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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

SILVER STAR ALPINE MEADOWS DEVELOPMENT LTD., Plaintiff and Respondent, v. LORA QUINLAN et al., Defendants and Appellants.	A145358 (San Mateo County Super. Ct. No. CIV 524552)

Lora and Stephen Quinlan appeal from an order under the Uniform Foreign-Country Money Judgment Recognition Act (Code Civ. Proc.,[1] §§ 1713–1724), recognizing a British Columbia court judgment against them for over $1 million in Canadian dollars. They contend the Canadian court should have applied a liability-limiting liquidated damages provision and therefore the $1 million-plus foreign damages judgment is repugnant to California public policy and should not be recognized. We conclude there was no abuse of discretion in recognizing the Canadian judgment, and affirm.

BACKGROUND

The Quinlans decided to purchase lots in an undeveloped subdivision at a ski resort located in British Columbia, Canada. They viewed the site and authorized an agent to purchase six lots from Silver Star Alpine Meadows Development Ltd. (Silver Star) at a sales event on March 4, 2006. Through that agent, the Quinlans agreed to pay for lot 11,

[1] Further statutory references are to the Code of Civil Procedure unless noted.

$229,000; for lot 12, $244,000; for lot 13, $279,000; for lot 15, $264,000; for lot 25, $369,000; and for lot 26, $369,000. The total amount payable under all six contracts was $1.754 million. (All of the dollar amounts given throughout this opinion are in Canadian dollars.) The Quinlans paid a deposit of 10 percent on each lot.

At the time of the sales contract, no roads were in place. After roads were installed, the Quinlans believed the topography of three of their properties, lots 11, 12, and 13, had changed; instead of gently sloped terrain, there were retaining walls and steep "cliffs" that would impact their ability to develop and resell the lots. They were told construction, though still possible, would be more complicated and costly. Experts later confirmed the complexities and costs, with one estimating an extra $75,000 to $120,000 per lot, compared to a completely flat and level lot.

In light of a perceived bait and switch, the Quinlans sought an extension of time to close, which Silver Star granted to February 4, 2008. But ultimately, the Quinlans did not complete any of the six contracts for purchase and sale.

When the deal fell apart, Silver Star sued in a British Columbia court in May 2008.

Following trial in 2012, the Canadian court delivered an oral statement of reasons for finding in favor of Silver Star. The court credited the testimony of a civil engineer, who had performed a slope analysis, that the lots and their slopes had not changed from the original drawings submitted to permitting authorities. The court did not credit the Quinlans' visual observation of alleged discrepancies. It found Silver Star had performed under the sales contracts, had tried to mitigate damages, and was entitled to compensatory damages.

With respect to damages, the court observed that after the contracts were signed in early 2006, the real estate market fell significantly and Silver Star was unable to resell the Quinlans' lots on the open market. Eventually, "[t]he lots that the Quinlans agreed to purchase were sold to people connected with the resort for $100,000 each in April and May of 2010. The total of those sales was $600,000." The court viewed the $600,000 as all Silver Star "could realize on the sale" of the lots—and an accurate reflection of their

value. The Quinlans' lots were by no means unique; other lots in the development that had not closed by 2008 could not be sold at all.

Accordingly, the Canadian court ordered judgment in favor of Silver Star and against the Quinlans for the difference between the original contract prices and the actual sales prices—for a total damages award of $1.154 million, plus interest, minus the Quinlans' deposit and interest thereon. The court further allowed Silver Star certain "disbursements" and costs. The Quinlans pursued an appeal, but later abandoned it.

Silver Star eventually sued in San Mateo County Superior Court to have the Canadian judgment recognized and made enforceable. The Quinlans cross-complained for breach of contract and fraud, seeking return of their deposit and other damages. They also proffered several defenses against recognizing the judgment, most notably that the sales contracts contained a liquidated damages clause that should have limited their exposure, that the Canadian court should have enforced it, and that it would be contrary to California public policy for a California court to recognize a judgment that should have been so limited but was not.

The California court readily found the Canadian litigation—in which the Quinlans had local counsel, discovery, witness confrontation, an unbiased judge, a detailed statement of decision, and other aspects of the Anglo-American legal system—offered sufficient due process of law. It also rejected the Quinlans' various defenses to enforcement. It found they had had the opportunity to raise the liquidated damages argument in Canada but did not, and, in any event, would not have achieved a better result even if they had. While sympathetic to the Quinlans' plight, the court declined to retry the case and recognized the Canadian order after trial as a foreign-country money judgment.

DISCUSSION

California courts "shall recognize" foreign-country money judgments of foreign courts if the proceedings were impartial and afforded due process, and if the foreign court had subject matter jurisdiction over the dispute and personal jurisdiction over the defendant. (§ 1716, subds. (a), (b).) There are, however, exceptions. (*Id.*, subd. (c).)

The one the Quinlans seek to invoke is if "[t]he judgment . . . is repugnant to the public policy of this state or of the United States." (*Id.*, subd. (c)(3).)[2]

"The standard," applicable to this exception, "is not simply that the law is contrary to our public policy, but instead that the judgment is so offensive to our public policy as to be ' " ' prejudicial to recognized standards of morality and to the general interests of the citizens . . . .' " ' " (*Java Oil Ltd. v. Sullivan* (2008) 168 Cal.App.4th 1178, 1189.)

The comment to the Uniform Foreign-Country Money Judgments Recognition Act, the model for California's law, "states that the public policy exemption 'retains the stringent test for finding a public policy violation . . . . Under that test, a difference in law, even a marked one, is not sufficient to raise a public policy issue. Nor is it relevant that the foreign law allows a recovery that the forum state would not allow. Public policy is violated only if recognition or enforcement of the foreign-country judgment would tend clearly to injure public health, the public morals, or the public confidence in the administration of law, or would undermine "that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel." ' " (*Hyundai Securities Co., Ltd. v. Lee* (2015) 232 Cal.App.4th 1379, 1391 (*Hyundai Securities*), quoting 13, pt. II West's U. Laws Ann. (2014 supp.) Uniform Foreign-Country Money Judgments Recognition Act, § 4, p. 30; see *Ohno v. Yasuma* (9th Cir. 2013) 723 F.3d 984, 1002 [" 'California courts have set a high bar for repugnancy under the Uniform Act.' "].)

"A determination of whether to recognize a foreign-country money judgment under the public policy provision of the Act (§ 1716, subd. (c)(3)) is discretionary (see 13, pt. II West's U. Laws Ann. (2014 supp.) Uniform Foreign-Country Money

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[2] A California court may also deny recognition to a judgment if "[t]he proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court." (§ 1716, subd. (c)(5).) In the trial court, the Quinlans asserted this subdivision also applied. They have not pursued this argument on appeal, understandably, as the sales contracts did not require dispute resolution in a forum other than the British Columbian courts.

Judgments Recognition Act, § 4, pp. 28–29 (Uniform Laws Annotated)), which determination is reviewed for an abuse of discretion—i.e., whether the trial court 'exceeded the bounds of reason.' (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.)" (*Hyundai Securities, supra,* 232 Cal.App.4th at p. 1385.) Where the facts of the case are uncontradicted, trial court action contrary to applicable law is outside the scope of its discretion. (*Ibid.*, citing *GuideOne Mutual Ins. Co. v. Utica National Ins. Group* (2013) 213 Cal.App.4th 1494, 1501.)

The Quinlans contend the Canadian judgment violates California public policy because the court failed to apply a liquidated damages clause. According to the Quinlans, that clause, in paragraph 11 of the contracts, would have capped their liability at forfeiture of their deposits (totaling less than $200,000) and shielded them from the $1.154 million award of actual damages.[3]

At the outset, we note the language of the sales contracts, however, did not conclusively limit Silver Star's remedies for breach of the sales contracts. Paragraph 10, entitled "Deposit on Account of Damages," states, in pertinent part: "If the Purchaser fails to comply with the terms of this Agreement, the above noted deposit is not refundable and will be paid to the Vendor on account of damages, without prejudice to the Vendor's other remedies . . . ." By its plain terms, then, paragraph 10, provides not only for forfeiture of the deposit, but also expressly preserves Silver Star's "other remedies" if the purchaser fails to abide by the terms of the purchase agreements, which would include failing to follow through with a promised purchase.

Paragraph 11, entitled "Late Closing," provides in full: "If the Purchaser fails to complete this transaction on the Completion Date through no fault of the Vendor, and if the Vendor is agreeable to an extension of the Completion Date, the conditions for the extension will include immediate release of the Deposit to the Vendor and interest payable on the balance of the Purchase Price at 10% per annum calculated annually from the original Completion Date until the transaction is actually completed. If the Vendor

[3] While California law expressly permits liquidated damages clauses in real estate sales contracts (Civ. Code, § 1676), it does not require them.

does not agree to an extension of the completion Date, the deposit will be paid to the Vendor as a genuine pre-estimate of damages and this Contract will be at an end."

This paragraph expressly provides for two contingencies: Where the seller agrees to an extension of escrow, the deposit is to be released immediately and the balance of the purchase price will carry a 10 percent interest rate. Where the seller does not agree to an extension, the deposit is also to be released "as a genuine pre-estimate of damages" and the contract "will be at an end." Here, Silver Star first *agreed* to an extension, but the Quinlans still failed to close. According to the Canadian court's fact findings, an extension was granted only up to February 4, 2008 and the "Quinlans breached the contracts of purchase and sale by not closing in February of 2008." Although Mrs. Quinlan told the California trial court she believed the parties were under a further extension of time when Silver Star filed legal action in May 2008, there was testimony from Silver Star's lawyer that the subject of further extensions never came up at trial in Canada, and this is reflected in that court's statement of reasons. Therefore, it is not apparent that Silver Star ever *refused* a requested extension to facilitate a late closing on the agreed contract terms, triggering paragraph 11.

Even if paragraph 11 did apply, it would be read in conjunction with paragraph 10, which applies where a purchaser fails to abide by the terms of the contract. Reading the two paragraphs in harmony suggests the following construction—that when the Quinlans failed to close after apparently not seeking another extension, the contract ended and Silver Star was entitled to immediate release of the deposit and to pursue other remedies.

While the Quinlans insist paragraph 11's use of the terminology "a genuine pre-estimate of damages" necessarily means the second sentence of that paragraph is a liquidated damages provision, it is not obvious why a guaranteed "pre-estimate" of damages would foreclose an eventual court award of actual damages. (Cf. *Royer v. Carter* (1951) 37 Cal.2d 544, 546–548 (*Royer*) [right to retain a deposit " 'as the consideration for the execution of this agreement by the seller' " not inconsistent with right to sue for damages from aborted sale].) Treatises on California real estate law, for example, provide model liquidated damages provisions that expressly use the term

"liquidated damages" and clearly limit recovery or say the deposit is the "sole" remedy.[4] No such limiting language appears in paragraph 11, and the Quinlans' interpretation is in tension with the explicit preservation of "other remedies" language in paragraph 10, which similarly specifies the deposit is to be released to the seller "on account of damages."

Accordingly, though we do not decide the question ourselves, it cannot be said that the Canadian court's view—that Silver Star was entitled to both keep the deposit and recover damages—was an unreasonable construction of the contracts, particularly since the Quinlans never raised the asserted liquidated provision in paragraph 11 in the Canadian litigation. If the Quinlans truly thought paragraph 11 was a crucial limitation on their liability, their silence throughout the Canadian proceedings is unfathomable.

Putting all this aside, even if the Canadian court erred in not reading the second sentence of paragraph 11 as a liquidated damages clause applicable to the facts at hand, that does not warrant refusal to recognize the Canadian judgment. Errors in foreign legal proceedings—especially when correction might have been sought at the trial or appellate levels—do not rise to a fundamental violation of California public policy. (See *Bank of America v. Jennett* (1999) 77 Cal.App.4th 104, 118 (*Bank of America*) [if the sister state had jurisdiction, "a sister state judgment is entitled to full faith and credit 'even as to matters of law or fact erroneously decided' "]; *Ruddock v. Ohls* (1979) 91 Cal.App.3d 271, 279 ["if the original court rendering the judgment had jurisdiction, an error of law or fact by that court generally cannot be raised in a collateral attack on the judgment"]; *Julen v. Larson* (1972) 25 Cal.App.3d 325, 327 ["The merits of the controversy which

[4] For instance, California Continuing Education of the Bar recommends a provision stating on buyer's failure to purchase "the deposits will be deemed liquidated damages for buyer's nonperformance as seller's sole and exclusive remedy," given the difficulty of estimating damages. (1 Cal. Real Property: Sales Transactions (Cont.Ed.Bar 4th ed. 2007) §4.177, p. 4-190 (rev. Feb. 2015.) Miller & Starr offer similar advice. (1 Miller & Starr, Cal. Real Estate Forms (2d ed. 2005) § 1:23, p. 323.) They also quote from California's form residential real estate purchase contract, which states "[on] Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid." (1A Miller & Starr, Cal. Real Estate Forms (2d ed. 2005) § 1:94, p. 351.)

resulted in the foreign judgment are not before us."]; accord *Naoko Ohno v. Yuko Yasuma* (9th Cir. 2013) 723 F.3d 984, 997, 1013.)[5]

In addition, while the trial court here opined the result it reached was harsh, California has long permitted sellers to recover the difference between the contract price and the actual value of real property. "The detriment caused by the breach of an agreement to purchase an estate in real property is deemed to be the excess, if any, of the amount which would have been due to the seller under the contract over the value of the property to him or her, consequential damages according to proof, and interest." (Civ. Code, § 3307; see *Royer*, *supra*, 37 Cal.2d at pp. 546–547 [damages not limited to deposit]; see generally 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 901, p. 994.) While California courts measure a property's actual value as of the time of breach (*Royer*, at p. 550), the history of the seller's efforts at resale and the ultimate resale price are relevant to the analysis. (*Id.* at p. 552 (conc. opn. of Schauer, J.); Greenwald et al., Cal. Practice Guide: Real Property Transactions (The Rutter Group 2015) ¶¶ 11:100 to 11:164, pp. 11-32 to 11-79.) Moreover, in certain probate matters where property is resold after a failed sale, Probate Code "[s]ection 10350, subdivision (e)(1) expressly allows the probate court to award to [an] estate damages in an amount equal to the difference between the defaulting and successful purchase prices." (*Estate of Felder* (2008) 167 Cal.App.4th 518, 522.)[6]

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[5] We also note that had the Quinlans litigated this case in a California trial court and failed to raise paragraph 11, it is very likely they would have been deemed to have waived the liquidated damages issue on appeal, given the ambiguity created by the language of paragraph 11, the additional provisions of paragraph 10, and the fact the trial court would have made factual findings relevant to the issue. (See *Foxx v. Williams* (1966) 244 Cal.App.2d 223, 243 [failure to raise contract provision in trial court waived issue on appeal]; see also *In re Marriage of Wilson* (Oct. 27, 2016, A140273) __Cal.App.5th__ [2016 WL 6302100, at p. *3] [while new questions of law not dependent on disputed factual milieu can be addressed for the first time on appeal, even review of new legal issues is left to appellate court's discretion; discretion declined].)

[6] Even in the mortgage context, while California law generally prohibits deficiency judgments (§ 580b), "California courts have given full faith and credit to deficiency judgments from a sister state, concluding that ' "a deficiency judgment in a

In sum, there is no basis for a determination that enforcement of the Canadian judgment would be clearly injurious to public health, public morals, or public confidence in the administration of law, or would undermine the sense of security for individual rights. There, accordingly, was no abuse of discretion by the trial court in enforcing it.

DISPOSITION

The judgment is affirmed. Costs are awarded to respondent.

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sister state is not so offensive [to public policy] so as to compel [the] court to recognize an exception to the full faith and credit clause of the United States Constitution." ' " (*Bank of America, supra,* 77 Cal.App.4th at p. 120.) " 'Deficiency judgments are only statutorily limited and are not inherently objectionable, as such judgments are not a threat to the moral or ethical standards of the citizens of this state.' " (*Washoe Development Co. v. Guaranty Federal Bank* (1996) 47 Cal.App.4th 1518, 1524.)

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Banke, J.

We concur:

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Humes, P.J.

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Margulies, J.

A145358, *Silver Star Alpine Meadows Development LTD. v. Quinlan et al.*