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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

WALTER FRY,

Plaintiff and Appellant,

v.

MATTHEW SKINNER,

Defendant and Respondent.

B271491

(Los Angeles County
Super. Ct. No. PC055841)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stephen P. Pfahler, Judge. Affirmed.

Benedon & Serlin, Douglas G. Benedon and Wendy S. Albers for Plaintiff and Appellant.

Appell Shapiro, Scott E. Shapiro and Barry M. Appell for Defendant and Respondent.

I. INTRODUCTION

After a bench trial, plaintiff Walter Fry was awarded \$10,000 from defendant Matthew Skinner for breach of contract. However, the trial court denied an award of attorney fees under the contract, finding neither party was a prevailing party under Civil Code section 1717. We hold that the trial court did not abuse its discretion in making that determination.

II. BACKGROUND

On January 25, 2011, respondent and defendant Matthew Skinner entered into a contract entitled “Settlement Agreement,” providing that plaintiff would perform “marketing training services & related activities” for defendant, and defendant would pay him \$7,500. Additionally, defendant would pay plaintiff a \$40,000 consulting fee, with both payments within 24 months. Defendant had already paid \$1,000 for the training. The agreement provided that upon execution, the ongoing legal action between the parties would be withdrawn. The agreement also contained a provision for attorney fees.¹ It is undisputed defendant did not pay plaintiff in full when the 24-month period elapsed, other than the previously mentioned \$1,000.

¹ The fees provision states, “In any action to enforce or interpret the terms of this Agreement, or any of the provisions hereof, the prevailing party shall be entitled to recover from the non-prevailing party, in addition to any other relief to which such prevailing party may be entitled, reasonable legal fees, costs and necessary disbursements.”

On July 17, 2014, plaintiff filed this breach of contract action against defendant. Plaintiff requested as relief \$46,500 in damages, as well as attorney fees pursuant to the contract.

After a two-day bench trial, the trial court issued its judgment on March 2, 2016, with a statement of decision. The parties do not dispute the trial court's substantive findings on the breach of contract claim. The trial court found that the contract was valid. However, the trial court rejected both parties' contentions as to the substance of the agreement. Plaintiff asserted the agreement was for future services only, which would avoid the legal prohibition on contracts promising to repay discharged debts, but the trial court found the agreement was *both* for future services *and* a settlement agreement. Plaintiff had agreed to dismiss his litigation against defendant in defendant's bankruptcy proceeding, and the agreement was titled "Settlement Agreement." As well, the trial court rejected defendant's argument that the agreement was a void and unenforceable reaffirmation agreement.²

The trial court found plaintiff had provided some services to defendant. However, the trial court determined the terms of the agreement were vague as to what services plaintiff was actually going to provide, to the point where the agreement was almost unenforceable. Nonetheless, because plaintiff had provided some services and was never paid, the trial court found in favor of plaintiff on his breach of contract claim, though it valued the damages at only \$10,000.

² "A reaffirmation agreement is the only vehicle through which a dischargeable debt can survive a Chapter 7 discharge." (*Matter of Turner* (7th Cir. 1998) 156 F.3d 713, 718; see 11 U.S.C. § 524(c).)

The trial court determined that no attorneys fees would be awarded under the contract because neither party was the prevailing party: “Although some damages were awarded to the Plaintiff, the Court notes that Plaintiff demanded and prayed for \$46,500.00, and insisted that the Agreement was purely an agreement for future services. This Court could easily have found that this Agreement was a ‘reaffirmation agreement’. This Court found that the subject Agreement was a ‘settlement agreement’. The defendant prevailed every bit as much as the Plaintiff.”

III. DISCUSSION

Plaintiff contends the trial court erred by finding he was not the prevailing party and denying him attorney fees. An award of attorney’s fees on a contract is governed by Civil Code section 1717. We review a determination of prevailing party under that section for abuse of discretion. (*Hsu v. Abbata* (1995) 9 Cal.4th 863, 871.)

Civil Code section 1717, subdivision (a) provides in pertinent part that a prevailing party on a contract is entitled to attorney fees: “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.”

However, Civil Code section 1717, subdivision (b)(1) provides that a trial court may determine that there is no party

prevailing on the contract: “The court, upon notice and motion by a party, shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2),³ the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section.”

Our Supreme Court analyzed Civil Code section 1717 and stated that a trial court may find that no party prevailed when there are “mixed” results in the case: “The trial court ruling on a motion for fees under [Civil Code] section 1717 is vested with discretion in determining which party has prevailed on the contract, or that no party has. [Citation.] ‘If neither party achieves a complete victory on all the contract claims, it is within the discretion of the trial court to determine which party prevailed on the contract or whether, on balance, neither party prevailed sufficiently to justify an award of attorney fees.’ [Citation.] . . . [A] party who obtains an unqualified victory on a contract dispute, including a defendant who defeats recovery by the plaintiff on the plaintiff’s entire contract claim, is entitled as a matter of law to be considered the prevailing party for purposes of section 1717. [Citation.] But ‘when the results of the [contract] litigation are mixed,’ the trial court has discretion under the statute to determine that no party has prevailed. [Citation.]” (*DisputeSuite.com, LLC v. Scoreinc.com* (2017) 2 Cal.5th 968, 973.) “[I]n deciding whether there is a ‘party

³ Paragraph (2) provides that when the action has been voluntarily dismissed or dismissed pursuant to settlement, there is no prevailing party. (Civ. Code, § 1717, subd. (b)(2).)

prevailing on the contract,’ the trial court is to compare the relief awarded on the contract claim or claims with the parties’ demands on those same claims and their litigation objectives as disclosed by the pleadings, trial briefs, opening statements, and similar sources. The prevailing party determination is to be made only upon final resolution of the contract claims and only by ‘a comparison of the extent to which each party ha[s] succeeded and failed to succeed in its contentions.’ [Citation.]” (*Hsu v. Abbara, supra*, 9 Cal.4th at p. 876.)

Here, the trial court’s reasoning in finding neither party prevailed on the contract demonstrates that it acted within its discretion. The trial court rejected plaintiff’s argument that the agreement was purely for future services, finding that it was also a settlement agreement. The trial court found it did not make sense that defendant, coming out of a bankruptcy and facing an adversarial proceeding, would enter into a vague agreement to pay \$47,500 solely for a future service. The trial court also found plaintiff’s damages were minimal because “it [was] next to impossible to determine exactly what services the Plaintiff was to provide.” The trial court awarded plaintiff much less than the \$46,500 that he prayed for as relief (with \$1,000 already paid) because “it was hard for the Court to determine that [\$46,500] was a fair, just, appropriate, reasonable, or warranted amount.” Based on a comparison of the relief requested (\$46,500) and the relief achieved (\$10,000), plaintiff did not achieve an unqualified victory; in fact the amount awarded was closer to the award to plaintiff that defendant believed proper (zero dollars) than it was to plaintiff’s request. Thus, the trial court was well within its discretion to find no party was prevailing on the agreement here.

IV. DISPOSITION

The judgment is affirmed. Defendant Matthew Skinner is awarded his appellate costs.

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RAPHAEL, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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