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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JASON FRANKLIN, Plaintiff, Cross-defendant and Respondent, v. NORTH COUNTY FORD et al., Defendants, Cross-complainants and Appellants.	D041259 (Super. Ct. No. GIN010962)

APPEAL from a judgment of the Superior Court of San Diego County, Michael M. Anello, Judge. Affirmed.

Defendants North County Ford and The Automotive Group (together NCF) appeal a judgment following a court trial awarding plaintiff Jason Franklin $3,000 in restitution on his unfair competition cause of action and $27,275 in attorney fees. NCF contends: (1) the trial court erred by awarding restitution to Franklin because he did not have standing to assert NCF violated the Rees-Levering Automobile Sales Finance Act

(hereafter the Rees-Levering Act) (Civ. Code, § 2981 et seq.); (2) the trial court erred by denying NCF's cross-claim against Franklin; and (3) Franklin was not entitled to an award of attorney fees under either the Rees-Levering Act or Civil Code section 1717.

FACTUAL AND PROCEDURAL BACKGROUND

On April 6, 2000, Carrie Nelson and her mother Jan Barton entered into a conditional sales contract with NCF for the purchase of a 1997 Eagle Vision automobile. That contract provided for a down payment of $2,500, $1,500 of which was to be deferred. Franklin, apparently then Nelson's boyfriend, gave NCF a check in the amount of $1,000, which was immediately negotiated by NCF as part of the down payment. Franklin also gave NCF other checks in the amounts of $1,000 and $500 toward the down payment, negotiation of which was deferred pursuant to a hold check agreement.[1] The hold check agreement was signed by NCF, Franklin and Nelson, and identified the vehicle purchased by Nelson and the contract number assigned to Nelson's conditional sales contract. Franklin's $1,000 and $500 checks held by NCF pursuant to the hold check agreement were later successfully negotiated by NCF.

On April 27 NCF and Nelson rescinded the April 6 contract, apparently because NCF was unable to obtain financing for Nelson based on that contract. Also on April 27, NCF, Nelson and Barton entered into a new conditional sales contract for the same vehicle, providing for an increase in the down payment from $2,500 to $5,000, $3,000 of

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[1] Negotiation of the $1,000 check was to be deferred until April 21 and negotiation of the $500 check was to be deferred until May 5.

which was to be deferred.[2] The contract provided that $500 of the deferred down payment was due on May 5 and the remaining $2,500 was due on May 25.[3] NCF assigned its interest in the financed portion of that conditional sales contract to Ford Motor Credit Company (FMCC). After Nelson did not deliver to NCF the remaining $2,500 deferred down payment, on May 30 Franklin gave NCF three additional checks in the amounts of $500, $1,000, and $1,000 toward the down payment, negotiation of which was deferred pursuant to another hold check agreement.[4] That hold check agreement was signed by NCF, Franklin and Nelson, and identified the vehicle purchased by Nelson and the contract number assigned to Nelson's conditional sales contract. NCF later successfully negotiated Franklin's $500 check, but its negotiation of his two $1,000 checks was unsuccessful because of Franklin's insufficient bank funds. Although Nelson apparently paid $500 toward the deferred down payment balance, she did not make any further payments toward the remaining deferred down payment balance of $1,500.

On February 26, 2001, Nelson, Barton and Franklin (collectively Plaintiffs) filed a complaint against NCF and FMCC, alleging, inter alia, that the conditional sales contract violated the Rees-Levering Act and NCF's actions constituted unfair business practices in violation of the unfair competition law, or "UCL" (Bus. & Prof. Code, § 17200 et

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2 The annual interest rate was also increased from 20.31 percent to 25.00 percent.

3 Apparently the $500 amount due on May 5 was paid by NCF's successful negotiation of Franklin's $500 check, which he delivered to NCF pursuant to the April 6 hold check agreement.

seq.[5]).[6] NCF filed a cross-complaint against Plaintiffs alleging a breach of contract cause of action. Nelson and Barton entered into a settlement agreement with FMCC pursuant to which the parties rescinded the conditional sales contract, Nelson returned the vehicle, and FMCC returned all finance payments made by Nelson. Shortly before trial, Nelson and Barton also entered into a settlement agreement with NCF. After those settlements and the trial court's decisions on NCF's demurrers to Plaintiffs' complaint and nonsuit motions, a court trial was held on Franklin's remaining cause of action against NCF for violation of the UCL and on NCF's cross-claim against Franklin for breach of the hold check agreement.

The trial court found that the April 27, 2000 conditional sales contract violated the Rees-Levering Act because the finance charge exceeded the maximum amount permitted under that act and therefore the contract was "subject to the remedies of rescission and full restitution provided" in that act.[7] It further found NCF's violation of the Rees-Levering Act constituted a violation of the UCL, making rescission and restitution

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4 Negotiation of the $500 check was to be deferred until June 2, negotiation of the first $1,000 check was to be deferred until June 13, and negotiation of the second $1,000 check was to be deferred until June 27.

5 All further statutory references are to the Business and Professions Code unless otherwise specified.

6 Section 17200 et seq. does not have a legislatively imposed title or name. Although courts have referred to those sections by various names, we refer to them as the "unfair competition law" in conformance with the California Supreme Court's reference to those sections in *ABC Internat. Traders, Inc. v. Matsushita Electric Corp.* (1997) 14 Cal.4th 1247, 1252.

appropriate remedies in this case under section 17203. The court alternatively found rescission and restitution would also be appropriate under Civil Code section 2983 of the Rees-Levering Act. Citing NCF's settlement agreement with Nelson and Barton pursuant to which NCF apparently received $1,500 back from its greater payment to Nelson and Barton, the court concluded NCF's cross-claim against Franklin for the $1,500 in insufficient funds checks Franklin had given NCF under the hold check agreements had been satisfied. Accordingly, the trial court entered a judgment awarding Franklin $3,000 against NCF and denying NCF's cross-claim against Franklin. The court later granted Franklin's motion for attorney fees, awarding him $27,275.

NCF timely filed a notice of appeal.

DISCUSSION

I

The Trial Court's Award to Franklin of Restitution of $3,000

NCF contends the trial court erred by awarding Franklin restitution for the $3,000 in aggregate payments he made to NCF pursuant to the conditional sales contracts and hold check agreements.

A

Section 17203 of the UCL provides:

> "Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. *The court may make such orders or judgments*, including the appointment of a receiver, as may be necessary to

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7 All further references to the conditional sales contract are to that contract signed on April 27, 2000.

> prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or *as may be necessary to restore to any person in interest any money or property*, real or personal, *which may have been acquired by means of such unfair competition*." (Italics added.)

One purpose of section 17203 orders and judgments is " 'to foreclose retention by the violator of its ill-gotten gains.' [Citation.]" (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1267, quoting *Fletcher v. Security Pacific National Bank* (1979) 23 Cal.3d 442, 449.) "The Legislature considered this purpose so important that it authorized courts to order restitution without individualized proof of deception, reliance, and injury . . . ." (*Bank of the West*, *supra*, at p. 1267.)

Section 17200 defines "unfair competition" to include "any unlawful, unfair or fraudulent business act or practice . . . ." A business practice is unlawful if it is forbidden by law. (*Farmers Ins. Exchange v. Superior Court* (1992) 2 Cal.4th 377, 383; *Bank of the West*, *supra*, 2 Cal.4th at p. 1266; *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 113; *Walker v. Countrywide Home Loans, Inc.* (2002) 98 Cal.App.4th 1158, 1169.) "The [UCL] thus creates an independent action when a business practice violates some other law. [Citation.]" (*Walker*, *supra*, at p. 1170.) Therefore, the UCL " 'borrows' violations of other laws and treats these violations, when committed pursuant to business activity, as unlawful practices independently actionable under section 17200 et seq. and subject to the distinct remedies provided thereunder." (*Farmers Ins. Exchange*, *supra*, at p. 383.) "Virtually any law--federal, state or local--can serve as a predicate for a section 17200 action. [Citation.]" (*State Farm Fire & Casualty Co. v. Superior Court* (1996) 45 Cal.App.4th 1093, 1102-1103, disapproved on another ground in *Cel-Tech*

Communications, Inc. v. Los Angeles Cellular Telephone Co. (1999) 20 Cal.4th 163, 184-185.) "A plaintiff suing under section 17200 does not have to prove he or she was directly harmed by the defendant's business practices. An action may be brought by any 'person, corporation or association or by any person acting for the interests of itself, its members or the general public.' (§ 17204.)"[8] (*Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 839.) Furthermore, section 17205 provides: "Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state."

B

NCF does not contest the trial court's finding that the conditional sales contract in this case violated the Rees-Levering Act. Furthermore, NCF concedes that a violation of the Rees-Levering Act can constitute unfair competition in violation of the UCL. However, on appeal NCF asserts Franklin cannot state a UCL cause of action based on NCF's violation of the Rees-Levering Act because Franklin does not have *standing* under that *predicate* statute (i.e., the Rees-Levering Act). However, standing under a predicate statute is *not* required for a plaintiff to have standing to allege a UCL cause of action. A UCL cause of action may be brought "by any person acting for the interests of itself, its members or the general public." (§ 17204; *Saunders v. Superior Court*, *supra*, 27 Cal.App.4th at p. 839.) Citing section 17204, the California Supreme Court rejected the

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8 Section 17204 provides: "Actions for any relief pursuant to this chapter shall be prosecuted . . . by any person acting for the interests of itself, its members *or* the general public." (Italics added.)

contention that standing under a predicate statute is required for a plaintiff to have standing to assert a UCL cause of action. (*Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 560-567.) In that case, the defendant argued the plaintiff "should not be permitted to use the UCL to obtain relief, indirectly, for violation of an underlying statute--Penal Code section 308--that [the plaintiff] is not authorized to enforce directly. According to [the defendant], the only reasonable construction of the UCL is that its remedies are not available to private parties if the Legislature did not include an express private right of action in the enforcement scheme for the underlying law." (*Id*. at p. 561.) The Supreme Court rejected that argument, stating:

> "We previously have held . . . that 'whether a private right of action should be *implied* under [the predicate] statute . . . is immaterial since any unlawful business practice . . . may be redressed by a private action charging unfair competition in violation of Business and Professions Code sections 17200 and 17203.' [Citations.] Thus, as we have long recognized, it is in enacting the UCL itself, and not by virtue of particular predicate statutes, that the Legislature has conferred upon private plaintiffs 'specific power' [citation] to prosecute unfair competition claims." (*Stop Youth Addiction, Inc.*, *supra*, 17 Cal.4th at p. 562, quoting *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 210-211.)

After discussing relevant cases, the court stated: "Neither from our discussion nor from the authorities we cited in [*Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal.4th 257], however, does it follow that a private plaintiff lacks UCL standing whenever the conduct alleged to constitute unfair competition violates a statute for the direct enforcement of which there is no private right of action." (*Stop Youth Addiction, Inc.*, *supra*, 17 Cal.4th at p. 565.) The court noted that the predicate statutes in that case

did not show a legislative intent to preclude application of other statutes and further noted that section 17205 shows a legislative intent that "the remedies and penalties under the UCL be cumulative to other remedies and penalties." (*Stop Youth Addiction,* at pp. 565-566.) Accordingly, the court concluded the plaintiff "ha[d] standing to prosecute this UCL action." (*Id*. at p. 567.)

In a case involving the Rees-Levering Act as the predicate statute for a UCL cause of action, a court addressed the issue of whether a plaintiff had standing to assert a UCL cause of action even though the plaintiff did not purchase an automobile from the defendant and presumably therefore did not have standing to directly assert a Rees-Levering Act cause of action. (*Hernandez v. Atlantic Finance Co.* (1980) 105 Cal.App.3d 65, 71-72.) Citing section 17204, *Hernandez* noted a UCL action "may be brought by any person acting in his own behalf *or* on behalf of the general public." (*Hernandez,* at pp. 71-72.) Accordingly, the court concluded the plaintiff had standing to pursue a UCL action against the defendant based on a violation of the Rees-Levering Act.[9] (*Id*. at p. 72.)

In *Consumers Union of United States, Inc. v. Fisher Development, Inc.* (1989) 208 Cal.App.3d 1433, the court addressed the issue of whether a plaintiff had standing to assert a UCL cause of action for injunctive relief even though it did not have standing

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9 Although the plaintiff in *Hernandez* brought her UCL action on behalf of the general public rather than herself individually, that distinction from the facts in this case (in which Franklin brought his UCL action on behalf of himself) does not preclude application of *Hernandez* to the facts in this case to support our conclusion that Franklin has standing to assert a UCL cause of action against NCF.

under the Unruh Act, which was the predicate statute for its UCL action. (*Id*. at pp. 1438-1444.) The court rejected the defendants' contention that "the standing provisions of the Unruh Act are controlling here, rather than those of the [UCL]; and that, under the former only aggrieved persons may bring private actions for violations of the Unruh Act . . . . They contend that the 'general provisions' of the Business and Professions Code must yield in this instance to the more specific standing limitations of the Unruh Act . . . ." (*Id*. at p. 1439.) The court stated: "Contrary to [defendants'] position, the courts have repeatedly permitted persons not personally aggrieved to bring suit for injunctive relief under the [UCL] on behalf of the general public, in order to enforce *other* statutes under which such parties would otherwise lack standing." (*Id*. at p. 1440.) It further noted: "[N]either the Unruh Act nor any other statute expressly provides that violations of the Unruh Act may not be prosecuted as acts of unfair competition." (*Id*. at p. 1441.) Accordingly, the court concluded the plaintiff had standing under the UCL to bring an action for an injunction to enforce the Unruh Act. (*Id*. at p. 1444.)

Based on sections 17204 and 17205 and the cases discussed *ante*, we conclude Franklin has standing to assert a UCL cause of action based on NCF's violation of the Rees-Levering Act even though he may not have standing to directly assert a Rees-Levering Act cause of action.[10] The cases cited by NCF in support of its contention that

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10 For purposes of this opinion, we assume, but do not decide, that Franklin was not a *buyer* under the Rees-Levering Act and did not have standing to directly assert a cause of action for restitution under that predicate act.

a plaintiff must have standing under the predicate statute to assert a UCL cause of action are inapposite and do not support its contention.[11]

NCF also argues Franklin did not have standing to assert NCF's conditional sales contract violated the Rees-Levering Act because Franklin was not a party to that contract. NCF asserts the hold check agreement to which Franklin *was* a party was a separate transaction on May 30, 2001, and cannot be considered substantially part of the same transaction as the conditional sales contract executed on April 27, 2001, by Nelson, Barton and NCF. However, the hold check agreement is *not* a separate transaction independent of the conditional sales contract. Rather, it is essentially a subsequent amendment to or modification of the conditional sales contract, providing for modification of the terms of the deferred down payment and adding Franklin as a party to the transaction (although we assume not as a *buyer*). Civil Code section 1698, subdivision (a) provides that "[a] contract in writing may be modified by a contract in writing." (Cf. *Crown Prod. Co. v. Cal. Food etc. Corp.* (1947) 77 Cal.App.2d 543, 549 [1943 written contract only modified several of the terms of 1941 written contract].) The hold check agreement has meaning only in the context of the whole transaction as set forth in the conditional sales contract, which describes the parties, the subject matter (i.e.,

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11 *California Medical Assn. v. Aetna U.S. Healthcare of California, Inc.* (2001) 94 Cal.App.4th 151 and the other cases cited by NCF do not involve dismissal of a UCL action based on a plaintiff's lack of standing under the predicate statute. Rather, *California Medical Assn.* concluded that the plaintiff's UCL action failed because the plaintiff failed to allege facts that would support a finding that the defendant violated the predicate statute. (*Id*. at p. 169; see also *Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1505, 1507 [same].)

conditional sale of the vehicle), price, and terms of payment. (Civ. Code, § 1642 ["[s]everal contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together"]; cf. *Hawes v. Lux* (1931) 111 Cal.App. 21, 24 [original contract and a subsequent contract that modifies the original contract in certain particulars are to be construed together as part of one contract and the subsequent contract supersedes the original contract whenever it is inconsistent therewith].) Because the hold check agreement does not contain all of the material terms generally required for enforcement of an independent contract, it clearly is an amendment to or modification of a prior contract (i.e., the conditional sales contract). Furthermore, by referring to the contract number assigned to the conditional sales contract, the hold check agreement expressly confirms its status as an amendment to or modification of the conditional sales contract.[12]

The hold check agreement is not independently enforceable. Because the hold check agreement simply amends or modifies the conditional sales contract, its enforceability depends on the enforceability of the conditional sales contract. Therefore,

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12 NCF argues the trial court made a contrary finding in denying Plaintiffs' summary judgment motion, which was based in part on their assertion that the conditional sales contract was void and unenforceable because it violated the "single document rule" of the Rees-Levering Act. Plaintiffs noted there were three documents--the conditional sales contract and two hold check agreements. In denying their summary judgment motion, the court noted "it appears separate transactions were at issue." Because of the context in which the court made that statement, we conclude the court did *not* find that the hold check agreement did not amend or modify the conditional sales contract *or* that the hold check agreement was enforceable even though the conditional sales contract violated the Rees-Levering Act. Accordingly, NCF's argument does *not* persuade us to conclude the conditional sales contract and the hold check agreement were separate, independent transactions for purposes of the Rees-Levering Act and the UCL.

if the conditional sales contract cannot be enforced by NCF because of illegality, it follows that the hold check agreement cannot be enforced. Because the trial court found the conditional sales contract violated the Rees-Levering Act, it properly found that contract and the hold check agreement were unenforceable by NCF. A conditional sales contract "that does not substantially conform to the requirements [of the Rees-Levering Act] is unenforceable. [Citation.]" (*Kunert v. Mission Financial Services Corp.* (2003) 110 Cal.App.4th 242, 248, citing *Hernandez v. Atlantic Finance Co.*, *supra*, 105 Cal.App.3d at pp. 69-70.) Because NCF's conditional sales contract violated the Rees-Levering Act, that contract and the hold check agreement that subsequently amended or modified it are unenforceable. Furthermore, regardless of whether the court determined the conditional sales contract was rescinded by operation of law because of its unlawfulness or by the parties pursuant to their settlement agreement, under the UCL the court properly awarded Franklin restitution of the $3,000 in down payments he made toward the purchase price. (§ 17203; see also Civ. Code, §§ 1667, 1689, subds. (a), (b)(5).) Section 17203 of the UCL provides that a trial court "may make such orders or judgments . . . as may be necessary to restore to any person in interest any money or property . . . which may have been acquired by means of such unfair competition." Because NCF's conditional sales contract violated the Rees-Levering Act, NCF's conduct constituted unfair competition under the UCL and any property acquired by NCF under that contract was subject to disgorgement pursuant to a court judgment ordering restitution to persons who gave NCF money. Because the record shows Franklin gave NCF a total of $3,000 pursuant to the conditional sales contract and the hold check

agreements, the trial court properly awarded Franklin $3,000 in restitution under his UCL cause of action against NCF. (§ 17203.)

C

NCF also asserts the trial court erred by awarding $3,000 in restitution to Franklin because NCF previously had paid that amount to Nelson and Barton pursuant to a pretrial settlement agreement. However, NCF's briefs do not contain any citation to the appellate record showing the terms and conditions of that settlement agreement. Although we assume, as NCF asserts, that it paid Nelson and Barton $39,500 to settle their claims against it, there is no evidence showing that amount included the $3,000 in aggregate payments *made by Franklin* to NCF toward the down payment required under the conditional sales contract.[13] We cannot presume NCF would pay Nelson and Barton amounts in restitution that were properly due Franklin. Furthermore, assuming arguendo NCF did so, that payment would not provide NCF with an affirmative defense to Franklin's cause of action for restitution under the UCL. If NCF were concerned about improper double recovery by Plaintiffs, it could have either included Franklin in its pretrial settlement or deposited the $3,000 amount with the trial court and interpleaded Nelson and Barton as third parties, allowing the trial court to decide who should properly receive that amount in restitution. In any event, NCF does not show the trial court erred by awarding Franklin $3,000 in restitution under section 17203 of the UCL.

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[13] Although the trial court found that Nelson's return to NCF of $1,500 of the $39,500 in total settlement proceeds satisfied Franklin's obligation under the hold check agreement and denied NCF's cross-claim against Franklin on that basis, that finding does

D

Because we affirm the trial court's judgment awarding Franklin $3,000 in restitution on UCL grounds, we need not, and do not, address the court's alternative basis for that award: that Franklin was entitled to restitution under Civil Code section 2983 of the Rees-Levering Act.

II

Denial of NCF's Cross-Claim Against Franklin

NCF contends the trial court erred by denying its cross-claim against Franklin for the remaining $1,500 in deferred down payments that he had a contractual obligation to pay pursuant to the hold check agreements. Assuming arguendo, as NCF asserts, that the trial court erred by considering the terms of NCF's settlement agreement with Nelson and Barton and by denying its cross-claim against Franklin based on Nelson's payment of $1,500 to NCF pursuant to that settlement agreement, we nevertheless affirm the trial court's decision to deny NCF's cross-claim on other grounds. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19 ["a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason"]; *Day v. Alta Bates Medical Center* (2002) 98 Cal.App.4th 243, 252, fn. 1; *Mike Davidov Co. v. Issod* (2000) 78 Cal.App.4th 597, 610; *J.B. Aguerre, Inc. v. American Guarantee & Liability Ins. Co.* (1997) 59 Cal.App.4th 6, 15-16 ["[a] trial court's order is affirmed if correct on any theory, even if the trial court's

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not necessarily show NCF's settlement payment to Nelson and Barton included restitution for the $3,000 in aggregate payments *made by Franklin*.

reasoning was not correct"]; *Mayflower Ins. Co v. Pellegrino* (1989) 212 Cal.App.3d 1326, 1332.) Because, as we discussed in Part I.B., *ante*, the hold check agreements amended or modified the conditional sales contract, their enforceability is dependent on the enforceability of the underlying conditional sales contract. However, because the conditional sales contract violated the Rees-Levering Act, that contract and its amendments or modifications are unenforceable. (*Kunert v. Mission Financial Services Corp.*, *supra*, 110 Cal.App.4th at p. 248; *Hernandez v. Atlantic Finance Co.*, *supra*, 105 Cal.App.3d at pp. 69-70.) Therefore, NCF cannot enforce the hold check agreements against Franklin. Accordingly, the trial court properly denied NCF's cross-claim against Franklin.

III

Award of Attorney Fees to Franklin

NCF contends the trial court erred by awarding attorney fees to Franklin.

A

Franklin filed a posttrial motion requesting an award of $54,390 for attorney fees he incurred in prosecuting his action against NCF and in defending NCF's cross-complaint against him. He cited Civil Code sections 1717 and 2983.4 as support for his motion. The trial court granted Franklin's motion, awarding him $27,275 in attorney fees. The court reasoned:

> "[Franklin] is entitled to an award of attorneys' fees under Civil Code section 2983.4, in light of the fact that the issue of whether the Rees-Levering Act was violated was raised at trial and formed one basis for the court's decision awarding restitution to [Franklin] in this matter. In the court's view, *[Franklin] was also the prevailing party*

> *in this matter and is thus entitled to reasonable attorneys' fees under Civil Code section 1717*." (Italics added.)

The court considered NCF's argument that Franklin could not recover attorney fees under the UCL, but nevertheless concluded Franklin could recover attorney fees under both Civil Code section 2983.4 and Civil Code 1717.

B

We conclude the trial court properly awarded Franklin attorney fees under Civil Code section 1717.[14] Civil Code section 1717 provides:

> "(a) 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. [¶] Where a contract provides for attorney's fees, as set forth above, that provision shall be construed as applying to the entire contract . . . . [¶] . . . [¶]
>
> "(b)(1) The court, upon notice and motion by a party, shall determine who is the party prevailing on the contract for purposes of this section . . . . [T]he 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."

In this case, the hold check agreements contained an attorney fees provision, which states: "In the event it becomes necessary to enforce the terms of this Agreement, the

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[14] Because we affirm the trial court's award of attorney fees on Civil Code section 1717 grounds, we need not, and do not, address the court's alternative basis for that award under Civil Code section 2983.4.

prevailing party shall be entitled to collect all costs incurred including reasonable attorneys' fees."

"[Civil Code] section 1717 makes an otherwise unilateral right reciprocal, thereby ensuring mutuality of remedy, . . . *when a person sued on a contract* containing a provision for attorney fees to the prevailing party *defends the litigation 'by successfully arguing* the inapplicability, invalidity, *unenforceability*, or nonexistence of the same contract.' [Citation.] . . . [I]t has been consistently held that *when a party litigant prevails in an action on a contract by establishing that the contract is* invalid, inapplicable, *unenforceable,* or nonexistent, *section 1717 permits that party's recovery of attorney fees* whenever the opposing parties would have been entitled to attorney fees under the contract had they prevailed. [Citations.]" (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 611, quoting *North Associates v. Bell* (1986) 184 Cal.App.3d 860, 865; italics added.) This principle applies to contracts that are voidable because of violations of statutes intended to protect members of the public. (*Yuba Cypress Housing Partners, Ltd. v. Area Developers* (2002) 98 Cal.App.4th 1077, 1082-1083 [trial court properly awarded attorney fees to buyer pursuant to attorney fees provision of real estate contract voided by buyer based on contract's violation of Subdivided Land Act].) "To deny plaintiff the attorney fees to which he is entitled as a result of the [voided] contract would permit defendant to benefit from the illegality that it created, thus disserving the goal of deterring illegal conduct." (*Id*. at p. 1083.) Therefore, in this case section 1717 applies to the attorney fees provision in the hold check agreement despite its unenforceability for

violation of the Rees-Levering Act, providing a basis for the trial court to award attorney fees to Franklin as the prevailing party.

"When a party obtains a simple, unqualified victory by completely prevailing on or defeating all contract claims in the action and the contract contains a provision for attorney fees, section 1717 entitles the successful party to recover reasonable attorney fees incurred in prosecution or defense of those claims. [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. '[I]n deciding whether there is a "party 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.' [Citation.]" (*Scott Co. v. Blount, Inc.* (1999) 20 Cal.4th 1103, 1109, quoting *Hsu v. Abbara* (1995) 9 Cal.4th 863, 876.) In this case, the trial court entered judgment for Franklin on NCF's cross-complaint for breach of contract. Because Franklin was completely successful in defending NCF's cross-complaint that alleged Franklin breached the hold check agreements, Franklin is the prevailing party on that contract claim as a matter of law and is entitled to an award of reasonable attorney fees under section 1717. Therefore, the trial court properly awarded attorney fees to Franklin under section 1717.[15] We therefore affirm the court's order awarding Franklin

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[15] Assuming arguendo the trial court had discretion to determine which party was the prevailing party under the attorney fees provision, we conclude the trial court presumably

$27,275 of the $54,390 in attorney fees requested by him.[16] Although NCF does not raise the issue, we note the trial court in this case was not required to apportion attorney fees between contract claims and noncontract claims because it could have reasonably found all claims in this case were inextricably intertwined. (*Abdallah v. United Savings Bank* (1996) 43 Cal.App.4th 1101, 1111.) "Attorney's fees need not be apportioned when incurred for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed." (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129-130.) Because all of the claims in this case involved the same contract (i.e., the conditional sales contract and the hold check agreements that amended or modified that contract), the trial court could have reasonably found Franklin's UCL cause of action, including its predicate Rees-Levering Act issue, was inextricably intertwined with Franklin's defense of NCF's breach of contract cross-complaint and therefore no apportionment of attorney fees was required.[17]

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considered the appropriate factors and did not abuse its discretion in determining Franklin was the prevailing party. NCF does not carry its appellate burden to show the trial court abused its discretion in determining Franklin was the prevailing party.

[16] Although, as NCF notes, the trial court, in sustaining NCF's demurrer to Franklin's breach of contract cause of action, found NCF did not breach any contractual obligation it owed *to Franklin* under the conditional sales contract and hold check agreement, that finding does not preclude a finding that Franklin was the prevailing party in successfully defending *NCF's* breach of contract cross-complaint.

[17] To the extent the trial court did not find the claims to be inextricably intertwined, it presumably apportioned the attorney fees related to the contract claims from the noncontract claims by awarding Franklin only $27,275 of the $54,390 in attorney fees sought by Franklin. NCF does not show the trial court abused its discretion by so apportioning attorney fees to those respective claims, assuming it did so.

C

If Franklin files a motion in the trial court for an award of reasonable attorney fees incurred on appeal, the trial court should grant that motion because Franklin is the prevailing party under Civil Code section 1717, and award him an amount of attorney fees that it determines he reasonably incurred on appeal. (*Villinger/Nicholls Development Co. v. Meleyco* (1995) 31 Cal.App.4th 321, 329; *Palmer v. Agee* (1978) 87 Cal.App.3d 377, 387-388.)

DISPOSITION

The judgment is affirmed. Franklin shall recover his costs on appeal. The matter is remanded to the trial court with directions to consider any motion Franklin may make for an award of attorney fees on appeal and, if made, to award to Franklin reasonable attorney fees incurred on appeal.

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McDONALD, J.

WE CONCUR:

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BENKE, Acting P. J.

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O'ROURKE, J.