

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WALLNER TOOLING/EXPAC, INC., A
CALIFORNIA CORPORATION,
Appellant,
vs.
PERFORMANCE STEEL, INC., A
NEVADA CORPORATION,
Respondent.

No. 73644

FILED

AUG 28 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Wallner Tooling/Expac Inc. (WTE) appeals from a judgment pursuant to a bench trial in a breach of contract action. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

In 2008, Performance Steel, Inc. (PSI) and WTE entered into a three-year requirements contract for the purchase of steel (the requirements contract).¹ The requirements contract, which the parties agreed was to be governed by California law, detailed the prices for each quarter over the three years. Two years later, Mariana Orozco, president of WTE, emailed James Russell, PSI's vice president, requesting a price reduction for the fourth quarter of 2010. The parties exchanged emails in which PSI offered to modify the contract reflecting a price reduction for the fourth quarter of 2010, a price reduction for steel purchased in 2011, and that WTE and PSI "would agree to continue our buy-sell relationship in the future" (the extended requirements contract). PSI reduced the prices, but

¹We do not recount the facts except as necessary to our disposition.

WTE stopped purchasing steel from PSI at the conclusion of the requirements contract.

PSI sued WTE alleging: 1) breach of contract for the extended requirements contract because WTE failed to purchase steel from WTE after the requirements contract concluded, 2) breach of contract in the alternative for the requirements contract because WTE failed to pay the full amount under the requirements contract, 3) promissory estoppel in the alternative, and 4) unjust enrichment in the alternative because PSI conferred a monetary benefit on WTE in the form of a price reduction when WTE failed to purchase steel from PSI after the requirements contract concluded. WTE counterclaimed for breach of contract and sought declaratory relief. During a six-day-long bench trial, PSI elected to “go forward with Count 1 and Count 4,” specifying that “[c]ount 1 . . . is a contract claim for the modification of the extension agreement” and “[c]ount 4 is for quantum meruit” for if the court finds “that there was no contract.” The district court found there was no meeting of the minds to extend the requirements contract but found in favor of PSI on its breach of contract claim, awarding \$167,242.55 in damages. It further found in favor of PSI on its unjust enrichment claim, awarding \$38,742.35 in damages and pre- and post-judgment interest. The district court also awarded PSI \$661,173.75 in attorney fees and \$69,415.13 in costs.

WTE appeals arguing that the district court: 1) erred in awarding damages under PSI’s breach of contract claim, 2) abused its discretion in awarding PSI attorney fees and costs, and 3) abused its discretion in awarding pre-judgment interest. WTE argues that because the district court found that the extended requirements contract was not valid, and the parties stipulated to dismiss the breach of the requirements

contract claim, the district court erred in awarding breach of contract damages. We agree.

“A plaintiff who sets forth alternative remedies in separate counts in his complaint may abandon or dismiss one count without prejudice to his right to proceed on the other.” *Steele v. Litton Indus., Inc.*, 68 Cal. Rptr. 680, 690 (Ct. App. 1968). Under California law, “the court shall dismiss the complaint, or any cause of action asserted in it, in its entirety or as to any defendant, with prejudice, when upon the trial and before the final submission of the case, the plaintiff abandons it” unless all parties consent to dismissal without prejudice. Cal. Civ. Proc. Code § 581(d)-(e). Generally, “a plaintiff’s voluntary dismissal of an action generally deprives the court of jurisdiction in the case.” *Pittman v. Beck Park Apartments Ltd.*, 230 Cal. Rptr. 3d 113, 123 (Ct. App. 2018).


Here, two different “contracts” were originally alleged in the underlying litigation: the extended requirements contract of Count 1 and the original requirements contract of Count 2. PSI initially pursued breach of contract claims for both. But during trial, the record clearly shows that PSI elected to move forward only on the breach of the extended requirements contract (Count 1) and voluntarily abandoned its claims arising from the requirements contract (Counts 2 and 3). The district court confirmed this in its findings of fact and conclusions of law, finding that the parties stipulated to the dismissal of the second and third claims. Therefore, any claims relating to Count 2, the requirements contract, were no longer before the district court, and the district court should have considered only whether WTE breached the extended requirements contract as alleged in Count 1.

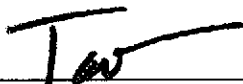
The district court found that no such extended requirements contract ever legally existed because the parties failed to reach a meeting of the minds as to all of its material terms. “[T]he existence of the contract is a question of fact, and we must uphold the trial court’s finding if supported by substantial evidence.” *Vita Planning & Landscape Architecture, Inc. v. HKS Architects, Inc.*, 192 Cal. Rptr. 3d 838, 845 (Ct. App. 2015). Neither party disputes the district court’s finding that there was no meeting of the minds relating to the extended requirements contract. And, substantial evidence supports that finding. For example, PSI’s offer that the parties “would agree to continue our buy-sell relationship in the future” was vague. Furthermore, conflicting evidence was presented at trial (namely Russell’s and Orzoco’s testimonies) as to whether the parties agreed to extend the requirements contract or merely continue their prior non-exclusive relationship. Accordingly, we must defer to the district court’s finding that there did not exist a valid extended requirements contract. If no extended requirements contract ever legally existed, then the district court erred in awarding any damages for its breach. Therefore, we vacate and remand the district court’s award of damages under Count 1.

Because we vacate the judgment as to the breach of contracts award, we also necessarily vacate the attorney fee and costs and pre-judgment interest awards. *Ducoin Mgmt. Inc. v. Super. Court of Orange Cty.*, 183 Cal. Rptr. 3d 548, 554 (2015) (“A disposition that reverses a judgment automatically vacates the costs award in the underlying judgment even without an express statement to this effect.”).

Accordingly, we

ORDER the judgment of the district court REVERSE AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Elizabeth Goff Gonzalez, Chief Judge
Stephen E. Haberfeld, Settlement Judge
Peterson Baker, PLLC
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
Pisanelli Bice, PLLC
The Quinlan Law Firm, LLC/Phoenix
The Quinlan Law Firm, LLC/Chicago
Eighth District Court Clerk