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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

IQAIR NORTH AMERICA, INC., Plaintiff, Cross-defendant and Appellant, v. CHA LA MIRADA, LLC, Defendant, Cross-complainant and Respondent.	B282007 (Los Angeles County Super. Ct. No. BC554763)

APPEAL from a judgment of the Superior Court of Los Angeles County. Barbara M. Scheper, Judge. Affirmed.

Quinn Emanuel Urquhart & Sullivan, Joseph M. Paunovich, Sanford I. Weisburst, and Cleland B. Welton II, for Plaintiff, Cross-defendant, and Appellant.

Law Offices of Martin N. Buchanan and Martin N. Buchanan; Law Office of Andrew R. Wiener and Andrew R. Wiener for Defendant, Cross-complainant, and Respondent.

Plaintiff, cross-defendant, and appellant IQAir North America, Inc. (IQAir) appeals from the judgment entered in favor of defendant, cross-complainant, and respondent CHA La Mirada, LLC (CHA or the hotel) following a bench trial in this action concerning the interpretation and enforcement of a reciprocal parking and maintenance agreement (RPMA) that governs parking on both parties' properties. We affirm the judgment.

FACTUAL BACKGROUND

The parties and their respective parcels

IQAir, a distributor of air-purifying equipment, owns a parcel of land in La Mirada, California on which it has its corporate headquarters. The IQAir parcel adjoins property owned by CHA, and on which CHA operates a Holiday Inn hotel.

The parties' respective parcels were once a single property owned by entities that were owned or controlled by Lewis Wolff (Wolff). Wolff built a Holiday Inn hotel on CHA's parcel (hotel parcel) in 1984. The footprint of the hotel has not been changed or expanded since that time. It includes 292 guest rooms, a restaurant, and a 10,000 square foot conference center that is used for meetings, weddings, banquets, and other events. Wolff originally built a movie theater complex on IQAir's parcel (theater parcel) but later replaced the theater with an office building.

A driveway separates the two parcels on the east side of CHA's property and the west side of IQAir's parcel. Sometime in the 1980's, Wolff erected a sign that said "Conference Center" on IQAir's side of the driveway.

Both parcels are in an industrial area just off the 5 freeway. Knotts Berry Farm and Disneyland are nearby, as are Whittier College, Biola University, Cerritos College, and

Fullerton College. The hotel's guests typically include business and leisure travelers, visiting sports teams, and truck drivers.

In or about 1997, Wolff decided to subdivide the property into two separate parcels and to sell the hotel parcel. As part of that process, Wolff drafted and recorded the RPMA to address the parking that would be available to both parcels.

Since the initial sale of hotel parcel, ownership of the hotel has changed, but the hotel has always been operated as a Holiday Inn. CHA purchased the hotel parcel in or about 2004. IQAir purchased the adjoining theater parcel in 2012 and moved into the property in January 2014 after renovating the office building and the parking lot. Before moving to its present location, IQAir occupied temporary office space across the street from its current offices for approximately six months.

The RPMA

The RPMA refers to CHA's parcel as the hotel parcel and to IQAir's parcel as the theater parcel. The RPMA, dated as of March 31, 1997, states that it is governed by California law and that it is perpetually binding on all successive owners of the two parcels. Its relevant provisions are set forth below.

"1.1 Definitions.

> "a. 'Driveways' shall mean all driveway areas now or hereafter located on either the Hotel Parcel or the Theater Parcel.
>
> "[¶] . . . [¶]
>
> "d. 'Parking Areas' shall mean those areas within the Theater Parcel and the Hotel Parcel as are now or may hereafter may [*sic*] be established from time to time by the respective Owners to be used for parking of automobiles and other vehicles.
>
> "[¶] . . . [¶]

"f. 'Permittees' shall mean the Parties, all tenants of either Parcel, and their respective officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees, tenants and concessionaires.

"g. 'Project' shall mean the property consisting of the Theater Parcel and the Hotel Parcel."

"2.1 Ingress and Egress. For the benefit of the Parties, each Owner, and their respective Permittees and subject to all of the terms and conditions of this Agreement, each Owner hereby grants to the other Owner, and their respective Permittees nonexclusive reciprocal easements over and across the Driveways for pedestrian and vehicular ingress to and egress from both Parcels and to and from all streets and roads abutting the Parcels, including, but not limited to ingress and egress for delivery and service trucks and vehicles.

"2.2 Parking.

"a. For the benefit of the Parties, each Owner, and their Permittees, and subject to the limitations contained in subparagraphs b, c, d, and e below, each Party hereby grants to the other Party, each Owner, and their respective Permittees nonexclusive reciprocal easements for parking for vehicular and pedestrian use incidental thereto in the Parking Areas of both Parcels in conjunction with the operation or patronage of the Project and the businesses operated therein.

"b. Parking on each Parcel shall only be permitted while conducting business on or in conjunction with the operation or patronage of the Project and the businesses operated therein. . . . The Owner of the Theater Parcel may from time to time

designate for the exclusive use of its Permittees up to one hundred (100) parking spaces on the Theatre Parcel. Said designated parking spaces will be the one hundred (100) spaces most proximate to the entrance of the theater building located on the Theater Parcel.

"c. The Owner of the Hotel Parcel reserves the right form [*sic*] time to time to restrict parking on the Hotel Parcel by Permittees of the Theater Parcel during the hours from 7:00 a.m. to 5:00 p.m., Monday through Friday (except national holidays).

"d. Each Party shall require employees of tenants or employees of occupants of its Parcel to park on such Party's Parcel and not on the other Party's Parcel.

"e. Each Owner shall satisfy all applicable governmental parking requirements upon its respective Parcel without taking into account the available parking on the other Parcel."

"4.1 General Maintenance. Each Owner shall at all times operate, manage and maintain its respective Parcel, including all Driveways, Parking Areas, landscaped and hardscaped areas, and cause them to be operated, managed, and maintained in a state of good repair, free from trash and debris and first class clean and orderly condition.

"4.2 Specific Duties. The duties of each Owner with respect to common areas on its Parcel shall include, without limitation, each of the following:

"a. the maintenance, repair, and replacement of all paved surfaces in a level, smooth, and evenly covered condition, with the type of surfacing material presently installed, or such substitute as shall in all

respects be at least equal to the existing material in quality, use, appearance and durability;

"[¶] . . . [¶]

"f. maintenance of liability insurance of not less than One Million Dollars ($1,000,000) per occurrence which insurance shall name the other Owner as additional insured and delivering proof of such insurance to the other Owner.

"4.3 Cost of Maintenance. . . . [A]ll costs incurred in fulfilling the obligations of Section 4.1 and 4.2 shall be paid by the Owner of each Parcel. . . ."

"5.10 Legal Action. If any Owner breaches any provision of this Agreement, then the other Owner may institute legal action against the defaulting Party for specific performance, injunction, declaratory relief, damages, or any other remedy provided by law. In addition to the recovery of any such sum or sums expended on behalf of the defaulting Owner, the prevailing Owner shall be entitled to recover from the other Owner such amount as the court may adjudge to be reasonable attorneys' fees for the services rendered to the prevailing Party in any such action."

The instant dispute

Between 6:30 and 8:30 a.m. each day, tour and charter buses arrive at the hotel to pick up guests and take them to Disneyland and other destinations. The hotel has a porte cochere located near the front desk, where one bus at a time can load and unload passengers. Until 2011, the hotel's practice was to direct buses to load and unload in this area.

The porte cochere area is too narrow to accommodate multiple buses, and a single bus typically takes approximately 20

minutes to load and unload, blocking the way for other vehicles. The congestion in the morning caused by multiple buses loading and unloading passengers on the hotel lot became a safety concern, and the hotel received complaints from guests about being unable to move their cars or being nearly hit by the buses. As a result, in 2011, the hotel began directing tour buses to load and unload passengers on the theater parcel's parking area near the entrance to the hotel conference center. The theater parcel was not occupied at that time.

After IQAir moved into its current office space, a dispute arose between the parties with regard to the loading and unloading of tour buses on IQAir's property. IQAir complained that the hotel's diversion of tour bus and oversized vehicle traffic onto IQAir's property was damaging the pavement on its parking lot, which was not designed to accommodate oversized commercial vehicles. IQAir further complained that the buses were unsightly, emitted diesel fumes that created unpleasant odors in its showroom, and that hotel guests disembarking from the buses on IQAir's lot did not pay attention to vehicle traffic. IQAir also objected to buses and other oversized vehicles parking on its property. Finally, IQAir objected to the placement of the hotel's "conference center" sign on its property. IQAir ultimately removed the sign.

In January 2014, IQAir adopted a policy requiring all vehicles to display a parking permit in order to use its parking area. IQAir made the permits available in its offices and at the hotel, and posted signs throughout its lot advising visitors of the need to obtain a permit. The signs depicted a tow truck towing away a vehicle and included text stating, "Towing Enforced At All Times" and "All vehicles must have a permit to be on IQAir property." IQAir began towing vehicles that did not display the IQAir permit, and some hotel guests had their vehicles towed.

In April 2014, IQAir designated an area near the back of its parking lot in which it would permit buses to load and unload, and large commercial vehicles to park, subject to two conditions: (1) the hotel could direct tour buses and other large commercial vehicles to park in this area only if the hotel's own lot was full, and (2) the hotel would be responsible for paying to repair any damage caused to the designated area. IQAir also adopted a "one space, one vehicle" policy for all areas of its parking lot except the area designated for large vehicles.

In September 2015, IQAir notified the hotel that the designated commercial vehicle area on the IQAir lot would close on October 31, 2015. It eliminated the designated loading zone and stopped allowing buses and other large vehicles from using its parking area altogether.

PROCEDURAL BACKGROUND

IQAir filed the instant action against CHA in August 2014, alleging causes of action for breach of the RPMA, trespass, and declaratory relief. The complaint sought damages and a declaration that IQAir was entitled to enforce its parking policies.

CHA filed a cross-complaint against IQAir for injunctive and declaratory relief, breach of the RPMA, breach of the covenant of good faith and fair dealing, tortious interference with prospective economic advantages, tortious interference with contractual relations, wrongful interference with contractual relations, and conversion of property. The cross-complaint sought a declaration that IQAir's parking policies violated the RPMA and an injunction against enforcing the parking policies.

IQAir later voluntarily dismissed its complaint, and CHA dismissed its tort claims against IQAir. A two-day bench trial ensued, at which witnesses for both sides testified. IQAir's engineering expert, Ertugiul Tacirogle, also testified as to the design and intended use of IQAir's parking lot. Based on his

review of IQAir's property, original design plans for the site, aerial photographs, and core samples taken from IQAir's property, Tacirogle opined that IQAir's parking lot was designed for single-space vehicles that weigh 5,000 pounds or less. Tacirogle further opined that damage he observed to the paving on IQAir's parking lot was caused by heavy vehicle use.

At the conclusion of the trial, the trial court issued a proposed statement of decision in which it ruled that the RPMA allowed CHA to direct buses to IQAir's lot for loading, unloading, and parking, even at times when CHA's own parking lot was not full. The court rejected IQAir's interpretation of the RPMA as allowing parking of only automobiles, and not buses or other large commercial vehicles, on the IQAir property. The court discounted the testimony of IQAir's expert, Tacirogle, because he did not consider the RPMA in forming his opinion and because there was other evidence as to the cause of asphalt cracking in IQAir's parking lot.

The trial court concluded that although the RPMA allowed IQAir to implement a permit policy to prevent unauthorized parking on its property, IQAir had not implemented its permit policy in good faith to prevent unauthorized parking, but rather to discourage hotel patrons from parking on IQAir's lot.

As to the conference center sign, the trial court concluded that the evidence established that the sign had been in place since at least 2005, and that CHA holds a prescriptive easement over the area where the sign had been installed. The court declined to award damages to CHA on its conversion claim based on IQAir's unauthorized removal of the conference center sign, however, because CHA failed to introduce evidence of its damages. The court therefore ruled that CHA was entitled to return the sign to its former location on IQAir's property, but at CHA's own expense.

IQAir filed objections to the proposed statement of decision. The trial court overruled those objections and adopted the proposed statement of decision as the final statement of decision.

Judgment was subsequently entered in CHA's favor, granting it declaratory and injunctive relief prohibiting IQAir from (1) preventing any vehicle of any type or class associated with the patronage or business of the hotel from parking on the IQAir parcel, (2) restricting or preventing vehicle access into and/or across the IQAir parcel by any type or class of vehicle associated with the patronage or business of the hotel, (3) implementing or enforcing any parking policy or parking space striping policy that prohibits any type or class of vehicle associated with the patronage or business of the hotel from taking up more than one parking space on the IQAir parcel, and (5) towing or threatening to tow any vehicle off of the IQAir parcel, unless and until confirming that the vehicle is not associated with either the IQAir parcel or the CHA parcel.

The injunction further required IQAir to (1) present evidence to the court that the lettering on all of its parking signs complies with Vehicle Code section 22658, (2) revise the language of the signs, to be approved by CHA and by the court, to make clear that hotel guests may park on IQAir's lot but that they must obtain a permit, and (3) make permits available by both IQAir and CHA and easily accessible to permittees intended to park on either parcel. The judgment prohibited IQAir from towing or threatening to tow away any vehicle, regardless of type, unless and until IQAir confirmed that the vehicle was not associated with either parcel.

The judgment granted CHA a prescriptive easement over the area on IQAir's parcel where the hotel's conference center sign had been located and accorded CHA the right to reinstall the sign at its expense. Finally, the judgment stated that CHA was

the prevailing party under Civil Code section 1717 and entitled to recover its reasonable attorney fees and costs to be determined by a postjudgment motion and memorandum of costs.

IQAir appeals from that judgment.

DISCUSSION

I. Applicable legal principles and standard of review

An easement agreement such as the RPMA is subject to the rules of interpretation that apply to contracts. (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 521.) "As with all contracts, the paramount goal of interpreting a writing creating an easement is to determine the intent of the parties. [Citation.] The parties' intent is ascertained from the language of the contract alone, 'if the language is clear and explicit, and does not involve an absurdity.' [Citations.]" (*Hill v. San Jose Family Housing Partners, LLC* (2011) 198 Cal.App.4th 764, 777.)

When a trial court interprets a contract without the aid of extrinsic evidence, an appellate court reviews that interpretation under a de novo standard and makes an independent determination of the meaning of the contract. (*Tin Tin Corp. v. Pacific Rim Park, LLC* (2009) 170 Cal.App.4th 1220, 1225.) When extrinsic evidence has been admitted to establish the parties' intent, a reviewing court must accept the trial court's determination if it is supported by substantial evidence. (*In re Marriage of Fonstein* (1976) 17 Cal.3d 738, 746-747.)

II. Interpretation of the RPMA

A. The plain language of the RPMA confers broad reciprocal easements for parking

Section 2.2 of the RPMA grants to the owners of the subject parcels and to their permittees "nonexclusive reciprocal easements for parking for vehicular and pedestrian use incidental thereto in the Parking Areas of both Parcels in conjunction with the operation or patronage of the Project and

the businesses operated therein." The contract language does not limit the types of vehicles that may use the Parking Areas to automobiles only. "Parking Areas" is defined in section 1.1 as those areas "used for parking of automobiles *and other vehicles*." Buses and trucks are "vehicles" and their use of the parking areas constitutes "vehicular use" within the ordinary and popular meaning of those terms. (Civ. Code, § 1644.) The plain language of section 2.2 grants reciprocal easements for parking those types of vehicles. IQAir's one-vehicle-one-space policy, which effectively precludes buses and other large vehicles from parking and from loading and unloading on its property, impermissibly narrows the scope of the easement granted by section 2.2. The trial court did not err by interpreting the RPMA to prohibit IQAir from enforcing that policy.

The trial court's interpretation is consistent with the history of the RPMA and the operation of the parties' respective parcels. As the trial court noted, the hotel from its inception was designed to be a full service hotel with up to 300 rooms and 20,000 square feet of restaurant and conference facilities. At the time the RPMA was drafted, the hotel was already in existence and had been operating for many years. The drafters of the RPMA would have understood that vehicles used in conjunction with the operation or patronage of the hotel included tour buses, delivery trucks, and other large vehicles. In addition, the RPMA was drafted and recorded in anticipation of a pending sale of the hotel parcel to a new owner and was intended to ensure that there would be adequate parking to meet the needs of both parcels. Substantial evidence accordingly supports the trial court's interpretation.

B. Other sections of the RPMA do not give IQAir the ability to enforce its one-vehicle-one-space policy

IQAir contends the broad easement rights conferred by section 2.2 are subject to "reasonable policies that IQAir may put in place as incidents of its ownership and management of its Parking Area." As support for this contention, IQAir cites sections 1.1(d), 2.1, 3.3, and 4.1 of RPMA, which it claims authorize the establishment and enforcement of its one-vehicle-one-space policy.

Section 1.1(d) of the RPMA defines "Parking Areas" as those areas on the respective parcels "as are now or may hereafter . . . be established from time to time by the respective Owners to be used for parking of automobiles and other vehicles." IQAir argues that this section authorizes its implementation and enforcement of the one-vehicle-one-space policy, which effectively prohibits buses and other large vehicles from using the IQAir lot. Such a policy is inconsistent, however, with the language of section 1.1(d) itself, which defines "Parking Areas" as those areas to be "used for parking of automobiles *and other vehicles*." The RPMA's express provision for parking for "other vehicles," as distinguished from automobiles, is consistent with the broad easements rights conferred by section 2.2. It is also consistent with the drafter's anticipated use of CHA's parcel as full service hotel, where tour buses, delivery trucks, and other large vehicles would regularly load, unload, and park. We are not persuaded by IQAir's argument that the doctrine of *ejusdem generis* applies to restrict the category of "other vehicles" that may use the Parking Areas to those that are similar in size to automobiles.

IQAir next argues that its ability to enforce a one-vehicle-one-space policy is supported by section 3.3 of the RPMA, which allows each parcel's owner to "change at any time and from time to time the buildings and parking configurations on its Parcel."

Section 3.3 further states, however, that an owner's ability to change the parking configurations on its parcel is "subject to . . . the parking requirements under Section 2.2." Section 3.3 thus expressly limits IQAir's ability to adopt and enforce a parking policy to one that is consistent with the broad easement rights created under section 2.2. IQAir's one-vehicle-one-space policy exceeds that limitation.

Section 4.1 of the RPMA similarly does not support IQAir's position. Section 4.1 states that, "Each Owner shall at all times operate, manage and maintain its . . . Parking Areas . . . and cause them to be operated, managed, and maintained in a state of good repair . . . and [in a] first class clean and orderly condition." Nothing in that section, whether read alone or together with the other RPMA provisions cited by IQAir, accord IQAir the right to enforce a parking policy that narrows the scope of the easement granted in section 2.2.

Finally, IQAir argues that section 2.1 of the RPMA, which creates reciprocal easements for "pedestrian and vehicular ingress to and egress from both Parcels . . . including, but not limited to ingress and egress for delivery and service trucks and vehicles" "shows that where the RPMA's drafters intended to grant particular rights to a particular class of vehicles (e.g., 'delivery and service trucks'), they knew to spell those rights out with specificity." The omission of similar language in section 2.2, IQAir maintains, demonstrates that the drafters intended to provide parking for automobiles and similar sized vehicles only.

IQAir's interpretation is inconsistent with the plain language of section 2.2, which confers broad easement rights "for parking for vehicular and pedestrian use . . . in conjunction with the operation or patronage" of the hotel. Section 2.2 contains no limitation on the types of vehicles that may park on the respective properties and we decline to read a limitation into the

RPMA to alter its express terms. (See *Series AGI West Linn of Appian Group Investors DE, LLC v. Eves* (2013) 217 Cal.App.4th 156, 163 [court will not read terms into a contract that the contract will not reasonably bear].)

The trial court did not err by interpreting the RPMA to prohibit IQAir from enforcing a one-vehicle-one-space policy in the parking area on its property.

C. No unreasonable burden

IQAir argues that the trial court's interpretation of the RPMA should be rejected because it imposes unreasonable burdens on IQAir that exceed what the parties intended at the time the RPMA was executed. Substantial evidence supports the trial court's implied finding of no unreasonable burden.

An easement created by an express grant "is not limited by . . . uses in existence at the time of the agreement and/or conveyance." (*Camp Meeker Water System, Inc. v. Public Utilities Com.* (1990) 51 Cal.3d 845, 866 (*Camp Meeker*).) "'[I]n determining the intent of the parties as to the extent of the grantee's rights . . . consideration must be given not only to the actual uses being made at the time of the severance, but also to such uses as the facts and circumstances show were within the reasonable contemplation of the parties at the time of the conveyance.'" (*Id.* at p. 867.)

"Whether a particular use of an easement by either the servient or dominant owner unreasonably interferes with the rights of the other owner is a question of fact. [Citations.]" (*Red Mountain, LLC v. Fallbrook Public Utility Dist.* (2006) 143 Cal.App.4th 333, 350.) A trial court's determination of that factual question must be upheld if it is supported by substantial evidence. (*Scruby v. Vintage Grapevine, Inc.* (1995) 37 Cal.App.4th 697, 706.)

Substantial evidence supports the trial court's finding that the hotel's use of the parking easement for buses and other large commercial vehicles was within the reasonable contemplation of the parties at the time the RPMA was drafted. As the trial court noted, the hotel, which included up to 300 rooms, a restaurant and a 10,000 square foot conference center, was in existence and had been operating for many years at the time the RPMA was drafted. Vehicles such as tour buses, delivery trucks and other large vehicles associated with the operation or patronage of the hotel were likely using the parking areas at that time. The RPMA was also drafted and recorded because of a pending sale of the hotel parcel and the need to ensure adequate parking to meet the future needs of the hotel.

That the hotel did not begin using IQAir's parking area to load and unload tour buses until 2011 did not preclude it from exercising its right to do so pursuant to the RPMA. An easement by an express grant is not limited to the uses at the time of conveyance. (*Camp Meeker, supra*, 51 Cal.3d at p. 867.)

Rye v. Tahoe Truckee Sierra Disposal Co., Inc. (2013) 222 Cal.App.4th 84 (*Rye*), on which IQAir relies as support for its position, is distinguishable. In that case, the defendant owned an easement that provided in general terms "'for ingress, egress, parking, storage, utilities over a portion of Parcel One.'" (*Id.* at p. 88.) Parcel One consisted of a paved area and an unpaved area. For years, the defendant used the paved area and a small portion of the unpaved area for its garbage trucks and storage of its garbage bins. The defendant attempted to expand its operations beyond the boundaries of its historical use of the easement, arguing that it was entitled to use additional unpaved areas included in the express easement. The property owner sued for injunctive relief, which the trial court granted. In affirming the trial court's grant of an injunction, the appellate court in *Rye*

noted that the express grant did not specify the extent and location of the parking and storage on the easement, nor did it specify that all of the area was subject to the easement. (*Id.* at p. 92.) The appellate court further noted that there was no clear indication of an intention to extend parking and storage to all of the area subject to the easement, and that the only evidence of the intention of the parties regarding use of the easement was past usage that was confined to the paved area and a portion of the unpaved area. The court in *Rye* therefore concluded that the defendant's use of the easement was confined to the area it had used historically from 1996 to the date of the parties' dispute. (*Id.* at p. 93.)

In contrast, the RPMA in the instant case specifies both the location and extent of the easement. The RPMA expressly grants an easement "in the Parking Areas," defined as those areas within both parcels "as are now or may hereafter . . . be established from time to time by the respective Owners to be used for parking of automobiles and other vehicles." The RPMA specifies the scope of the easement as "for parking for vehicular and pedestrian use incidental thereto . . . in conjunction with the operation or patronage of" the hotel.

There was evidence in the instant case that in 2011 CHA communicated with the previous owner of IQAir's parcel, A&B Properties, regarding CHA's intent to use the IQAir parcel's parking area to load and unload tour buses. There was also evidence that CHA communicated with IQAir in 2012 about the hotel's use of the IQAir parcel for loading and unloading buses, and explained why it was necessary for CHA to do so. CHA continued to use the IQAir parking lot, without objection, until IQAir moved onto the property in January 2014. IQAir thus had notice of CHA's use of IQAir's parking area from the time IQAir

acquired the property in 2012, before it moved onto the property in 2014.

IQAir claims that buses and other large vehicles are damaging the pavement in its parking area, and that the cost of constantly repairing and repaving the parking area is a significantly increased burden. IQAir cites testimony by its engineering expert, Tacirogle, that the IQAir lot was built and paved with standard grade asphalt designed for automobile use and that damage to the asphalt on IQAir's lot was caused by overloading due to use by heavy vehicles.

There was evidence, however, that the IQAir property was vacant for many years and that the pavement on its parking lot was in a state of disrepair. The hotel's general manager, Richard Choi, testified that he observed damage to the asphalt on IQAir's lot throughout the entire parking area in 2011, and that before IQAir moved onto the property, it chose to repair some areas but not others. Choi also took photographs of IQAir's lot between 2013 and 2016, and testified that the cracked asphalt currently on IQAir's lot is in areas that IQAir chose not to repair. In light of the evidence, the trial court could have properly discounted Tacirogle's testimony and credited CHA's position that the damage cited by IQAir was due to lack of maintenance over time and not heavy vehicle traffic. Moreover, the trial court was not required to credit any of Tacirogle's expert testimony even if it had been uncontroverted. "As a general rule, '[p]rovided the trier of fact does not act arbitrarily, he may reject *in toto* the testimony of a witness, even though the witness is uncontradicted. [Citations.]' [Citation.] This rule is applied equally to expert witnesses. [Citation.]" (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)

As to the cost of repaving and repairing IQAir's parking area, sections 4.1 and 4.3 of the RPMA put that responsibility squarely on IQAir.

III. Injunctive relief

A. Irreparable harm

Civil Code section 3422 governs the granting of a permanent injunction. It states in relevant part that "a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant: [¶] 1. Where pecuniary compensation would not afford adequate relief; [or] [¶] 2. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief." (Civ. Code, § 3422.) Under this statute, a "plaintiff must ordinarily show that the defendant's wrongful acts threaten to cause *irreparable* injuries, ones that cannot be adequately compensated in damages. [Citation.]" (*Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1352, citing 5 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 782, p. 239.) "[T]o say that the harm is irreparable is simply another way of saying that pecuniary compensation would not afford adequate relief or that it would be extremely difficult to ascertain the amount that would afford adequate relief. [Citations.]" (*DVD Copy Control Assn. v. Kaleidescape, Inc.* (2009) 176 Cal.App.4th 697, 722.)

A mandatory injunction may be issued for the protection and preservation of an easement. (*Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 572 (*Warsaw*).) Moreover, in a proper case, the trial court has discretion to issue a permanent mandatory injunction to protect and preserve an easement; enjoin a threatened interference; and compel a defendant to remove an encroachment, repair an injury or otherwise restore original conditions, thus undoing a completed wrong. (*Clough v. W. H. Healy Co.* (1921) 53 Cal.App. 397, 400.)

"The trial court's decision to grant a permanent injunction rests within its sound discretion and will not be disturbed on appeal absent a showing of a clear abuse of discretion. [Citation.]" (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912.)

In granting an injunction, "[a] trial court will be found to have abused its discretion only when it has '"exceeded the bounds of reason or contravened the uncontradicted evidence."' [Citations.] Further, the burden rests with the party challenging the injunction to make a clear showing of an abuse of discretion. [Citations.]" (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69.)

IQAir contends the trial court abused its discretion by granting CHA injunctive relief barring enforcement of IQAir's one-vehicle-one-space policy because there was no evidence that CHA suffered any injury as the result of the one-vehicle-one-space policy. Absent evidence of such harm, IQAir argues, "there is no basis to think that such harm will occur in the future."

IQAir misapprehends the standard required for injunctive relief. A plaintiff seeking such relief need not show past injury or harm, but that the defendant's acts threaten to cause irreparable harm in the future. Injunctive relief is granted "to prevent threatened injury and has no application to wrongs that have been completed. [Citation.]" (*Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 332.) That CHA presented no evidence of past harm does not preclude the granting of relief against threatened future harm.

There is evidence in the record to support CHA's argument that IQAir's parking policy threatened to cause harm to the hotel's customer goodwill. There was evidence, for example, that the alternatives to loading and unloading buses on IQAir's property generated complaints from patrons or presented safety

concerns. Choi testified that CHA's previous practice of loading and unloading buses in the porte cochere area of the hotel resulted in complaints from guests who were unable to maneuver their own vehicles around the waiting buses or who were nearly hit by moving buses. Choi further testified that the location CHA currently uses to load and unload tour buses is unsafe because large vehicles drive through that same area when making deliveries to the hotel.

CHA argued that it has no way of quantifying how many guests might decide not to return to the hotel or who might dissuade others from patronizing the hotel because of a negative experience with parking or disembarking from a bus on CHA's property. The record discloses no abuse of discretion by the trial court in granting injunctive relief to CHA.

B. Scope of the injunction

IQAir contends the injunctive relief accorded by the judgment is overbroad because it authorizes the hotel to direct large commercial vehicles to park in IQAir's parking area regardless of whether the hotel's own parking area has room to accommodate them. IQAir argues that section 3.3 of the RPMA obligates the hotel to use its own parking area as its primary parking lot.

Section 3.3 allows a party to change the buildings and parking configurations on its parcel, subject to the restrictions and limitations set forth in the RPMA, "including without limitation, the parking requirements under Section 2.2." It imposes additional restrictions on any replacement buildings, requiring that "the size, number, location, and uses of such replacement buildings . . . (a) is such that the parking areas on each Parcel will be adequate and convenient for the Permittee of such Parcel, (b) is such that the primary Parking Areas on each Parcel will generally be more convenient to the Permittees of

such Parcel than the Parking Areas of the other Parcel, and (c) is otherwise such that each Parcel will generally support its own parking needs in accordance with all legal requirements."

Section 3.3 does not apply, as CHA has not altered or replaced any of the hotel buildings. Moreover, section 3.3 expressly states that a party's ability to change the parking configurations on its parcel is subject to the parking easement granted by section 2.2. Section 2.2 does not require CHA to exhaust the available parking spaces on its own parcel before directing its patrons to park in the parking area on IQAir's parcel. The injunctive relief granted does not exceed the scope of the easement created by the RPMA.

Substantial evidence also supports the injunctive relief granted by the trial court. Choi testified that the hotel is required to have at least 334 parking spaces, that a large commercial vehicle such as a bus takes up 8 spaces but requires 12 to 15 spaces to maneuver in and out of a parking space. Choi further testified that the hotel cannot eliminate parking spaces on its lot in order to accommodate buses and other large vehicles.

IQAir has established no basis for reversing or modifying the injunctive relief granted.

IV. Prescriptive easement

The elements necessary to establish a prescriptive easement are use of another's property for five years, which use is open and notorious, continuous and uninterrupted, and adverse to the property owner. (*Warsaw, supra*, 35 Cal.3d at p. 570.) IQAir contends there was insufficient evidence to support the trial court's finding that CHA asserted an adverse claim over the portion of IQAir's property on which the hotel's conference center sign had been located for the requisite five-year period.

Substantial evidence supports the trial court's finding that the five-year period to establish a prescriptive easement had

passed by the time IQAir complained about and then removed the sign. There was evidence that a conference center sign was located on what is now IQAir's property in 2004, when CHA acquired the hotel property, and that CHA continued to maintain a conference center sign in that same location until IQAir's unauthorized removal of the sign in 2014.

IQAir argues that the conference center sign was installed when Wolff owned both parcels and that there is no evidence that Wolff ever withdrew his consent to maintain the sign on the theater parcel after the hotel parcel was sold and no evidence that the hotel ever gave clear and actual notice of an adverse claim of right. The trial court rejected that argument, noting that the evidence showed that the theater parcel was owned by A&B Properties (an entity neither owned nor controlled by Wolff) in 2005, and that the sign was in place at that time.

IQAir argues on appeal that the trial court "disregarded" property records that purportedly show that A&B Properties did not acquire the theater parcel from Wolff until December 2009 -- less than five years before IQAir removed the conference center sign. There is no indication that those property records were ever admitted into evidence, however, and we decline to consider on appeal evidence not admitted below.[1] (See *Higbee v. La Salle* (1956) 145 Cal.App.2d 737, 739.)

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[1] After the parties' presented their closing arguments, IQAir filed a request for judicial notice of a grant deed dated December 23, 2009, by Wolff-La Mirada Theater L.P. conveying the theater parcel to A&B Properties, Inc. Nothing in the record indicates that the trial court granted this request, and the final statement of decision does not mention the grant deed.

IQAir has failed to establish any basis for reversing the judgment on the prescriptive easement claim.[2]

V. Attorney fees

IQAir's sole basis for challenging the trial court's award of attorney fees and costs to CHA as the prevailing party under Civil Code section 1717 is that the judgment should be reversed and IQAir should be the prevailing party on the merits. As IQAir has failed to establish any basis for reversing the judgment, there is no basis for reversing the attorney fees award.

DISPOSITION

The judgment is affirmed. CHA is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST

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[2] CHA states in a footnote in its appellate brief that it "withdraws its claim for a prescriptive easement as to the 'Conference Center' sign" and consents to have that portion of the judgment vacated as moot. We decline to do so.