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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SOOBOK L. HONG,

Plaintiff and Respondent,

v.

CREED CONSULTING INC.,

Defendant and Appellant.

G046954

(Super. Ct. No. 30-2011-00442847)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jamoa
A. Moberly, Judge. Reversed and remanded.

Albert Chang for Defendant and Appellant.

Juan Hong for Plaintiff and Respondent.

Soobok L. Hong hired Creed Consulting Inc. (Creed) to remodel her house. She then sued Creed seeking to recover the \$85,000 she paid it under the statute that allows a party to recover “all compensation paid to [an] unlicensed contractor” (Bus. & Prof. Code, § 7031, subd. (b)),¹ on the theory Creed failed to carry workers’ compensation insurance, which resulted in automatic suspension of its contractor’s license during the time it worked on her house. Hong successfully moved for summary adjudication on this claim. After she dismissed her remaining causes of action and Creed dismissed its cross-complaint, the trial court entered judgment in Hong’s favor for \$85,000. Creed raises several issues, one of which has merit: the trial court erred by taking judicial notice of a printout Hong’s attorney made from the California Contractors State License Board website to prove Creed did not carry workers’ compensation insurance. Accordingly, we reverse the judgment and remand for a trial on that cause of action.

FACTS AND PROCEDURE

The Pleadings

The operative complaints are Hong’s unverified first amended complaint (complaint) and Creed’s unverified first amended cross-complaint (cross-complaint). Hong’s complaint alleged that on August 24, 2010, she entered into a written contract with Creed for home remodeling work. The written contract, attached to the complaint as an exhibit, was for work totaling \$92,000. Hong alleged she paid Creed \$85,000 in progress payments. Despite alerting Creed to defects and shoddy workmanship, on December 21, 2010, Creed wrote to Hong the job was finished and demanded she pay the remaining contract balance of \$11,430 immediately.

¹ All further statutory references are to the Business and Professions Code, unless otherwise indicated.

Hong's complaint alleged causes of action for fraud and breach of contract, and contained two causes of action seeking to recover the amounts she had paid Creed because it was an unlicensed contractor. As relevant to the cause of action on which summary adjudication was granted, the complaint's third cause of action, Hong alleged Creed was a corporation engaged in the construction business and required to have a contractor's license. Creed's contractor's license was exempted from having workers' compensation insurance effective June 2, 2010, because it certified it had no employees. Creed had employees working on Hong's jobsite. Creed's failure to carry workers' compensation insurance resulted in automatic suspension of its contractor's license and, thus, entitled Hong to recover all amounts she had paid Creed.

Creed's unverified cross-complaint alleged causes of action against Hong and her husband, Juan Hong, for breach of written and oral contract, common counts, and breach of implied in fact contract. The cross-complaint alleged the Hong's and Creed entered into the written contract on August 24, 2010, for remodeling work totaling \$92,000, and the Hong's agreed to an additional \$4,430 of work (\$96,430 total). The written contract was attached as an exhibit to Creed's cross-complaint. Creed alleged it had fully performed all its obligations under the contract, and the Hong's breached the contract by failing to pay the balance due of \$11,430.

Motion for Summary Adjudication

Hong filed a motion for summary adjudication of her complaint's third cause of action alleging violation of sections 7031, 7215, and 7125.2. The combined gist of the causes of action are that a contractor must maintain workers' compensation insurance, his contractor's license is automatically suspended if he does not, and a person who utilizes the services of an unlicensed contractor may recover all compensation paid to the unlicensed contractor.

Hong's motion was accompanied by a request for judicial notice of several documents. Exhibit 1 was the written contract, which her attorney declared was a true and correct copy of the contract attached as an exhibit to Creed's cross-complaint. Exhibits 2 and 3 were printouts Hong's attorney declared were true and correct copies of the California Contractors State License Board website. Exhibit 2 was a one-page printout dated December 29, 2010, 9:19 a.m., showing licensing information for Creed. Above the words, "Workers' Compensation," the printout states "this license is exempt from having workers compensation insurance; they certified that they have no employees at this time." Next to the words, "Workers' Compensation," the printout says, "Effective Date: 06/02/2010," and "Expire Date: None." Exhibit 3 was a four-page printout dated October 3, 2011, 8:52 a.m., showing licensing information for Creed. On the second page (in the same format as exhibit 2), above the words, "Workers' Compensation," the printout states "[t]his license has workers compensation insurance with the [State Compensation Insurance Fund]." Next to the words, "Workers' Compensation," the printout says, "Effective Date: 06/15/2011," and "Expire Date: 06/15/2012." The third page states "Workers' compensation History" and says "exempt 03/31/2008," "State Compensation Insurance Fund . . . 08/15/2008[-]08/01/2010," "exempt 06/02/2010," and "State Compensation Insurance Fund . . . 06/15/2011[-]06/15/2012."

Hong's separate statement set forth the following undisputed facts she claimed were established by the documents of which she requested judicial notice. On August 24, 2010, she and Creed entered into the written contract for construction work (citing the exhibit 1, the written contract). She paid Creed \$85,000 (citing Creed's allegations in its cross-complaint). From June 2, 2010, to June 14, 2011, Creed did not have workers' compensation insurance and was exempted from having workers' compensation insurance because it certified it had no employees (citing exhibits 2 and

3). Creed had employees including Hyunsung Park and Dukyong Lee (citing Creed's discovery responses).

Creed opposed the motion asserting it contained no admissible evidence and Hong therefore failed to meet her burden of proof. Creed's separate statement disputed each of Hong's asserted undisputed facts, objecting to the evidence in support of each undisputed fact as being inadmissible hearsay, lacking foundation, or that it was "impossible to determine what evidence [Hong was] referencing" in her separate statement, and objecting to the court taking judicial notice of the documents. The opposition included no declarations or other evidence.

The trial overruled Creed's evidentiary objections, granted Hong's request for judicial notice, and granted Hong's motion for summary adjudication of the third cause of action. The court found Hong had established Creed had employees during the time it worked on Hong's house. During that time, Creed did not carry workers' compensation insurance, and therefore, its contractor's license was automatically suspended. Moreover, because Creed certified it had no employees, it did not act reasonably or in good faith to maintain its license and could not avail itself of the substantial compliance/good faith exception to section 7031, subdivision (e). Creed produced no evidence showing any triable issue of fact. The court concluded judgment would be entered in Hong's favor on the third cause of action for \$85,000. Hong subsequently dismissed her remaining causes of action with prejudice, and Creed dismissed its cross-complaint with prejudice, and a judgment for Hong was entered.

DISCUSSION

Standard of Review

"A motion for summary adjudication proceeds in all procedural respects as a motion for summary judgment. [Citations.]" (*Westlye v. Look Sports, Inc.* (1993))

17 Cal.App.4th 1715, 1727.) “Any party to an action may move for summary judgment on a cause of action or defense—a plaintiff contending that there is no defense to the action, a defendant contending that the action has no merit. [Citations.]” (*Hartford Casualty Ins. Co. v. Swift Distribution, Inc.* (2012) 210 Cal.App.4th 915, 920 (*Hartford*).

“A plaintiff moving for summary judgment has met its burden of showing that there is no defense to a cause of action if it has proved each element of the cause of action entitling it to judgment on that cause of action. Once the plaintiff has met that burden, the burden shifts to the defendant to show the existence of a triable issue of one or more material facts as to that cause of action or a defense thereto. The defendant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists, but instead must set forth specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto. [Citations.] [¶] The court must grant the motion if all the papers submitted show there is no triable issue as to any material fact—that no issue requires a trial as to any fact that is necessary under the pleadings and the law—and that the moving party is entitled to a judgment as a matter of law. [Citations.]” (*Hartford, supra*, 210 Cal.App.4th at p. 920.)

We review the trial court’s ruling granting summary judgment or summary adjudication de novo. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142.) We must view the evidence in the light most favorable to the party opposing the motion, liberally construing the opposing party’s evidence and strictly scrutinizing the moving party’s “in order to resolve any evidentiary doubts or ambiguities in [the opposing party’s] favor. [Citation.]” (*Ibid.*)

“A different analysis is required for our review of the trial court’s . . . rulings on evidentiary objections. Although it is often said that an appellate

court reviews a summary judgment motion ‘de novo,’ the weight of authority holds that an appellate court reviews a court’s final rulings on evidentiary objections by applying an abuse of discretion standard. [Citations.]’ [Citation.]” (*Miranda v. Bomel Construction Co., Inc.* (2010) 187 Cal.App.4th 1326, 1335.)²

Judicial Notice

Creed contends the trial court erred in taking judicial notice of the printouts from the California Contractors State License Board website (Exhibits 2 and 3) to establish as an undisputed fact that Creed did not carry workers’ compensation insurance during the time it performed work on Hong’s house. Moreover, as that was the only evidence Hong submitted to establish that Hong lacked workers’ compensation insurance, she failed to carry her burden and was not entitled to summary adjudication on her third cause of action. We agree.

Judicial notice is a court’s recognition of the existence of a matter of law or fact relevant to an issue as a substitute for formal proof of that matter. (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264 (*Fontenot*); *Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.) “Judicial notice may not be taken of any matter unless authorized or required by law.” (Evid. Code, § 450.) Matters that are subject to judicial notice are listed in Evidence Code sections 451 and 452. A matter ordinarily is subject to judicial notice only if the matter is reasonably beyond dispute. (*Post v. Prati* (1979) 90 Cal.App.3d 626, 633.)

² We note that in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 535, our Supreme Court indicated de novo review is appropriate when the trial court fails to rule on evidentiary objections in connection with a summary judgment motion, but expressly did “not decide generally whether a trial court’s rulings on evidentiary objections based on papers alone in summary judgment proceedings are reviewed for abuse of discretion or reviewed de novo.” Creed agrees the trial court’s evidentiary rulings are subject to an abuse of discretion standard of review.

Hong contends the two website printouts were proper subjects for judicial notice under Evidence Code section 452, subdivision (c) [official acts of legislative, executive, or judicial departments], and subdivision (h) [facts and propositions not reasonably subject to dispute and capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy], because they were from a government website and as such were “self-authenticating.” But assuming the documents are what Hong says they are (see Evid. Code, § 1400 [“[a]uthentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law[.]”]), that does not answer whether they are adequate to allow judicial notice of the *fact* for which Hong offered them, i.e., that Creed did not carry workers’ compensation insurance.

“Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning.’ [Citation.] While courts take judicial notice of public records, *they do not take notice of the truth of matters stated therein*. [Citation.] ‘When judicial notice is taken of a document, . . . the truthfulness and proper interpretation of the document are disputable.’ [Citation.]” (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375 (*Herrera*), italics added; see also *In re Christian P.* (2012) 207 Cal.App.4th 1266, 1275, fn. 4 [judicial “notice [of court record] is limited to the existence of the documents and is not the same as taking notice of the truth of any matters or facts stated therein”].)

Herrera, supra, 196 Cal.App.4th 1366, is instructive. In that case, plaintiffs sued to set aside the nonjudicial foreclosure sale of their home contending, among other things, defendants who conducted the sale (a bank and a reconveyance company) were not in fact the beneficiary and the trustee under the deed of trust and,

thus, did not have authority to conduct the sale. (*Id.* at pp. 1368-1369.) In defendants' summary judgment motion, they claimed the undisputed evidence showed they were the beneficiary and the trustee and to establish those facts, defendants asked the trial court to take judicial notice of the recorded assignment of the deed of trust and substitution of trustee showing them substituted as beneficiary and trustee. (*Id.* at p. 1374.) Plaintiffs disputed defendants' facts and objected to the court taking judicial notice of disputed facts contained in a hearsay document—the recorded substitution and assignment. (*Id.* at p. 1374.) The trial court overruled plaintiffs' hearsay objections, granted the request for judicial notice, and granted summary judgment.

In reversing, the court of appeal explained that although the recorded documents were public records subject to judicial notice, that matters stated therein were not subject to judicial notice. (*Herrera, supra*, 196 Cal.App.4th at p. 1369.) Although the recorded documents recited the bank was the present beneficiary under the deed of trust and the reconveyance company was the successor in interest to the original trustee, those facts were hearsay and disputed so the trial court could not take judicial notice of them. “The truthfulness of the contents of the [assignment document] remains subject to dispute [citation], and plaintiffs dispute the truthfulness of the contents of all of the recorded documents.” (*Id.* at p. 1375.) Because “[j]udicial notice of the recorded documents did not establish [defendants were the beneficiary and the trustee] under the . . . deed of trust[,] [d]efendants failed to establish ‘facts justifying judgment in [their] favor’ [citation], through their request for judicial notice.” (*Ibid.*)

Here, Hong relied solely on the printouts from a government website reciting that Creed was exempt from carrying workers' compensation insurance and had certified it had no employees, to prove the essential fact that it did not have workers' compensation insurance. But the truthfulness of the contents of the printout

was subject to dispute and the court could not take judicial notice of the contents of the website printout. Accordingly, Hong failed to establish all the essential elements of her cause of action. Summary adjudication was improper and the judgment must be reversed. We recognize this may well be a hollow victory for Creed. It either had workers' compensation insurance during the relevant time period or it did not, and that seems an easy enough fact for Hong to prove through properly obtained discovery.

Other Contentions

In view of our conclusion with regard to website printouts, we need only briefly touch on Creed's remaining contentions. Creed argues the trial court also erred by allowing Hong to rely upon statements in the written contract and in Creed's unverified cross-complaint to establish as undisputed facts that: Creed and Hong entered into a contract; Creed agreed all work would be performed by properly licensed persons; the contract period was September 1, 2010, to October 31, 2010; and Hong paid Creed \$85,000. Creed repeats the argument made with regard to the website printouts, i.e., that taking judicial notice of court documents, in this case its own pleadings, does not permit the court to take judicial notice of the truth of the matters alleged in those pleadings. (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 483-484.)

Creed's arguments in this regard are frivolous. Creed attached the contract to its cross-complaint alleging it was a true and correct copy of the contract. It alleged the contract amount was \$96,430 and Hong failed to pay the balance due of \$11,430 ($\$96,430 - \$11,430 = \$85,000$). These constitute judicial admissions by Creed by which it is bound. (See *Valerio v. Andrew Youngquist Construction* (2002) 103 Cal.App.4th 1264, 1272 [an admission in a pleading is conclusive on the pleader]; *Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 222, fn. 3 [party's admission in its pleadings "are conclusive concessions of the truth of a matter and effectively

remove it from the issues”]; *Reichert v. General Ins. Co.* (1968) 68 Cal.2d 822, 836 [doctrine of judicial admissions applies to unverified as well as verified complaints].)

DISPOSITION

The judgment is reversed and the matter is remanded for trial on Hong’s third cause of action for violation of Business and Professions Code section 7031, 7215, and 7125.2. In the interests of justice, the parties shall bear their own costs on this appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

O’LEARY, P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.