Filed 5/30/12 Ruane v. 403 Main CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BILL RUANE, Plaintiff, Cross-Defendant, and Appellant, v. 403 MAIN LLC et al., Defendants, Cross-Complainants, and Respondents.	B227273 (Los Angeles County Super. Ct. No. YC060373)

APPEAL from a judgment and order of the Superior Court of the County of Los Angeles, Morris Jones, Judge. Affirmed.

Lewis Brisbois Bisgaard & Smith, Roy G. Weatherup, Caroline E. Chan; Spierer, Woodward, Corbalis & Goldberg and Stephen B. Goldberg, for Plaintiff, Cross-Defendant, and Appellant.

Law Offices of Thomas Carter, Thomas P. Carter for Defendants, Cross-Complainants and Respondents.

INTRODUCTION

Plaintiff, cross-defendant, and appellant Bill Ruane (Ruane) appeals from a judgment entered in favor of defendants, cross-complainants, and respondents 403 Main, LLC (403 Main) and Hillary Condren (Condren). Ruane contends that the trial court erred when it entered judgment in favor of 403 Main based on a lease and purchase option because 403 Main had not filed articles of organization at the time the lease and option were executed and therefore lacked the capacity to contract. Ruane further contends that the trial court misinterpreted the written notice requirements of the lease and option and that the court impermissibly relied on parol evidence when interpreting those agreements. In a consolidated appeal, Ruane contends that the trial court's attorney fees award was excessive.

We hold that Ruane forfeited his claim that 403 Main lacked the capacity to contract. We further hold that the trial court did not misinterpret the written notice requirement of the lease and option or rely on inadmissible parol evidence in interpreting the lease and option or in connection with the fraud claim. We also hold that the trial court did not abuse its discretion in fixing the amount of attorney fees. We therefore affirm the judgment and fee award.

FACTUAL BACKGROUND[1]

Ruane, an experienced real estate agent, owned a commercial property located at 403 Main Street, El Segundo, California (the property). He approached Condren about opening a new restaurant at the property. Condren initially rejected Ruane's restaurant proposal, but subsequently advised Ruane that he would open a restaurant at the property if he could buy the property. After further negotiations, the parties agreed to a sales price

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1 The facts are taken from the trial court's statement of decision, the propriety of which Ruane does not challenge on appeal.

of $975,000. The initial intention of the parties was to structure the transaction as a purchase agreement.

According to Condren, he anticipated that it would take six to eight months to complete necessary improvements to the property and build out a restaurant. Condren also explained that it would be impossible to recoup the costs of the improvements and build out during a short term lease. Therefore, Condren was only interested in opening a new restaurant at the property if he could own the property.

After the parties reached their agreement for Condren to buy the property, but before the agreement was reduced to writing, Ruane advised Condren that Ruane needed time to find a suitable replacement property to purchase so that the transaction would qualify as an Internal Revenue Code section 1031 exchange (section 1031 exchange).[2] Ruane, however, never intended to sell the property to Condren. He made the false representation concerning a section 1031exchange to induce Condren to enter into a lease rather than a purchase agreement. Condren relied on Ruane's representation that he would complete the sale once he found a suitable property for the section 1031 exchange.

Based on Ruane's representations, the parties structured their deal as a one-year lease with an option to purchase the property. Ruane's office prepared the lease and purchase option addendum, which identified the lessee/optionee as 403 Main.[3]

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[2] A section 1031 exchange allows a person who sells property and then buys a "like kind" property within a limited period of time to defer taxes on the capital gain. (See 26 U.S.C., § 1031(a)(1) ["(a) Nonrecognition of gain or loss from exchanges solely in kind. [¶] (1) In general. No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment"].)

[3] Condren explained that 403 Main was "an LLC that was put together to potentially hold the assets of the building and the business." The members of 403 Main were Condren and Kenny Garmoe. But Condren also explained that "when [they] put the deal together originally, there wasn't even an LLC." According to Condren, because there was no time to file articles of organization for 403 Main when the lease was executed, he

Paragraph 59 of the typewritten addendum provided: "Lessee (Buyer) has an option to buy the property for $975,000 in the first 12 months at any time. With the written request from the seller, buyer must purchase the property in 90 days for the said price." Paragraph 23.1 of the standard form commercial lease provided in pertinent part: "Notice Requirements. All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23."

Following execution of the lease, Condren spent considerable effort and a significant amount of money to improve and build out the property for the purpose of opening the restaurant. He estimated that the project cost was in excess of $250,000.

During the first year of the lease and several times thereafter, Condren told Ruane that he wanted to complete the sale of the property. But each time Condren communicated his desire to complete the sale, Ruane would mislead Condren by repeating that he needed more time to find a suitable buyer to complete a section 1031 exchange. On each occasion, Condren accepted Ruane's statements as true and agreed to give Ruane more time. Condren accepted Ruane's statements because, inter alia, Ruane was acting as Condren's real estate agent in bringing Condren several other potential real estate deals and representing Condren on several real estate deals. During that time period, Ruane and Condren were operating on a "handshake" basis. But despite Ruane's repeated representations that he needed more time to find a suitable exchange property, he admitted that he never attempted to locate such a property.

From October 2005 until November 2007, Ruane did not at any time indicate to Condren that Ruane was not willing to proceed with the sale of the property. Similarly, Ruane did not disclose to Condren that Ruane was not attempting to locate a suitable

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planned to file the articles at the time they purchased the property and "put everything they had done up to that point into the LLC . . . ."

property to complete a section 1031 exchange. In November 2007, Ruane finally told Condren that Ruane had no intention of selling Condren the property at the agreed upon price. Ruane decided not to sell the property at the agreed upon price because by 2007, the property had increased in value and was worth more than that purchase price.

PROCEDURAL BACKGROUND

Ruane initially sued 403 Main for unlawful detainer. When 403 Main vacated the premises, Ruane filed an amended complaint against 403 Main and Condren for breach of contract, unpaid rent, and other damages. In response, 403 Main and Condren cross-complained against Ruane for fraud, breach of written contract, and breach of oral contract. Following a bench trial, the trial court entered a judgment awarding Ruane $11,449 in unpaid rent and damages, and awarding Condren and 403 Main $60,000 in compensatory damages and $30,000 in punitive damages. The trial court also found that Condren and 403 Main were the prevailing parties in the action entitled to attorney fees and costs pursuant to the lease. Thereafter, the trial court awarded Condren and 403 Main attorney fees and costs in the amount of $109,288.75.

Ruane appealed from the judgment and from the postjudgment order granting attorney fees and costs, and those two appeals were consolidated. Condren and 403 Main filed a cross-appeal from the judgment, but that cross-appeal subsequently was dismissed.

DISCUSSION

A. Lack of Capacity to Contract and Forfeiture

Ruane argues that because 403 Main was not a valid and existing limited liability company at the time the lease was executed, or at the time the 12-month purchase option expired, it lacked the capacity to enter into the lease and option and, therefore, had no ability to sue based on those void agreements. According to Ruane, Condren admitted at trial that 403 Main was not a valid and existing limited liability company at the time he

executed the lease on its behalf, and certain evidence outside the record[4] shows that 403 Main's articles of organization were not filed until 2008, well after the cross-complaint was filed.

It is undisputed that Ruane did not raise the capacity issue at trial, notwithstanding that he was aware from Condren's testimony at trial that Condren had not yet filed articles of organization for 403 Main at the time the lease was executed. Thus, there is a threshold issue as to whether the capacity issue has been forfeited on appeal.

"The forfeiture rule generally applies in all civil and criminal proceedings. (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 400, pp. 458-459; 6 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Reversible Error, § 37, pp. 497-500.) The rule is designed to advance efficiency and deter gamesmanship. As we explained in *People v. Simon* (2001) 25 Cal.4th 1082 [108 Cal.Rptr.2d 385, 25 P.3d 598] (*Simon*): '"'"The purpose of the general doctrine of waiver [or forfeiture] is to encourage a defendant to bring errors to the attention of the trial court, so that they may be corrected or avoided and a fair trial had . . . ."' [Citation.] '"No procedural principle is more familiar to this Court than that a *constitutional* right," or a right of any other sort, "may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a

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4 We denied Ruane's request for judicial notice and motion to take additional evidence seeking to add to the record documents showing the date 403 Main filed its articles or organization. (See *Haworth v. Superior Court* (2010) 50 Cal.4th 372, 379, fn.2.) In his reply brief, Ruane urges us to reconsider that denial. But there is no basis upon which to reconsider our prior order. The documents in issue were not before the trial court and Ruane raised no issue concerning them in the trial court. "'Reviewing courts generally do not take judicial notice of evidence not presented to the trial court' absent exceptional circumstances. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3 [58 Cal.Rptr.2d 899, 926 P.2d 1085].) 'It is an elementary rule of appellate procedure that, when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered. [Citation.] This rule preserves an orderly system of [litigation] by preventing litigants from circumventing the normal sequence of litigation.' (*Reserve Insurance Co. v. Pisciotta* (1982) 30 Cal.3d 800, 813 [180 Cal.Rptr. 628, 640 P.2d 764].)" (*Ibid.*)

tribunal having jurisdiction to determine it." . . .' [Citation.] [¶] 'The rationale for this rule was aptly explained in *Sommer v. Martin* (1921) 55 Cal.App. 603 at page 610 [204 P. 33] . . . : "'In the hurry of the trial many things may be, and are, overlooked which would readily have been rectified had attention been called to them. The law casts upon the party the duty of looking after his legal rights and of calling the judge's attention to any infringement of them. If any other rule were to obtain, the party would in most cases be careful to be silent as to his objections until it would be too late to obviate them, and the result would be that few judgments would stand the test of an appeal.'"' [Citation.]" (Fn. omitted; [citations].)' (*Simon, supra*, 25 Cal.4th at p. 1103, italics added.) (Footnote omitted.)" (*Keener v. Jeld-Wen, Inc*. (2009) 46 Cal.4th 247, 264-65.)

Ruane did not contend prior to or during trial that 403 Main lacked the capacity to enter into the lease, much less argue that the lease and option were void and unenforceable as a result. To the contrary, it was Ruane who initially filed suit on the lease against *403 Main, LLC*, for unlawful detainer and unpaid rent. He then proceeded to trial and obtained a monetary judgment in his favor based on the lease. Moreover, despite eliciting testimony from Condren that 403 Main did not exist at the formation of the lease, Ruane did not use that testimony to suggest or imply at trial that the lease and option were void ab initio. Under such circumstances, the issue of whether 403 Main lacked the capacity to contract has been forfeited on appeal.

Ruane concedes that he is raising the capacity issue for the first time on appeal, but he contends that the issue has not been forfeited because it presents a legal question that can be determined from the undisputed facts in the record. Citing *Ward v. Taggart* (1959) 51 Cal.2d 736, Ruane maintains that because 403 Main had the affirmative burden of pleading and proving capacity to contract, but failed to do so, the lease and option upon which 403 Main based its cross-complaint were void and unenforceable as a matter of law. According to Ruane, because Condren admitted at trial that 403 Main did not exist when the lease was executed, there is no factual dispute on the capacity issue, and, as a result, the forfeiture rule does not apply.

Ruane's reliance on *Ward v. Taggart, supra*, 51 Cal.2d 736 is misplaced. In that case, the plaintiffs relied on a tort theory of recovery in presenting their case to the trial court, but on appeal argued that the facts they proved at trial also supported an unasserted claim under a quasi-contract theory of recovery, unjust enrichment. In holding that the plaintiffs could change their theory of recovery on appeal, if the facts in the record supported it, the court explained: "Although [the quasi-contract] theory of recovery was not advanced by [the] plaintiffs in the trial court, it is settled that a change in theory is permitted on appeal when 'a question of law only is presented on the facts appearing in the record. . . .' (*Panopulos v. Maderis*, 47 Cal.2d 337, 341 [303 P.2d 738]; *American Auto. Ins. Co. v. Seaboard Surety Co.*, 155 Cal.App.2d 192, 200 [318 P.2d 84].) The general rule confining the parties upon appeal to the theory advanced below is based on the rationale that the opposing party should not be required to defend for the first time on appeal against a new theory that 'contemplates a factual situation the consequences of which are open to controversy and were not put in issue or presented at the trial.' (*Panopulos v. Maderis, supra*, 47 Cal.2d at 341.)" (*Ward v. Taggart, supra*, 51 Cal.2d at p. 742.)

In the trial court, Ruane did not base any claim or defense on Condren's admission that 403 Main was not a limited liability company at the time the lease was signed. The admission was elicited by his trial counsel during cross-examination, but no argument of any sort was made concerning the significance of the admission, if any, to Ruane's case. As a result, and unlike the situation in *Ward v. Taggart, supra*, 51 Cal.2d 736, the consequences of Condren's admission were not put in issue or presented to the trial court. There is no change in theory here, but rather an attempt to rely on an undisputed fact to present an entirely new defense. The exception to the forfeiture rule recognized in *Ward* is therefore not applicable to this case.

Moreover, Ruane's argument in response to the forfeiture assertion is also flawed because it is based on the inaccurate premise that *403 Main* had the burden of pleading and proving capacity to contract as part of its breach of contract cause of action. "The statement of a cause of action for breach of contract requires a pleading of the following:

(1) The contract . . . [¶] (2) Plaintiff's performance or excuse for nonperformance . . . . [¶] (3) Defendant's breach . . . [¶] (4) Damage to plaintiff . . . ." (4 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 515, p. 648 and cases cited therein.) There is no procedural requirement that a plaintiff must plead capacity to contract, and that issue appears to be a "new matter" that must be raised by a defendant as an affirmative defense. (See, e.g., 5 Witkin, Cal. Procedure, *supra,* §§ 1088, 1091, at pp. 520, 522 [explaining that lack of capacity to contract due to minority or mental incompetency must be specially pleaded as an affirmative defense].)

Ruane's capacity contention appears to be based on the contract law principle that only *persons* have the capacity to contract[5] and the assertion that due to Condren's failure to file articles of organization, 403 Main was not a legally recognized person[6] when the lease was executed or when the option expired. But in an analogous situation, courts have held that a claim that a suspended corporation lacks the capacity to sue is not an element of the action, but rather a plea in abatement upon which a defendant has the burden of pleading and proof. (See, e.g., *Color-Vue, Inc. v. Abrams* (1996) 44 Cal.App.4th 1599, 1604 ["Our Supreme Court has specifically stated that 'a plea of lack of capacity of a corporation to maintain an action by reason of a suspension of corporate powers for nonpayment of its taxes "is a plea in abatement . . . ."'"].) Ruane, therefore, had the affirmative burden in the trial court to plead and prove his claim that 403 Main lacked the capacity to contract. Because he failed to do so, he forfeited that claim on appeal.

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5 Civil Code section 1556 states "[a]ll *persons* are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights." (Italics added.)

6 Corporations Code section 17003, subdivision (d) provides in pertinent part: "[A] limited liability company organized under this title shall have all of the powers of a natural person in carrying out its business activities, including, without limitation, the power to: [¶] . . . [¶] (d) Make contracts and guarantees, incur liabilities, act as surety, and borrow money."

B. Notice of Exercise of Option

Ruane contends that the trial court misinterpreted the lease and option when it determined that the written notice provision in paragraph 23.1 of the form lease did not apply to the purchase option provision in paragraph 59 of the addendum. As Ruane reads the lease and addendum, the requirement in the lease that all notices must be in writing applied to the option provision in the addendum. Because it was undisputed at trial that 403 Main did not give written notice to Ruane of its election to exercise the purchase option, Ruane argues that there was no breach of the option agreement as found by the trial court.

Because we agree with Ruane that the lease and option constitute an integrated written agreement, that agreement is to be construed solely on its own language. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865.) Construction of the instrument is therefore a question of law, which we review under an independent or de novo standard. (*Ibid.*)

Ruane's contention concerning the written notice requirement of the lease is controlled by settled rules of contract interpretation. "'The fundamental rules of contract interpretation are based on the premise that the interpretation of a contract must give effect to the "mutual intention" of the parties. "Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. (Civ. Code, § 1636.) Such intent is to be inferred, if possible, solely from the written provisions of the contract. (*Id.*, § 1639.) The 'clear and explicit' meaning of these provisions, interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage' (*id.*, § 1644), controls judicial interpretation. (*Id.*, § 1638.)"' (*Waller* [*v. Truck Ins. Exchange, Inc*. (1995)] 11 Cal.4th [1,] 18.)" (*Ameron Internat. Corp. v. Insurance Co. of State of Pennsylvania* (2010) 50 Cal.4th 1370, 1378.)

Ruane maintains that paragraph 23.1 of the form lease must be read together with paragraph 59 of the typewritten addendum and concludes that, when read together, those two provisions explicitly require the lessee/optionee to provide written notice to the

lessor/optionor of an exercise of the purchase option. Paragraph 23.1, however, expressly limits the written notice requirement to notices that are *required or permitted* under other provisions of the lease: "All notices *required or permitted by this Lease* shall be in writing." (Italics added) Paragraph 59 of the addendum, which grants a purchase option to the lessee/optionee, does not expressly require or permit notice with respect to the lessee/optionee's exercise of the purchase option: "Lessee (Buyer) has an option to buy the property for $975,000 in the first 12 months at any time." Thus, contrary to Ruane's conclusion, paragraph 23.1 does not apply to the first sentence of paragraph 59 dealing with the lessee/optionee's purchase option right. Although the second sentence of paragraph 59[7] dealing with the lessee/optionee's purchase option *obligation* expressly does require written notice by the lessor/optionor, there is no such express requirement concerning the lessee/optionee's purchase option *right*, i.e., the purchase option provision is silent as to the manner in which the lessee/optionee's right is to be exercised.

Under well established California law, when a purchase option is silent as to the manner and timing of an exercise of the option, any reasonable manner and timing is acceptable. (See *Riverside Fence Co. v. Novak* (1969) 273 Cal.App.2d 656, 661 [when an option agreement does not prescribe any particular manner in which an option is to be exercised, any method of communicating election is proper]; *Lawrence v. Settle* (1960) 182 Cal.App.2d 386, 388-389 [when there is no provision in an option for any written notice or any tender of purchase price, "any reasonable and usual mode may be adopted"]; see also 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 176, p. 210 [unless terms require a writing, an option may be accepted orally]; see also 1 Miller & Starr, Cal. Real Estate (3d ed.) § 2:9, p. 35 [if the method of exercise of the option is not specified, it may be exercised in any reasonable manner calculated to give the optionor notice of the optionee's intent to accept the offer and perform the contract of purchase]; 7 Miller & Starr, Cal. Real Estate (3d ed.) § 19:135, p. 415 [except when

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[7] The second sentence of paragraph 59 provides: "With the written request from the [lessor/optionor,] [lessee/optionee] must purchase the property in 90 days for the said price."

required by statute or the terms of the lease, an option may be exercised orally or by conduct indicating the tenant's intent to exercise].)

Ruane contends that even though the first sentence of paragraph 59 does not expressly require notice to the optionor of an optionee's exercise of the option, the notice requirement is implicit because the only way to exercise an option is by some form of notice from the optionee to the optionor. Therefore, according to Ruane, paragraph 23.1 requires that any such notice of exercise of the option be in writing.

Ruane's argument ignores the well established authority holding that an option which is silent as to the manner of exercise may be exercised in any reasonable manner, including by *conduct* indicating the optionee's intent to exercise the option. Thus, for example, under the option in issue, the optionee could have tendered the purchase price to the optionor or opened an escrow for the purchase of the property, neither of which exercises involves formal notice as contemplated by other provisions of the lease and option.[8] Here, it is undisputed that Condren orally communicated to Ruane 403 Main's desire to purchase the property within the first 12 months of the lease. Under the foregoing authorities, that communication constituted a valid and binding exercise of the option that obligated Ruane to sell the property to 403 Main for the agreed upon purchase price. The trial court therefore correctly concluded that Ruane's refusal to sell at the agreed price constituted a breach of the purchase option agreement.

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[8] There are several notices expressly required under the lease, all of which involve some form of advance notice to a party concerning the exercise of a right or the imposition of an obligation under the lease. For example, the second sentence of paragraph 59 requires 90 days advance notice prior to the imposition on the optionee of the obligation to purchase the property. Similarly, under paragraph 13.1(d) of the lease, the landlord is required to give the tenant 30 days advance notice of certain types of defaults under the lease prior to deeming a given default a breach for purposes of exercising the landlord's rights and remedies in response to such breach.

C. Parol Evidence

Ruane contends that because the lease was an integrated agreement, the trial court erred by admitting parol evidence to interpret the agreement. Specifically, Ruane argues that the trial court should not have considered the following evidence in construing the lease and option: (i) Condren's original desire to buy the property; (ii) Ruane's need for time to structure a section 1031 exchange; and (iii) Ruane's proposal of a one-year lease with an option to purchase.

"The parol evidence rule is codified in Civil Code section 1625 (fn. omitted) and Code of Civil Procedure section 1856. (Fn. omitted.) (See *Marani v. Jackson* (1986) 183 Cal.App.3d 695, 701 [228 Cal.Rptr. 518] (*Marani*).) It 'generally prohibits the introduction of any extrinsic evidence, whether oral or written, to vary, alter or add to the terms of an integrated written instrument.' (*Alling v. Universal Manufacturing Corp.* (1992) 5 Cal.App.4th 1412, 1433 [7 Cal.Rptr.2d 718] (*Alling*).) The rule does not, however, prohibit the introduction of extrinsic evidence 'to explain the meaning of a written contract . . . [if] the meaning urged is one to which the written contract terms are reasonably susceptible.' (*BMW of North America, Inc. v. New Motor Vehicle Bd.* (1984) 162 Cal.App.3d 980, 990, fn. 4 [209 Cal.Rptr. 50] (*BMW*).)" (*Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 343-344.)

"Although the [parol evidence] rule results in the exclusion of evidence, it 'is not a rule of evidence *but is one of substantive law*.' (*Estate of Gaines* (1940) 15 Cal.2d 255, 264 [100 P.2d 1055], italics added.) [¶] Unlike traditional rules of evidence, the parol evidence rule 'does not exclude evidence for any of the reasons ordinarily requiring exclusion, based on the probative value of such evidence or the policy of its admission. The rule as applied to contracts is simply that as a matter of substantive law, a certain act, the act of embodying the complete terms of an agreement in a writing (the "integration"), *becomes the contract of the parties*. The point then is, not how the agreement is to be proved, because as a matter of law the writing is the agreement.' (*Estate of Gaines, supra,* 15 Cal.2d at pp. 264-265.) Thus, '[u]nder [the] rule[,] the act of executing a written contract . . . *supersedes* all the negotiations or stipulations concerning its matter

which preceded or accompanied the execution of the instrument.' (*BMW, supra*, 162 Cal.App.3d at p. 990, italics added.) And '[e]xtrinsic evidence cannot be admitted to prove what the agreement was, not for any of the usual reasons for exclusion of evidence, but because as a matter of law the agreement is the writing itself. [Citation.]' (*Ibid.*) 'Such evidence is legally irrelevant and cannot support a judgment.' (*Marani*, *supra*, 183 Cal.App.3d at p. 701.)" (*Casa Herrera, Inc. v. Beydoun, supra*, 32 Cal.4th at pp. 343-344.)

Ruane's contentions concerning the parol evidence rule are premised on the assertion that the challenged evidence concerning the parties' negotiations was used by the trial court to vary or alter the express terms of the lease and option. But Ruane does not point to any term of the lease or option that was varied or altered by the trial court. Moreover, 403 Main and Condren did not argue in the trial court that any of the express terms of the lease or option should be varied or altered by consideration of parol evidence or otherwise. The evidence of the parties' negotiations was offered to explain how the original purchase agreement evolved into a one-year lease with an option to purchase. Neither 403 Main nor Condren denied that the lease or option was enforceable. To the contrary, they sued for breach of those agreements, relying on their terms as written. Given the state of the evidence and the arguments of the parties in the trial court, the parol evidence rule has no application to the decision of the trial court.

Characterizing the fraud claim in this case as one based solely on fraud in the inducement, Ruane argues that the claim was barred by the rule in *Bank of America Etc. Assn. v. Pendergrass* (1935) 4 Cal.2d 258, 263-264 (*Pendergrass*). According to Ruane, *Pendergrass* prohibits a claim based on fraud in the inducement if the fraudulent promise upon which the claim is based directly contradicts an express term of a written agreement. As Ruane views the evidence, Condren's testimony that the original agreement was for the purchase of the property directly contradicted the written purchase option agreement.

Even assuming that the fraud claim in this case was limited to oral promises or agreements made prior to the execution of the lease,[9] that claim was not barred under the *Pendergrass* rule. None of the oral agreements, promises, or understandings of the parties' prior to the execution of the lease directly contradicted any term or provision of the lease or option. To the contrary, each was consistent with the lease and option and served to explain how the original proposed purchase agreement became a 12-month lease with an option to purchase. For example, that Condren originally wanted to purchase the property is consistent with the purchase option that allowed 403 Main to purchase the property at any time during the 12-month term of the lease. Moreover, 403 Main and Condren did not contend at trial that the transaction with Ruane was anything other than a 12-month lease with a purchase option. Therefore, the claim for fraud in the inducement was not barred under *Pendergrass.*

D. Amount of Attorney Fees Award

Ruane challenges the amount of attorney fees awarded by the trial court. He asserts that there was insufficient evidence to support an award—$109,288.75—that exceeded the amount of the judgment in favor of 403 Main and Condren—$90,000. Among other things, Ruane maintains that too many attorney hours were expended on what he characterizes as a simple case, there were too many client meetings, the amount recovered—$90,000—was far less than the amount sought—$250,000—and he incurred less than half the attorney fees that were claimed by 403 Main and Condren.

It is undisputed that the lease provided that the prevailing party was entitled to recover reasonable attorney fees and that 403 Main was a prevailing party in the litigation

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[9] Neither the cross-complaint nor the testimony at trial support Ruane's assertion that the fraud claim was based solely on fraud in the inducement. Both the allegations and the testimony showed that the fraud was also based on Ruane's repeated representations, after the lease was executed, that he needed more time to locate a suitable replacement property.

entitled to recover such fees under Civil Code section 1717.[10] The issue on appeal is therefore limited to the propriety of the amount of fees awarded.

"Civil Code section 1717 provides that '[r]easonable attorney's fees shall be fixed by the court.' As discussed, this requirement reflects the legislative purpose 'to establish uniform treatment of fee recoveries in actions on contracts containing attorney fee provisions'; (*Santisas v. Goodin* [(1998)] 17 Cal.4th [599,] 616.) Consistent with that purpose, the trial court has broad authority to determine the amount of a reasonable fee. (*International Industries, Inc. v. Olen* [(1978)] 21 Cal.3d [218,] 224 ['[E]quitable considerations [under Civil Code section 1717] must prevail over . . . the technical rules of contractual construction.']; *Beverly Hills Properties v. Marcolino* (1990) 221 Cal.App.3d Supp. 7, 12 [270 Cal.Rptr. 605] ['the award of attorney fees under section 1717, as its purposes indicate, is governed by equitable principles']; *Montgomery v. Bio-Med Specialties, Inc*. (1986) 183 Cal.App.3d 1292, 1297 [228 Cal.Rptr. 709] [trial court has 'wide latitude in determining the amount of an award of attorney's fees' under Civil Code section 1717]; *Vella v. Hudgins* (1984) 151 Cal.App.3d 515, 522 [198 Cal.Rptr. 725] ['The amount to be awarded in attorney's fees is left to the sound discretion of the trial court'].) As we have explained: 'The "experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong"—meaning that it abused its discretion. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49 [141 Cal.Rptr. 315, 569 P.2d 1303]; *Fed-Mart Corp. v. Pell Enterprises, Inc*. (1980) 111 Cal.App.3d 215, 228 [168 Cal.Rptr. 525] [an appellate court will interfere with a determination of reasonable attorney fees "only where there has been a

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10 Civil Code section 1717, subdivision (a) provides in pertinent part: "In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs."

manifest abuse of discretion"'].)" (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094-1095.)

"[T]he fee setting inquiry in California ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. 'California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys' fee award.' (*Margolin v. Regional Planning Com*. (1982) 134 Cal.App.3d 999, 1004-1005 [185 Cal.Rptr. 145].) The reasonable hourly rate is that prevailing in the community for similar work. (*Id*. at p. 1004; *Shaffer v. Superior Court* (1995) 33 Cal.App.4th 993, 1002 [39 Cal.Rptr. 2d 506].) The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. (*Serrano v. Priest, supra*, 20 Cal.3d at p. 49.) Such an approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary. (*Id*. at p. 48, fn. 23.)" (*PLCM Group v. Drexler, Inc., supra*, 22 Cal.4th at p. 1095.)

Contrary to Ruane's assertion, there was sufficient evidence before the trial court to support the attorney fees award. The attorneys for 403 Main submitted detailed time records that described the work performed and the amount of time expended to perform the work described. The records were authenticated by the attorneys' declarations and the attorneys stated under oath that the work was performed as described. Based on that evidence, the trial court was able to verify the lodestar calculation as a starting point for determining a reasonable amount to award. The trial court then considered and weighed Ruane's arguments concerning the reasonableness of the amount of fees claimed, including his assertions that the case was not complex, there was too much time expended on client meetings, Ruane's attorneys billed only $42,000 in litigating the case, and the invoices submitted in support of the fees claimed were inadequate in certain particulars.

Based on the evidence before it and the arguments of the parties,[11] the trial court concluded the amount of fees claimed was reasonable. In light of the record on the fee award, we conclude that the trial court's decision was not arbitrary. As explained above, a trial court has wide latitude in fixing a fee award and its award will not be disturbed absent a manifest abuse of discretion. Although reasonable minds might differ as to the appropriate amount of the award in this case, we cannot substitute our judgment for that of the trial court. We therefore affirm the attorney fees award.

DISPOSITION

The judgment in favor of 403 Main and Condren and the order awarding attorney fees are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

We concur:

TURNER, P. J. KRIEGLER, J.

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[11] Ruane notes that the judge who fixed the amount of attorney fees was not the trial judge, and argues that there was no evidence submitted as to the complexity of the case or the number of motions made, thereby suggesting that the judge who rendered the award knew nothing about the nature or complexity of the case. But the court file was at all times available to the judge who rendered the award, and the written and oral arguments of the parties provided further context and background concerning the nature and complexity of the case.