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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

GUITA MADADIAN, Plaintiff and Appellant, v. MASERATI NORTH AMERICA, INC., Defendant and Respondent.	B293688 Los Angeles County Super. Ct. No. BC643094

APPEAL from a judgment of the Superior Court of Los Angeles County, Teresa Beaudet, Judge. Affirmed.

Rosner, Barry & Babbitt, Hallen D. Rosner, Michelle A. Cook; Strategic Legal Practices, Payam Shahian and Christine Haw for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith, Jeffry A. Miller, Tracy D. Forbath, Eric Y. Kizirian, Michael K. Grimaldi and Sharon Shin for Defendant and Respondent.

INTRODUCTION

Plaintiff and appellant Guita Madadian leased a 2014 Maserati that, among other things, leaked exhaust fumes into the passenger compartment. After defendant and respondent Maserati North America, Inc., (Maserati) repeatedly tried and failed to repair it, Madadian demanded Maserati repurchase the car under the Song–Beverly Act, California's lemon law. Maserati refused to do so, and Madadian sued. While the lawsuit was pending, the lease expired. But rather than return the car to its owner, a third-party lessor, Madadian exercised her lease-end option to buy the car. We are asked to decide whether the purchase price is part of Madadian's "actual damages" for purposes of calculating the civil penalty Maserati must pay for its willful violation of the law. Under the circumstances of this case, we conclude it is not, and affirm.

BACKGROUND

1. The Lease

In July 2014, Madadian leased a new 2014 Maserati Ghibli through a third-party lessor. The lease required Madadian to pay $2,500 at lease signing, then pay $768.78 per month for 35 months, for a total of $28,632.30.[1] At the end of the lease, Madadian would have the option to buy the car for $40,154.40.

The car was distributed by Maserati, which provided a written warranty against certain defects.

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[1] The $2,500 due at signing included a $775 refundable security deposit. Thus, the lessor appears to have arrived at this total using the following calculation: ($768.78 × 35) + ($2,500 − $775) = $28,632.30.

2. Madadian's Warranty Claims

On April 27, 2015, less than a year into the lease, Madadian brought the car to Maserati for repair under the warranty: It was leaking exhaust fumes into the passenger compartment, and the check-engine light kept turning on. Maserati kept the car for nearly three weeks and returned it to Madadian on May 15, 2015.

But two weeks later, on June 2, 2015, Madadian returned with the same problems; the car had also developed an oil leak. Again, Maserati kept the car for nearly three weeks. Madadian brought the car back again within a fortnight because the check-engine light came on again and she was concerned about a fuel odor.

Over the remaining lease term, the fuel odor, oil leaks, and various other problems—including a broken seatbelt latch, inoperable power adapter, dashboard warning lights, and multiple recalls—caused Madadian to bring the car in for service at least nine more times.

In October 2016, Madadian asked Maserati to repurchase the car under the Song–Beverly Consumer Warranty Act (Civ. Code,[2] § 1791 et seq.) (hereafter Song–Beverly Act or Act). In response, Maserati told Madadian to bring the car in again for further attempts to diagnose and repair it. Madadian agreed—but when Maserati still couldn't fix the car, she again asked the company to repurchase it.

On November 17, 2016, after numerous follow-up inquiries, Maserati told Madadian it would not buy or replace her car.

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[2] All undesignated statutory references are to the Civil Code.

Instead, it offered her a $5,000 "goodwill" payment in exchange for her release of unspecified claims.

3. Madadian Sues Maserati

In December 2016, Madadian filed a complaint against Maserati alleging six causes of action. The first three causes of action alleged violations of the Song–Beverly Act under section 1793.2, subdivisions (a)(3), (b), and (d); the fourth cause of action alleged breach of express written warranty (§§ 1791.2, subd. (a), 1794); the fifth cause of action alleged breach of the implied warranty of merchantability (§§ 1791.1, 1794); and the sixth cause of action alleged violations of the Magnuson–Moss Warranty Act (15 U.S.C. § 2301 et seq.).

Maserati denied liability and asserted a variety of affirmative defenses.

4. Madadian Buys the Car

As Madadian approached the end of her lease term in July 2017, with the lawsuit ongoing, she contacted the lessor to try to extend the lease. When the lessor offered her only a single three-month extension, however, Madadian exercised her option to buy the car instead. To do so, she took out a loan with a third-party lender for $44,319.40 at 4.34 percent interest.[3] Under the purchase agreement, Madadian would make 74 payments of $675.82 per month and one payment of $675.48 for a total of $50,686.16.

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[3] This price was the sum of the lease's residual value of $40,154.40, $3,513 in sales tax, $53 in fees, and a $599 gap contract.

5. Stipulation and Bench Trial

On January 3, 2018, Maserati filed an amended answer to Madadian's complaint, in which it admitted liability under the Song–Beverly Act.[4] In particular, Maserati admitted that it could not conform the car to applicable express and implied warranties after a reasonable number of opportunities; that the vehicle qualified for replacement, repurchase, or restitution; and that Maserati did not promptly provide the required restitution.

As such, Maserati offered to compensate Madadian for the "actual damages she is entitled to receive under the provisions of the Act, which [Maserati] contends and limits its admissions herein to the total of lease payments paid or payable under the Lease Agreement for the Subject Vehicle, less any amounts directly attributable to use by the Plaintiff prior to discovery of the nonconformities." Maserati also offered to pay Madadian "a civil penalty under the Act in the amount of two times [her] actual damages," plus "reasonable attorney fees and costs as determined by the Court upon noticed motion or as determined by agreement of the parties."

The parties proceeded to a bench trial to determine the damages to which the civil penalty should apply. For purposes of the bench trial, the parties stipulated, as relevant here, that:

- Maserati distributed the vehicle under a limited written warranty;
- Madadian delivered the vehicle to Maserati's authorized repair facility on a number of occasions;

[4] It continued to deny liability for the remaining causes of action.

- Maserati could not conform the vehicle to the warranty after a reasonable number of opportunities;
- the vehicle qualified for repurchase;
- Maserati did not promptly replace, buy back, or provide restitution for the vehicle as required under the Act;
- Maserati would pay Madadian the statutory damages to which she was entitled under the Act;
- Maserati would pay Madadian "a civil penalty under the Act in the amount of two times [her] actual damages";
- Maserati would pay any incidental and consequential damages per applicable law;
- Maserati would not seek a mileage-offset deduction;
- regardless of the measure of damages the trial court adopted, Maserati would pay whatever sum was necessary to acquire title to the vehicle, and Madadian would return the vehicle to Maserati for title branding.

6. Judgment

After a contested proceeding, the court ruled that the civil-penalty provisions of the Act did "not extend to cover amounts [Madadian] voluntarily paid at lease termination to purchase the subject vehicle" and that "only amounts paid under the lease"—namely, her lease payments—"are subject to civil penalty."

On August 30, 2018, the court entered judgment for Madadian. The court ordered Maserati to pay Madadian $97,696.96, calculated as follows:

- $28,632.32 in lease payments plus a civil penalty of $57,264.64, for a total of $85,896.96;
- $800 for registration costs;
- $3,000 for insurance payments made during the lease;
- $8,000 to acquire title to the vehicle;[5]
- attorney's fees, costs, and prejudgment interest by agreement of the parties or noticed motion.

Madadian filed a timely notice of appeal.

DISCUSSION

Madadian contends that because Maserati agreed to pay her a civil penalty of twice her actual damages, and because her lease-end vehicle purchase was part of her "actual damages" under section 1794, the court erred by not awarding her a civil penalty on the amount she spent to buy the car. Namely, she seeks an additional $83,905.76—twice the $8,000 in principal and interest she had paid towards her car loan as of July 13, 2018, plus twice the then-outstanding loan balance of $33,952.88.

1. Standard of Review

The meaning of "actual damages" under section 1794 is an issue of statutory interpretation, which we review de novo.

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[5] The court ordered Maserati to pay the $33,952.88 balance on the car loan directly to the lender.

(*Martinez v. Kia Motors America, Inc.* (2011) 193 Cal.App.4th 187, 192 (*Martinez*).)

"As with any case involving statutory interpretation, our primary goal is to ascertain and effectuate the lawmakers' intent. [Citation.] To determine intent, we first examine the statutory language and give the words their ordinary meaning. [Citation.]" (*Austin v. Medicis* (2018) 21 Cal.App.5th 577, 590.) "If the statutory language is unambiguous, its plain meaning controls; if the statutory language is ambiguous, ' " 'we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history.' [Citation.] Ultimately we choose the construction that comports most closely with the apparent intent of the lawmakers, with a view to promoting rather than defeating the general purpose of the statute. [Citations.]" ' [Citation.]" (*Id.* at p. 591.) Nevertheless, we "may not change the scope of a statute 'by reading into it language it does not contain or by reading out of it language it does. We may not rewrite the statute to conform to an assumed intention that does not appear in its language.' [Citation.]" (*Martinez*, *supra*, 193 Cal.App.4th at pp. 192–193.)

2. The Song–Beverly Act

"The Song–Beverly Act is a remedial statute designed to protect consumers who have purchased products covered by an express warranty. [Citation.]" (*Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 798.)

"Among other requirements, a manufacturer[6] of consumer goods covered by an express warranty and sold in California must

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[6] Though Maserati was the distributor in this case, it is a "manufacturer" within the meaning of the Act. (§ 1795.)

generally maintain service and repair facilities within the state. (§ 1793.2, subd. (a).) If the goods do not conform to the applicable express warranties, they must generally be serviced or repaired within 30 days. (§ 1793.2, subd. (b).)" (*Martinez*, *supra*, 193 Cal.App.4th at p. 193.) To trigger the manufacturer's obligations, the buyer must deliver nonconforming goods to the manufacturer's in-state service and repair facility. (§ 1793.2, subd. (c).)

New motor vehicles are a special category of consumer good under the Act. If a manufacturer cannot conform a new vehicle to its "express warranties after a reasonable number of attempts," it must "either promptly replace the new motor vehicle ... or promptly make restitution to the buyer ... ." (§ 1793.2, subd. (d)(2).) If either party elects restitution (*ibid.*), the manufacturer must "make restitution in an amount equal to **the actual price paid or payable by the buyer** … plus any incidental damages to which the buyer is entitled under Section 1794 … ." (*Id.*, subd. (d)(2)(B), emphasis added.) For purposes of the Act, "a buyer of a new motor vehicle" includes "a lessee of a new motor vehicle." (§ 1793.2, subd. (d)(2)(D).)

A car buyer—or lessee—who is damaged by a manufacturer's violation of the Act may bring an action for damages and other legal and equitable relief. (§ 1794, subd. (a).) In addition to the refund-or-replace remedy provided in section 1793.2, the buyer may also recover incidental and consequential damages under sections 2714 and 2715 of the Commercial Code. (§ 1794, subd. (b)(2); *Kwan v. Mercedes-Benz of North America, Inc.* (1994) 23 Cal.App.4th 174, 187–188 (*Kwan*).) Those damages "include[ ], but [are] not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer." (§ 1793.2,

subd. (d)(2)(B).) And, if the buyer proves the manufacturer's violation was willful, the judgment may include a civil penalty of up to twice the amount of the buyer's "actual damages." (§ 1794, subd. (c).) Finally, the court must award a prevailing buyer, "as part of the judgment," the aggregate costs, expenses, and attorney's fees "reasonably incurred by the buyer in connection with the commencement and prosecution" of the action. (*Id.*, subd. (d).)

3. The vehicle purchase was a litigation expense.

Madadian does not argue either that the $40,154.40 lease-end purchase option was an "actual price paid or payable" under the lease (§ 1793.2, subd. (d)(2)(B)) or that she would have been entitled to that residual—and a civil penalty thereon—even if Maserati had admitted liability before the lease expired.[7] Instead, Madadian treats her lease payments and lease-end purchase as two separate transactions.[8] And, as to the second transaction, she argues she is entitled to a civil penalty on the purchase price and interest payments because, by contesting liability, Maserati "forced [her] to purchase a defective vehicle … ." Even were we to accept this theory, however, the purchase price would not

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[7] As such, we do not address that issue. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 ["It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived."].)

[8] For example, Madadian argues in her opening brief that as "a result of Maserati's incessant refusal to comply with the law, 'the actual price paid or payable' by Ms. Madadian increased from just $28,632.32 to $70,585.20."

constitute "actual damages" for which Madadian could recover a civil penalty.

As discussed, under the Song–Beverly Act, a buyer's damages are the sum of her restitution for the "actual price paid or payable" under section 1793.2, subdivision (d)(2)(B), and her incidental and consequential damages under section 1794, subdivision (b)(2). (§ 1794, subd. (b).) Those damages are the basis for any civil penalty awarded under section 1794, subdivision (c).

Section 1794, subdivision (d), in turn, provides that a prevailing buyer in an action arising under the Song–Beverly Act "shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of *costs and expenses*, including attorney's fees based on actual time expended, determined by the court to have been reasonably *incurred by the buyer in connection with the commencement and prosecution of such action*." (Italics added.)

The "Legislature intended the phrase ' "costs and expenses" ' in section 1794, subdivision (d) "to cover items not included in 'the detailed statutory definition of "costs" ' set forth in Code of Civil Procedure section 1033.5. [Citation.]" (*Warren v. Kia Motors America, Inc.* (2018) 30 Cal.App.5th 24, 42.) And, whereas the civil penalty in subdivision (c) was enacted to incentivize manufacturers to comply with the Act voluntarily (*Kwan*, *supra*, 23 Cal.App.4th at p. 184), the broad costs provision in subdivision (d) was created to "provide[ ] injured consumers strong encouragement to seek legal redress in a situation in which a lawsuit might not otherwise have been economically feasible." (*Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th

985, 994, superseded by statute on other grounds.) We therefore interpret the provision broadly.

Here, Madadian argues that "Maserati forced her to choose between returning the Vehicle at lease end, thus allowing Maserati to prevail [in the lawsuit], or instead preserving the evidence needed to vindicate her rights under California law" by buying the car. Put another way, Madadian claims that the car's purchase price was "an expense[ ] … reasonably incurred by the buyer in connection with the commencement and prosecution" of her lawsuit against Maserati. (§ 1794, subd. (d).)

If we accept this reasoning, the car's purchase price necessarily constitutes a litigation expense under subdivision (d). And, while Madadian must be reimbursed for her litigation expenses under subdivision (d)—as she was here—those expenses are not "actual damages" for purposes of the civil penalty allowed under subdivision (c).

4. Madadian was not required to buy the car to protect the public.

Madadian also argues that she had to exercise her lease-end purchase option to ensure Maserati branded the car's title " 'Lemon Law Buyback' " under sections 1793.23 and 1793.24. We disagree.

Under section 1793.23, subdivision (d), "Any manufacturer who reacquires or assists a dealer or lienholder to reacquire a motor vehicle in response to a request by the buyer or lessee that the vehicle be either replaced or accepted for restitution because the vehicle did not conform to express warranties" (*ibid.*), must "notify any subsequent transferee that the car was 'reacquired' because of a nonconformity." (*Martinez*, *supra*, 193 Cal.App.4th

at p. 194, fn. 4.) The manufacturer does so by prominently branding the vehicle's title " 'Lemon Law Buyback.' " (§ 1793.24.)

Madadian reasons that had she returned the car to its owner, the third-party lessor, at the end of her lease term in July 2017, with the lawsuit ongoing, the lessor would not have been reacquiring the car under the Act, and the car, therefore, would not be subject to the Act's title-branding requirements. The defective vehicle could then be sold, with a clean title, to an unsuspecting member of the public. And, once Madadian prevailed in her lawsuit, there would be no practical way for Maserati to retrieve the vehicle from the stream of commerce to brand its title.

Be that as it may, this statutory loophole was not Madadian's problem to fix: The Act did not require her to keep her defective Maserati pending resolution of her claim. Although other states have adopted a different rule, "there is simply no requirement that California consumers be able to tender the alleged defective car for purposes of availing themselves of the remedies provided by the Act." (*Martinez*, *supra*, 193 Cal.App.4th at p. 197.) Indeed, the "Act says nothing about the buyer having to retain the vehicle after the manufacturer fails to comply with its obligations under its warranty and the Act." (*Id*. at p. 194.)

DISPOSITION

The judgment is affirmed. In the interests of justice, no costs are awarded on appeal.

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LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

DHANIDINA, J.