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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

AVI, INC.,

Plaintiff and Respondent,

v.

FARIBORZ MOSAZADEH et al.,

Defendants and Appellants.

B231170

(Los Angeles County
Super. Ct. No. BC416433)

APPEAL from an order of the Superior Court of Los Angeles County,

Yvette M. Palazuelos, Judge. Affirmed.

Law Offices of Ehsan Afaghi and Ehsan Afaghi for Defendants and Appellants.

Rombro & Associates, S. Roger Rombro and Melinda A. Manley for Plaintiff
and Respondent.

Appellant Fariborz Mosazadeh (Mosazadeh) and appellant F&A Future Collection (F&A) (together appellants) appeal from the trial court's order on January 7, 2011 awarding respondent Audio Visual Innovations, Inc. a/k/a AVI, Inc. (AVI) attorneys' fees in the amount of \$27,613.12. Appellants contend that such award was an abuse of discretion. We disagree and hold that the terms of the contract authorized attorneys' fees and such fees did not need to be apportioned so as to exclude fees incurred with respect to non-contract causes of action.

FACTUAL AND PROCEDURAL BACKGROUND¹

AVM Marketplace, Inc. d/b/a Projector People (Projector People) is a manufacturer and distributor of projectors. Projector People sold merchandise to F&A from November 5, 2008 through March 10, 2009. Mosazadeh is the President, CEO and owner of F&A. Without Projector People's knowledge, Mosazadeh prepared a State of California Secretary of State Domestic Stock Corporation Certificate of Dissolution for F&A on December 31, 2008. Less than two months later, on February 3, 2009, appellants executed a Confidential Customer Credit Application (the contract). Projector People did not sign and return a copy of the contract to appellants, but, in accordance with their practice, it accepted the contract and extended credit to appellants. Appellants continued to make payments through March 4, 2009, leaving an unpaid balance of \$158,822.00. Although appellants issued additional checks, two were returned for insufficient funds and one was returned after appellants issued a stop

¹ The factual and procedural background is taken from the record, which consists of a one-volume Reporter's Transcript, a one-volume Appellants' Appendix and a one-volume Respondent's Appendix.

payment order. Appellants filed the certificate of dissolution on April 20, 2009.

Projector People assigned its rights under the contract to AVI on May 14, 2009.

On June 24, 2009, AVI filed a complaint alleging the following causes of action: (1) breach of contract; (2) money on an open book account for money due; (3) money on an account stated; (4) money for goods, wares, and merchandise sold and delivered; (5) money had and received; (6) quantum meruit; (7) accounting; (8) imposition of constructive trust; (9) actual fraud; and (10) deceit.²

The trial was held on September 1, 2010. AVI moved to dismiss the sixth cause of action for quantum meruit without prejudice. The trial court granted the motion. AVI later moved to dismiss the ninth and tenth causes of action for fraud and deceit with prejudice, which motion was also granted. Appellants stipulated to joint and several liability with respect to the first through fifth causes of action in the amount of \$158,822.00 stating, “We owe them money, and we agree to plaintiff [taking] a judgment individually and against the corporation.” The trial court entered judgment in favor of AVI with respect to these causes of action but entered judgment in favor of appellants with respect to the seventh and eighth causes of action. The trial court included in the judgment that AVI shall recover costs in accordance with a memorandum of costs to be filed within 15 days. The judgment was filed on September 27, 2010.

² The cover of the complaint included, as the sixth cause of action, money for work, labor, services and materials. However, the complaint itself contains no allegations supporting this cause of action. At trial, AVI’s counsel confirmed that the cover of the complaint was incorrect and AVI did not intend to bring an action for money for work, labor, services and materials.

AVI filed its memorandum of costs on October 5, 2010 seeking \$1,592.45 in costs other than attorneys' fees. It also filed a motion to fix the amount of attorneys' fees as an item of costs which sought \$36,817.50 in fees to be paid by appellants. Appellants filed a motion to tax costs shortly thereafter. The hearing originally set for November 17, 2010 was continued to January 7, 2011. The trial court granted AVI's motion for attorneys' fees but reduced the amount by 25 percent to \$27,613.12 because AVI failed to submit evidence of the market rate for attorneys engaged in similar work. The trial court also granted appellants' motion to tax costs and taxed such costs in the amount of \$593.80. This appeal followed.

CONTENTIONS ON APPEAL

Appellants' contentions turn on two separate issues: (1) the unenforceability of the contract; and (2) the apportionment of the fees. Under the first category, appellants argue that (a) the contract was unenforceable because it was never signed by AVI; (b) Mosazadeh was not a party to the contract because he signed on behalf of F&A, but not individually; and (c) the interest rate provided in the contract on the amount owed by appellants is usurious. Under the second category, appellants argue that the trial court improperly included attorneys' fees for the non-contract causes of action in its award instead of properly apportioning and excluding those fees.

DISCUSSION

1. *The September 27, 2010 Judgment Bars Appellants' Contentions Regarding the Unenforceability of the Terms of the Contract*

Appellants argue that (a) the contract was unenforceable because it was never signed by AVI; (b) Mosazadeh was not a party to the Contract because he signed on behalf of F&A, but not individually; and (c) the interest provided for under the terms of the contract (18 percent) on the amount owed by Appellants is usurious. These arguments are entirely without merit.

First, appellants *stipulated* to the requested judgment with respect to AVI's breach of contract causes of action. Additionally, appellants' counsel specified at trial that *both* Mosazadeh and F&A were *jointly and severally* liable for damages pursuant to the breach of contract claims. And appellants failed to specify to the trial court that such liability was limited to the amount owed to AVI for merchandise received.³

The judgment entered on September 27, 2010 contains the following language: "IT IS ORDERED, ADJUDGED, AND DECREED that plaintiff Audio Visual Innovations, Inc. shall recover from defendants [sic] Fariborz Mosazadeh, also known as Fred Mosazadeh on plaintiff's first, second, third, fourth and fifth causes of action, the sum of \$158,822.00, with interest thereon at the rate of ten percent (10%) from and

³ Appellants' counsel stated at trial, "[W]e are stipulating to the amount of the complaint as stated in the complaint by plaintiff. . . . [¶] Of course not including the attorney's fees and interest that I will deal with that later. . . ." Although appellants' counsel appeared to state that the amount of attorneys' fees and the percentage of interest was in dispute and was not included in the amount of damages owed to AVI, he did not specify that the joint and several liability to which appellants' stipulated did not also apply to attorneys' fees and interest.

after March 4, 2009. . . . [¶] Audio Visual Innovations, Inc. shall recover from defendant Fariborz Mosazadeh, also known as Fred Mosazadeh, costs of suit in accordance with a memorandum of costs” The language clearly states that Mosazadeh is liable not only for the sum of \$158,822 plus interest, but also for any costs.

Furthermore, this judgment is not before us for review as appellants’ notice of appeal is limited to the order entered on January 7, 2001. “To appeal from a superior court judgment or an appealable order of a superior court, . . . an appellant must serve and file a notice of appeal in that superior court. . . . [¶] The notice of appeal must be liberally construed. The notice is sufficient if it identifies the particular judgment or order being appealed. . . .” (Calif. Rules of Court, Rule 8.100, subd. (a).) An appellate court’s review is limited in scope to the judgment or order specified in the notice of appeal. (*Soldate v. Fidelity National Financial, Inc.* (1998) 62 Cal.App.4th 1069, 1073.) The September 27, 2010 judgment is not included in appellants’ notice of appeal. Because appellants’ notice of appeal is limited to the January 7, 2011 order, our review is limited in scope to that order alone.

Finally, as noted above, the judgment lowered the contractual interest rate from 18 percent to ten percent. Thus, even were we to review the judgment, appellants’ argument that 18 percent interest is usurious is moot.

2. *Apportionment of Attorneys' Fees Was Unnecessary*

Appellants next argue that the trial court erred in awarding AVI all of its attorneys' fees and costs.⁴ Specifically, appellants argue that the trial court should have apportioned and excluded those fees and costs incurred for all non-contract causes of action from its award because appellants were the prevailing party with respect to the remaining seventh and eighth causes of action and AVI dismissed the sixth, ninth and tenth causes of action. We disagree.

Code of Civil Procedure section 1032 and section 1033.5, subdivision (a)(10)(A), provide that a prevailing party in any action may recover attorneys' fees if authorized by the contract at issue. Civil Code section 1717, subdivision (a), governs contractual attorneys' fees and states that "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." It further provides, "Reasonable attorney's fees shall be fixed by the court, and shall be an element of the costs of suit." (Civ. Code, § 1717, subd. (a).)

"Where fees are claimed under a contract allowing for their recovery, the scope of activities for which fees may be recovered is governed by the terms of the contract.

⁴ Appellants' statement that the trial court awarded AVI *all* of its attorneys' fees is incorrect. The trial court discounted the amount by 25% because AVI failed to submit evidence of the fees customarily charged in this type of action and because of the "block billing" by AVI's attorneys. The trial court also taxed costs in the amount of \$593.80.

[Citation.] Unless the contract permits it, an award may not include fees incurred solely in the pursuit or defense of claims not arising from the contract. [Citation.] However, all fees falling *within* the provision are recoverable, even if the activities on which the fees are predicated also supported the prosecution or defense of claims outside the provision. The prevailing party is entitled to recover all expenses incurred in litigating ‘ “common issues” ’ between covered and uncovered claims or defenses. [Citations.] And the trial court need not seek to disentangle claims so as to apportion fees when the matters litigated are ‘so interrelated that it would have been impossible to separate them into claims for which attorney fees are properly awarded and claims for which they are not’ [Citation.]” (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 577.)

“A request for an award of attorney fees is entrusted to the trial court’s discretion and will not be overturned in the absence of a manifest abuse of discretion, a prejudicial error of law, or necessary findings not supported by substantial evidence. [Citations.]” (*Yield Dynamics, Inc. v. TEA Systems Corp.*, *supra*, 154 Cal.App.4th at p. 577.)

The contract provision at issue states, “Any fees that are incurred and authorized by Projector People to collect past due accounts will be added to the amount that is due (their fees include and are - and are not limited to attorney’s fees).” It clearly authorizes attorneys’ fees incurred in collecting past due amounts.

Because all of the causes of action in AVI’s complaint stemmed from the common issue of appellants’ failure to pay amounts due for the merchandise sold to them, the trial court could reasonably conclude that the contractual claims and the

non-contract claims were inextricably intertwined. Additionally, AVI's counsel stated in her supporting declaration for the motion for attorneys' fees, "I believe that substantially all of the work I did on this case would have been necessary whether or not the fraud cause of action had been pleaded," providing further evidence of the interrelatedness of all of the causes of action brought. Finally, the trial court, though for other reasons, reduced the amount by 25 percent to \$27,613.12. Based on the foregoing, the trial court did not abuse its discretion in ordering appellants to pay AVI's attorneys' fees.

DISPOSITION

The order is affirmed. Respondent shall recover costs on appeal.

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CROSKEY, Acting P. J.

WE CONCUR:

KITCHING, J.

ALDRICH, J.