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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

ROUTE 66 CPAS, LLC, Plaintiff and Respondent, v. GLENDORA COURTYARD, LLC, et al., Defendants and Appellants.	B269499 (Los Angeles County Super. Ct. No. KC066584)

APPEAL from an order of the Superior Court of Los Angeles County, Dan T. Oki, Judge. Affirmed.

John W. Melvin; Law Offices of Ezekiel E. Cortez, Ezekiel E. Cortez and Joshi A. Valentine for Defendants and Appellants.

Mahoney & Soll, Paul M. Mahoney and Richard A. Soll for Plaintiff and Respondent.

Glendora Courtyard, LLC (Glendora) appeals from the trial court's order granting Glendora's motion to amend a preliminary injunction. We affirm.

This appeal is not our first encounter with the disputes between Glendora and Route 66 CPAs, LLC (Route 66) regarding changes to the landscaping of Glendora Courtyard, a commercial development with a common area (parking lot, landscaping, driveways, sidewalks, and hardscape). Glendora owns two, and Route 66 owns one, of three office buildings in the development. Under the declaration of covenants, conditions, and restrictions (CC&Rs) in effect at the time of the events in this lawsuit, Route 66 was responsible for 42.95 percent of the common area expenses, and Glendora was responsible for 57.05 percent, with payment due each month.

In April 2012, Route 66 filed a complaint against Glendora alleging breaches of the CC&Rs and seeking an injunction and declaratory relief as to common area improvements that Route 66 believed were unacceptable and too expensive. Glendora filed a cross-complaint, and Route 66 filed a special motion to strike under Code of Civil Procedure section 425.16,[1] which the trial court denied.

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

Route 66 appealed and we affirmed. (*Route 66 CPAs, LLC v. Glendora Courtyard, LLC* (May 13, 2014, B247318) [nonpub. opn.].) Route 66's complaint went to trial, and the court found in favor of Route 66 on the declaratory relief claims but denied injunctive relief. The trial court also granted Glendora's motion for judgment on Route 66's claims for breaches of the contract, the covenant of good faith and fair dealing, and fiduciary duty.

In December 2013, Glendora sent a notice of default to Route 66 for $171,330.27 in overdue common area maintenance obligations and stated it would file a lien if Route 66 did not cure in 10 days. On December 27, 2013, Route 66 filed a complaint for declaratory and injunctive relief against Glendora. In January 2014, Glendora recorded a lien in the full amount on Route 66's building, then issued a new notice of default for $57,360.67, and (after the trial court issued a preliminary injunction against filing the prior lien) stated that the prior lien of $171,330.27 was superseded. Route 66 paid the $57,360.67, but Glendora nevertheless recorded a lien in that amount on February 19, 2014. In March 2014, the trial court granted Route 66's motion to release the lien. Route 66 then filed a second amended complaint in March 2015, requesting declaratory and injunctive relief, accounting, and restitution. Glendora filed a motion to strike the second amended complaint under section 425.16, and for monetary sanctions. The court denied the motion to strike, and we affirmed on appeal.

(*Route 66 CPAs, LLC v. Glendora Courtyard, LLC* (Mar. 23, 2016, B264055) [nonpub. opn.].)[2]

On November 13, 2014, the trial court entered a preliminary injunction (as requested by Route 66's December 27, 2013 complaint). The injunction enjoined and restrained Glendora from (1) removing any grass, turf, hedges, or trees in the common area, and replacing them with white rock and bird of paradise plants; (2) removing any of the same vegetation in the common area and replacing it with anything but identical replacement landscaping; and (3) removing the existing sprinkler system and replacing it with drip irrigation.

A year later, on November 12, 2015, Glendora filed a motion to amend the preliminary injunction which is the subject of the current appeal. Glendale argued that the common area was not handicap accessible, and attached as exhibit C a six-page operative plan approved by the City of Glendora, showing repairs for accessibility, path of travel, and of the parking lot to comply with the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) (ADA). Glendora's proposed amendment estimated that the work would cost $421,547.50.

In response, Route 66 pointed out that exhibit C included a note in small print, stating: " 'Landscape: approximately 5,150 square feet of existing turf and

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[2] We draw our description of the earlier lawsuits and appeals from this prior nonpublished opinion.

landscape will be affected. Landscape/irrigation plan to be submitted separately.' " (Underscore omitted.) Concerned that the note referenced changes to the landscaping not disclosed on the face of exhibit C, Route 66 requested that if the trial court granted Glendora's motion to amend the preliminary injunction, the court should further modify the injunction to state that Glendora (1) may perform the work in accordance with exhibit C, (2) shall not change the landscaping or irrigation system except as set forth in exhibit C, (3) shall use licensed contractors within the budget approved by Route 66, and (4) Route 66 could seek reimbursement for money paid for work that was unreasonable or unacceptable based on an audit of the invoices.

The court held a hearing on the motion on December 10, 2015. Route 66's counsel had not seen any landscaping plan. Glendora's counsel represented that they were still working on the plan. The court pointed out that its tentative ruling stated that Glendora should let Route 66 see any landscaping plan incorporated into exhibit C. Glendora's counsel answered that in order to comply with the ADA, Glendora had to remove some landscaping, and state water regulations adopted by the City of Glendora would then require replacement of the entire landscaping with drought-tolerant plants. Route 66's counsel stated that his client did not oppose the tentative ruling but wanted to see the landscaping plan. Route 66 would not oppose any restrictions on landscaping that the City of Glendora might

impose as a condition of issuing the permit for the ADA compliance plan. Glendora's counsel repeated that Glendora had a landscape plan, and Route 66 responded that it had not seen the plan and did not want Glendora to use ADA compliance as a pretext to replace all the landscaping. Glendora represented that state water law, adopted by the City of Glendora, required drought-tolerant landscaping. Glendora planned on using their "own people" to do the work, and Route 66 rejoined that the work should be done by licensed contractors. Glendora's counsel said "[t]hey are licensed contractors," and nevertheless continued to object to any requirement that licensed contractors do the work.

The trial court stated, "You may submit a proposed modification of the preliminary injunction. Make sure you serve a copy on [Route 66's counsel]. [¶] You [Route 66] can have five days to object if you have any objections."

On December 17, 2015, Glendora submitted a proposed order which included the landscaping plan as exhibit 2.[3] On December 22, 2015, Route 66 filed objections arguing that Glendora's proposed order contained extraneous matters and specifically objected to the landscaping plan, characterizing the proposed order as Glendora's attempt "to pull an 'end run' " around previous court orders involving landscaping. Route 66 had never seen the attached landscaping plan, which was prepared not by a landscape architect, but by one of Glendora's tenants at Glendora Courtyard.

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[3] Curiously, Glendora does not include the landscaping plan in its appellant's appendix.

Meanwhile, on December 16, Route 66 had submitted a proposed order amending the preliminary injunction to state that exhibit C controlled the plan for compliance repairs, no landscaping changes could be made that were not set forth explicitly in exhibit C, licensed contractors shall be used within the approved budget, and Route 66 could seek reimbursement for unreasonable or excessive work based upon an audit of the invoices. Route 66 advised the court by a letter copied to Glendora that Route 66 was filing its own order because Glendora had not served its proposed order on Route 66.

On December 22, Glendora objected that it had served its proposed modification on Route 66, and argued that Route 66 violated the court order by proposing its own modifications to the preliminary injunction. Those proposed modifications would prevent minor plan deviations (including landscaping) required by building site inspectors.

On December 29, 2015, the trial court signed Route 66's proposed order.

Glendora filed a notice of appeal on January 6, 2016 from "CCP 904.1(a)(6) Order granting additional injunction and refusing to dissolve."

DISCUSSION

Glendora purports to appeal under section 904.1, subdivision (a)(6), which allows an appeal "[f]rom an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction." The trial court granted Glendora's motion to amend the November 13, 2014 preliminary

injunction, and made modifications which Glendora objects to on appeal. "[A]s a general rule, a party is not aggrieved and may not appeal from a judgment or order entered in its favor. [Citation.] However, a party which has not obtained *all* of the relief it requested in the trial court is aggrieved and may appeal." (*Friends of Aviara v. City of Carlsbad* (2012) 210 Cal.App.4th 1103, 1108.) In this case, Glendora's motion to amend stated that the work would be governed by exhibit C, which included a note stating that a landscape plan would be submitted separately. Route 66 responded by requesting that any modification make clear that Glendora could not change the landscaping or irrigation system except as provided in exhibit C, and must use licensed contractors. The court adopted these requests in its final order. Glendora therefore did not obtain all its requested relief. The court did not modify the injunction as Glendora wished, to allow Glendora to proceed under exhibit C *and* a landscaping plan which Glendora did not submit to the trial court or to Route 66 until after the hearing; the court also required Glendora (over its objection) to employ licensed contractors.

While Glendora is aggrieved and therefore has standing to appeal from the trial court's order, we dispose of the merits in short shrift, reviewing for an abuse of discretion. (*Husain v. McDonald's Corp.* (2012) 205 Cal.App.4th 860, 867.) Glendora has not demonstrated why the trial court abused its discretion in amending the injunction to require it to proceed under exhibit C, the plan *Glendora itself* submitted to the court, without also allowing

Glendora to incorporate into exhibit C a landscaping plan Glendora had not disclosed at the time of the hearing.

Nor does Glendora show why requiring the use of licensed contractors for this major project is an abuse of discretion. Glendora merely states that the order violates Business and Professions Code section 7044, subdivision (a)(1)(B), without any argument or discussion of how Glendora meets the statute's conditions. We therefore do not consider this argument.

Glendora's opening brief also impugns the integrity of the trial court, stating that the trial court favored Route 66, willfully circumvented federal disability law and due process, and issued an "openly biased expanded mandatory injunction." Glendora's allegations of judicial bias are without support. Glendora considers the modified preliminary injunction "mandatory" in that it requires the use of licensed contractors. The original injunction was prohibitory, enjoining Glendora from removing the existing landscaping except under certain conditions. Glendora sought to amend the preliminary injunction to allow it to proceed to make accessibility repairs as outlined in exhibit C, and the court allowed Glendora's requested modification with the proviso that Glendora employ licensed contractors. When an injunction mandates an affirmative act, we " 'scrutinize it even more closely for abuse of discretion.' " (*Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 625.) Even with close scrutiny, we perceive no abuse of discretion.

Glendora refers to a "perjured declaration" from the City of Glendora which is not in the record and to documents from another case included in its appellant's appendix. We do not consider filings that were not in issue before the trial court in the case under appeal. Before Glendora filed its opening brief, we denied Glendora's motion to consolidate this appeal with its appeal in the other case.

Route 66 argues that Glendora's brief is frivolous, and urges us to impose sanctions against Glendora on our own motion. (Cal. Rules of Court, rule 8.276(a).) Section 907 provides: "When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just." An appeal is frivolous " 'only when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or *when it indisputably has no merit—when any reasonable attorney would agree that the* [appeal] *is totally and completely without merit*.' " (*Franceschi v. Franchise Tax Board* (2016) 1 Cal.App.5th 247, 263; *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.) The power to sanction an appeal as frivolous should be used "most sparingly to deter only the most egregious conduct.'" (*In re Marriage of Flaherty*, at p. 651.)

This case closely approaches but does not cross the line. Although the long-standing emnity between the parties has led to overlitigation and hyperbole, we decline to impose sanctions on our own motion. Glendora's appeal clearly has no merit, but we hesitate to say that its conduct in arguing

the appeal was egregious, or that Glendora brought the appeal solely for the purpose of delay or of harassing Route 66. We caution, however, that "[a]ppellate courts can, and often do, consider the prior conduct of attorneys and their clients in considering whether sanctions are appropriate." (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 192.) Moving forward, Glendora would be well served by remaining cognizant of that standard.

DISPOSITION

The order is affirmed. Costs on appeal are awarded to Route 66 CPAs, LLC.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

LUI, J.