant. Judge Dalila Corral Lyons presided over a court trial in April 2015. Fig I and Fig III were represented by one attorney, while Fig II was represented by separate counsel. Judge Lyons heard testimony from five witnesses: ABM employees Brian Marsh, Ladel Odono, and Ernest Lytle; Fig II manager, Simon Barlava; and Fig III manager, Massoud Yashouafar.

Post-trial briefing and proceedings

Fig II filed objections to the proposed statement of decision served on all parties by ABM. Judge Lyons denied Fig II's objections as untimely, filed the statement of decision, and entered judgment in favor of ABM in the

amount of $243,627.39. The judgment against FT-II GP, LLC was initially a default judgment, but it was later changed nunc pro tunc by Judge Lyons to correctly show the judgment was not by default. Fig II and FT-II GP, LLC filed a timely notice of appeal.

DISCUSSION

Fig II contends the judgment exceeded the allegations of ABM's complaint and was not supported by substantial evidence. We are not persuaded by either contention.

Jurisdiction over FT-II GP, LLC

We asked the parties to provide additional briefing addressing the corporate status of FT-II GP, LLC and its capacity to appeal. Counsel for ABM responded with a letter attaching a printout indicating the corporation's status in the state of Delaware was suspended in November 2016 and remained suspended as of September 25, 2017. However, the printout was not an official certificate of status, and ABM did not file a request for judicial notice. A corporation's suspended status does not affect the court's jurisdiction to proceed and grant relief to the adverse party. (*Tabarrejo v. Superior Court* (2014) 232 Cal.App.4th 849, 862–867; *V & P Trading Co., Inc. v. United Charter, LLC* (2012) 212 Cal.App.4th 126, 133 [defense based on lack of capacity to sue is waived unless it is raised at the earliest

opportunity].) Rather than delving into the complexities of corporate status and the possibility of revivor, we will resolve the appeal on the merits.

Standard of review

We review Fig II's contentions under a substantial evidence standard of review. (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981.) When the trial court's "'statement of decision sets forth the factual and legal basis for the decision, any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision.' [Citation.]" (*In re Marriage of Ruelas* (2007) 154 Cal.App.4th 339, 342.)

Fig II's brief frequently characterizes Judge Lyons's statement of decision as relying on evidence that was either imprudently admitted or rebutted by explanatory testimony. However, Fig II does not contend that any of her evidentiary rulings were an abuse of discretion, nor does it adequately develop any of its vague and unfounded concerns as separate contentions on appeal. "Failure to provide proper headings forfeits issues that may be discussed in the brief but are not clearly identified by a heading." (*Pizarro v. Reynoso* (2017) 10 Cal.App.5th 172, 179; see Cal. Rules of Court, rule 8.204(a)(1)(B).)

At several points in its opening brief, Fig II also argues that Code of Civil Procedure section 634 prevents this court

from drawing inferences in favor of the judgment based on portions of the statement of decision that were the target of Fig II's untimely objections. This argument misconstrues the purpose of section 634, which permits a party to bring ambiguities or omissions in the statement of decision to the trial court's attention. (See, e.g., *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 48–49 [if appellant has not brought ambiguities or omissions in the factual findings of a statement of decision to the trial court's attention, the reviewing court will infer the trial court made every implied factual finding necessary and determines whether substantial evidence supports the implied factual findings].) Fig II's objections did not call attention to omissions or ambiguities in Judge Lyons's statement of decision, but rather sought to challenge her factual findings by challenging the evidentiary basis for the findings. In addition, Fig II does not contend Judge Lyons abused her discretion when she denied the objections as untimely.

Agency relationship

Fig II first contends the judgment included factual findings that exceeded the allegations of the complaint. Specifically, Fig II argues that absent any evidence of a direct relationship between itself and ABM, there is no basis to hold Fig II liable for ABM's unpaid invoices.

Fig II's argument misrepresents the allegations of ABM's complaint, which do not allege a direct relationship

between ABM and the limited partnerships. It also ignores Milbank's role as Fig II's authorized agent. The complaint alleges that the defendant limited partnerships and LLCs "became indebted to" ABM on the various theories identified. Judge Lyons made factual findings that the defendants became indebted based on the actions of their agent, Milbank. Her findings are consistent with the complaint allegations and supported by substantial evidence.

"An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal." (Civ. Code, § 2330.) Milbank was the agent for all three limited partnerships and it acted within the scope of its agency in its business dealings with ABM. (*Seneca Ins. Co. v. County of Orange* (2004) 117 Cal.App.4th 611, 618 [whether an agent acted on behalf of a principal is a question of fact reviewed on appeal for substantial evidence].) It was undisputed that Milbank was the property manager for Figueroa Tower, and that the three limited partnerships owned the building from 2004 to 2013. The written agreement between Milbank and the limited partnerships gave Milbank actual authority to incur expenses related to the operation and maintenance of the building. Milbank's management agreement with the limited partnerships was admitted into evidence, and established that Milbank had actual authority to "contract . . . for all services and utilities necessary for the efficient

operation and maintenance" of the building, which would reasonably include arranging for building security. Barlava in his capacity as manager of FT-II GP, LLC declared under penalty of perjury that Milbank historically collected rent from tenants and disbursed funds to pay operating expenses for the building "in accordance with the terms of the parties' Management Agreement." The declaration stated that "Milbank utilizes a central operating account that it maintains (as agent for the [limited partnerships]) . . ." and that "[p]ursuant to the terms of the Management Agreement, the central operating account is maintained by Milbank solely for the Property . . . ."

Other documents also support a finding of Milbank's actual authority to act on behalf of Fig II and the other limited partnerships in its dealings with ABM. For example, Milbank directed vendors to include the limited partnerships as additional insured parties on applicable insurance policies, and ABM provided a certificate of liability insurance that complied with the requirement. E-mails and letters between Milbank and ABM further support the finding that Milbank was acting with actual authority as an agent for the limited partnerships.

With substantial evidence that Milbank was Fig II's agent, and contracting for security services for Figueroa Tower was within the scope of its agency, there was no need for ABM to establish a direct relationship with Fig II in order to hold the principal liable for the authorized acts of its agent.

Common counts

The complaint filed by ABM asserted three causes of action under common count theories: (1) account stated; (2) work, labor, and services performed; and (3) book account. "A common count is not a specific cause of action . . . rather, it is a simplified form of pleading normally used to aver the existence of various forms of monetary indebtedness, including that arising from an alleged duty to make restitution under an assumpsit theory." (*McBride v. Boughton* (2004) 123 Cal.App.4th 379, 394.) "The only essential allegations of a common count are '(1) the statement of indebtedness in a certain sum, (2) the consideration, i.e., goods sold, work done, etc., and (3) nonpayment.' [Citation.]" (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460.)

Account stated

Fig II contends the evidence relied upon by Judge Lyons to find an account stated was insufficient to show that Fig II and ABM had agreed upon a balance due. We disagree.

"An account stated is an agreement, based on prior transactions between the parties, that all items of the account are true and that the balance struck is due and owing from one party to the other." (*Trafton v. Youngblood*

(1968) 69 Cal.2d 17, 25.) "An account stated, by its very nature, normally assumes the consideration of all objections, is usually a compromise, and is a final, conclusive acknowledgment of an exact amount due having in contemplation all credits and offsets. An account stated is an agreed balance of accounts; an account which has been examined and accepted by the parties. It implies an admission that the account is correct, and that the balance struck is due and owing from one party to the other. Its effect is to establish prima facie the accuracy of the items without further proof, and to constitute a new contract on which an action will lie." (*Perry v. Schwartz* (1963) 219 Cal.App.2d 825, 829–830.)

Fig II argues that the creditor list and bankruptcy schedule admitted into evidence are insufficient to satisfy the elements of ABM's account stated cause of action. Fig II claims it was a passive investor that did not receive any invoices or statements of accounts from ABM, and the bankruptcy filings were signed on "information and belief."

Judge Lyons gave the bankruptcy statements about ABM's claim great weight and viewed Barlava's testimony with distrust, pointing out that the limited partnerships did not offer any testimony to explain why the amount was incorrect. Fig II's statements in the bankruptcy case were signed under penalty of perjury. The exact wording signed by Barlava states that he, as "manager of FT-II GP LLC of the corporation named as debtor in this case, declare under penalty of perjury that I have read the foregoing list and

that it is true and correct to the best of my information and belief." The schedule also includes a column for the debtor to indicate if a particular debt is "contingent, unliquidated, disputed, or subject to setoff" and none of the limited partnerships indicated that the debt was in any way in dispute. The ballot analysis for the reorganization plan further supports the conclusion that Fig II acknowledged a debt for $243,627.39, while reserving the right to object to ABM's claim for a higher amount. The fact that the amount of the account stated is established by Fig II's document, rather than an accounting sent by ABM to Fig II, is irrelevant. "An account stated need not be submitted by the creditor to the debtor. A statement expressing the debtor's assent and acknowledging the agreed amount of the debt to the creditor equally establishes an account stated." (*Truestone, Inc. v. Simi West Industrial Park II* (1984) 163 Cal.App.3d 715, 726.) The bankruptcy schedules are substantial evidence of Fig II's acknowledgment of the existence and amount of the debt owed to ABM.

With sufficient evidence to support the judgment under an account stated theory of recovery, our analysis is complete. We hold in the alternative that there is also substantial evidence to support the judgment on ABM's common count for work, labor and services performed, often referred to as quantum meruit.

Quantum meruit

Fig II argues ABM cannot prevail on its quantum meruit claim because it introduced no evidence that Fig II requested services from ABM, and there was no evidence to establish the reasonable value of those services. As explained earlier in this opinion, Fig II cannot escape liability by the mere fact that it sought ABM's services through an agent, Milbank. In addition, there was sufficient evidence to support the court's determination that ABM's charges were reasonable.

Courts accept a wide variety of evidence in determining reasonable value for quantum meruit claims, including expert or lay testimony. A reasonable rate is the rate "'a willing buyer would pay to a willing seller, neither being under compulsion to buy or sell, and both having full knowledge of all pertinent facts.' [Citation.]" (*Alameda County Flood Control & Water Conservation Dist. v. Department of Water Resources* (2013) 213 Cal.App.4th 1163, 1174–1175, fn. 9.) "Evidence of value can also be shown through agreements to pay and accept a particular price. [Citations.] 'The court may consider the price agreed upon by the parties "as a criterion in ascertaining the reasonable value of services performed."' [Citation.] . . . . [E]vidence of a professional's customary charges and earnings is relevant and admissible to demonstrate the value of the services rendered. [Citation.] [¶] . . . [T]he facts and circumstances

of the particular case dictate what evidence is relevant to show the reasonable market value of the services at issue, i.e., the price that would be agreed upon by a willing buyer and a willing seller negotiating at arm's length." (*Children's Hospital Central California v. Blue Cross of California* (2014) 226 Cal.App.4th 1260, 1274–1275.)

ABM's billing rates were initially based on a scale for wages and benefits established by the Service Employees International Union, accounting for the number of hours of service provided. The fact that Milbank had historically paid those rates provides adequate evidentiary support for the court's conclusion that the rates were reasonable. At Milbank's request, ABM switched to a lower billing rate based on a non-union pay scale and reduced the number of employees in the building. There is no merit to Fig II's argument that the rate reduction somehow supports an inference that the original rate was unreasonable.

Book account

Having determined that there was substantial evidence to support the judgment based on either an account stated or quantum meruit theory of recovery, we need not consider Fig II's arguments against the trial court's decision on the book account cause of action.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to plaintiff and respondent ABM Security Services, Inc.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

DUNNING, J.*

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