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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

SPATIAL CORP., Plaintiff and Appellant, v. AUTODESK, INC., et al., Defendants and Respondents.	A104856 (Marin County Super. Ct. No. CV 016250)

Software developer Spatial Corporation, the successor-in-interest to Spatial Technology Inc. (collectively, "Spatial"), filed a breach of contract action against Autodesk, Inc. ("Autodesk") for sharing Spatial's confidential computer source code with a third party. After the jury returned a verdict finding Autodesk had committed no breach, Spatial filed this appeal. Spatial argues the trial court erred in admitting testimony from a former officer of Spatial about his understanding of the parties' rights under the disputed contract, and this error resulted in a miscarriage of justice. We conclude the evidence was admissible and affirm the judgment.

BACKGROUND

Spatial was founded in Boulder, Colorado in 1986 by Richard Sowar and two other individuals. The company develops software for use in three-dimensional modeling programs. Its flagship product, the ACIS 3D Geometric Modeler ("ACIS"),[1]

[1] ACIS is an acronym that stands for "Alan, Charles and Ian's software," referring to the original creators of the product.

is a mathematical program Spatial sells to other software companies, which then use ACIS in developing their own software. Autodesk, a large software company headquartered in San Rafael, California, was one of Spatial's most important customers. Autodesk produces a variety of computer-aided design ("CAD") software products for engineers, architects and other end-users, and during the relevant time period it had the largest installed base of any CAD software company. Autodesk also licenses its products to third-party developers who build specialized software that "runs on top of," or incorporates, Autodesk's design programs. Several of Autodesk's products incorporate Spatial's ACIS computer source code.

On December 31, 1989, Spatial and Autodesk entered their first contract pertaining to the ACIS technology. Entitled "Source Code License Agreement," this agreement (the "1989 contract") gave Autodesk a license to the object code and source code of ACIS; however, it permitted Autodesk to disclose the ACIS source code "only to those employees of Autodesk who have executed a confidentiality agreement" containing specific terms and conditions. The 1989 contract also expressly prohibited Autodesk from distributing, sublicensing or otherwise transferring the ACIS source code "to any third party."

Beginning in December 1990, corporate officers of Spatial and Autodesk met to renegotiate certain provisions of the 1989 contract. As a result, on June 27, 1991, the parties entered a new "Technology Development and Royalty Agreement" (the "1991 contract"), which was intended to replace and supersede the earlier contract. The 1991 contract marked a change in the parties' relationship. Whereas, under the 1989 contract, Autodesk had been a mere customer of Spatial's software, the 1991 contract made Autodesk a joint developer of software with Spatial. This contract was very valuable to Spatial because the relationship with Autodesk enhanced Spatial's credibility with customers, and because the success of Autodesk's ACIS-based products translated into increased royalties for Spatial. In the 1991 contract, Spatial

gave Autodesk a full license to Spatial source code and confidential documentation,[2] including the rights to copy, use and modify the code as necessary to fix "bugs" or for development projects. However, Autodesk's obligation to maintain the confidentiality of these materials was expressed differently than in the prior contract. In paragraph 3.2, which later became the subject of much debate, the 1991 contract states: "Autodesk agrees that only individuals who have executed Autodesk's standard Employee Confidentiality Agreement may have access to the Source Code and Confidential Documentation."

During the same month it entered the 1991 contract with Autodesk, Spatial also engaged the British company D-Cubed Limited ("D-Cubed") as a consultant to develop ACIS source code. When Autodesk developed code for incorporation into ACIS, it understood and expected Spatial would share this code with D-Cubed. Later, after Autodesk and other customers complained to Spatial about its program's "hidden line" functionality,[3] Spatial encouraged Autodesk to work with D-Cubed to develop this feature for ACIS. Autodesk and D-Cubed entered a contract for this work in July 1996, and, pursuant to this agreement, Autodesk sent its modified version of ACIS source code to D-Cubed. Executives at Spatial were aware that Autodesk had shared the source code with D-Cubed, and they did not claim the disclosure was unauthorized or objectionable.

Spatial and Autodesk shared a cooperative and mutually beneficial relationship for nearly 10 years after they entered the 1991 contract, but good relations ended after Spatial was acquired by French conglomerate Dassault Systèmes ("Dassault"). All of Spatial's officers were replaced in the acquisition, and Dassault installed Michael

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[2] The 1991 contract defines "confidential documentation" separately from "source code" as: "documents, code, and supporting material . . . which are not intended for dissemination to third parties and which may be used internally to further the purposes of this Agreement."

[3] "Hidden line" is a design tool that erases the lines or edges of a geometric model when they cannot be seen from a given viewpoint.

Payne as the company's new CEO, President and Chairman. Payne had previously founded a company called Solid Works, which made a CAD product that was a direct competitor of Autodesk's product. In October 2001, Payne met with the Carol Bartz, the CEO of Autodesk, to discuss changes in the companies' relationship. In this meeting, Payne suggested that Autodesk abandon its CAD product and instead resell the competing Solid Works product—a proposal that was flatly rejected. Payne also indicated Spatial intended to deny Autodesk access to improvements Dassault and Spatial would be making to the ACIS source code. After Spatial demanded additional payments from Autodesk for past and future royalties it asserted were owed, Autodesk made a lump sum payment to Spatial of close to $6.4 million to extinguish these royalty obligations. Shortly thereafter, in November 2001, Autodesk retained D-Cubed as a consultant to help Autodesk develop, enhance and maintain the ACIS source code.

Spatial filed a breach of contract action against Autodesk and D-Cubed on December 27, 2001, seeking an injunction preventing Autodesk from disclosing ACIS source code to D-Cubed or, in the alternative, an injunction preventing D-Cubed from performing work for Autodesk using personnel who had previously worked on the source code for Spatial. Spatial later amended its complaint to add prayers for declaratory relief and damages.[4] The case ultimately proceeded to trial against Autodesk only. After eight days of live and recorded testimony from numerous witnesses, and the admission of scores of documentary exhibits, the jury deliberated for only two hours and then returned a verdict finding Autodesk had not breached its contractual duties regarding the ACIS source code and related confidential documentation.

[4] The amended complaint alleges claims against Autodesk for breach of contract and declaratory relief (Code Civ. Proc., § 1060), and a claim against D-Cubed for tortious interference with contract. This claim against D-Cubed was dismissed on summary judgment. An additional claim against both defendants for misappropriation of trade secrets was also dismissed before trial.

DISCUSSION

Spatial's sole claim on appeal is that the trial court abused its discretion in admitting certain videotaped deposition testimony from Richard Sowar, one of Spatial's founders who formerly served as its executive vice president and board member.

I. Testimony of Richard Sowar

In the bulk of the deposition testimony designated for presentation at trial, Sowar discussed Spatial's motivation in entering the 1991 development contract with Autodesk. Although Spatial's CEO John Rowley was the primary negotiator in the 1991 contract discussions with Autodesk, Sowar attended every meeting of these negotiations with Rowley and one other Spatial executive (Bruce Morgan). Sowar and another individual signed the 1991 contract on behalf of Spatial.

Sowar explained that it was in Spatial's best interest for Autodesk to sell as much ACIS-based product as possible, because this would increase the brand recognition of ACIS and would increase Spatial's royalties from Autodesk and from third-party developers who were writing software based on Autodesk's products. There were many such "value added" developers for Autodesk's products, and they were a separate market from which Spatial could obtain licensing fees or royalties. Sowar distinguished between these "value added" companies and developers, like D-Cubed, that worked internally for Autodesk to improve Autodesk's own products. He explained that the confidentiality provision in paragraph 3.2 of the 1991 contract represented Spatial's attempt to protect against disclosure of ACIS source code to the value-added developers (so that Spatial could sell them licenses). However, it was also a priority for Spatial to get developers like Autodesk the help they needed to ship ACIS-based product, and to this end Sowar played the role of "marriage broker" matching clients like Autodesk with component developers like D-Cubed that could help them develop a marketable product. Sowar testified that Spatial's desire to encourage such collaboration was a motivation for "lightening up on" the 1989 contract's ban against sharing ACIS source code with third parties. Spatial benefited

because this collaboration enabled Autodesk to develop and ship ACIS-based products more quickly, leading to faster royalty-generation for Spatial.

In particular, Sowar described Spatial's desire to encourage a relationship between Autodesk and D-Cubed. Impressed by the hidden line technology D-Cubed had developed, Sowar introduced D-Cubed to Autodesk with the hope that Autodesk would incorporate this technology into its ACIS products. Sowar testified he had "zero objection" to Autodesk providing ACIS source code to D-Cubed for this purpose, so long as appropriate agreements were in place to protect the code, and he was "quite confident" Autodesk would have had to share source code for the integration to take place. Although Sowar did not recall any particular conversation about Autodesk providing source code to D-Cubed for the hidden line project, he was aware D-Cubed was working on the source code for Autodesk at its Cambridge, England location, and he believed this collaboration was good for Spatial.

Sowar identified paragraph 3.2 of the 1991 contract as the provision that lightened restrictions on Autodesk about sharing source code, but he did not know who drafted the language of this paragraph, nor did he recall discussions with anyone at the time about the meaning of the contract language. He also did not recall any specific discussion during the 1991 contract negotiations about changing Autodesk's rights to disclose ACIS source code.

Sowar was questioned about a declaration he submitted before trial, in which he stated it was his understanding and intention, throughout the course of Spatial's contractual relationship with Autodesk, that Autodesk have the right to use third-party contractors like D-Cubed to do development work on the ACIS source code. He affirmed this statement, explaining that Autodesk "had the right to bring in John Doe and put him under their disclosure . . .; and [the developer] could work to help them internally build out . . . [a] better solution[,] and so they could develop something that is based on ACIS." Sowar agreed this was "a contractual right" Autodesk had, but when asked which contract was the source of this right Sowar replied, "I'm not talking about contract. I am saying that throughout the course it was always my

understanding and intention. . . . I don't know what else I can say about that." Later, when asked to elaborate on this answer, Sowar said: "I don't know . . . what I was saying about contractual, I didn't have access to the contract, okay? But . . . I think that I would have said had the contractual right maybe. I don't know. I am just saying it was always my understanding and intention. Why isn't that clear? [¶] I always believed, I always intended that Autodesk could go and use whatever third-party developers they could; and I think they had the right to do it. That is how we worked with them."

Before trial, Spatial filed a motion in limine to exclude evidence "pertaining to Richard Sowar's personal understandings and intentions with respect to the issue of whether Autodesk had the right to use third-party contractors to work on Spatial's ACIS code." Spatial objected in particular to three brief portions of Sowar's deposition testimony, designated by page and line references to the transcript. Autodesk filed an opposition to the motion, and it was denied after argument. Excerpts of Sowar's testimony designated by both parties were played at trial without further objection.[5]

II. The Testimony Was Admissible Evidence of Spatial's Intent

Seizing on Sowar's remark that he was "not talking about contract" when he said Autodesk had the right to share source code with component developers like D-Cubed, Spatial asserts that all testimony about Sowar's understanding and intentions should have been excluded as irrelevant to the breach of contract issue before the jury.

Spatial correctly points out that the principal question for the jury was the meaning of the provision, in paragraph 3.2 of the 1991 contract, that "only individuals who have executed Autodesk's standard Employee Confidentiality Agreement may have access to the Source Code and Confidential Documentation." The jury had to

[5] Although Spatial's counsel interrupted the presentation at one point, saying "I have an objection," the ensuing discussion between the court and counsel was not reported, and the record does not reflect the basis of this objection.

decide whether "individuals" meant only Autodesk employees (i.e., people who would be expected to sign the company's employee confidentiality agreement), or whether "individuals" referred to any persons, including employees of third-party contractors retained by Autodesk, who signed the confidentiality agreement referred to. However, the presence of a contract interpretation issue does not render irrelevant and inadmissible all testimony or evidence that is not directly tied to the words of the disputed provision.

The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. (Civ. Code, § 1636; *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 473.) "The mutual intention to which the courts give effect is determined by objective manifestations of the parties' intent, including the words used in the agreement, as well as extrinsic evidence of such objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract; the object, nature and subject matter of the contract; and the subsequent conduct of the parties. [Citations.]" (*Morey v. Vannucci* (1998) 64 Cal.App.4th 904, 912.)

Extrinsic evidence is admissible to interpret the language of a written instrument so long as it is offered to prove a meaning to which the contract language is reasonably susceptible. (*Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 37; *Morey v. Vannucci*, *supra*, 64 Cal.App.4th at p. 912.) Indeed, it is error for a court *not* to admit extrinsic evidence that is relevant proof of a "reasonably susceptible" meaning. (*Southern Pacific Transportation Co. v. Santa Fe Pacific Pipelines, Inc.* (1999) 74 Cal.App.4th 1232, 1241-1242; *Morey v. Vannucci*, *supra*, 64 Cal.App.4th at p. 912.)

Spatial does not dispute that the contract language in question is ambiguous, nor that the meaning of "individuals" urged by Autodesk is one to which the contract language is reasonably susceptible. Spatial also does not dispute, as a general matter, the admissibility of extrinsic evidence to interpret the contract language. Instead, Spatial argues Sowar's testimony in particular was irrelevant, because (1) he stated at

the end of his deposition that he was not talking about the disputed contract, and (2) he was not personally involved in drafting the provision at issue. These arguments are unpersuasive.[6]

As a founder and executive vice-president of Spatial, and a primary negotiator who was one of only two signatories for the company on the 1991 contract, Sowar was obviously one of the most knowledgeable people who could have spoken to Spatial's intentions with regard to the disputed contract. His testimony explained Spatial's business motivations in the relationship with Autodesk, and it was relevant evidence bearing upon Spatial's intention with respect to how Autodesk would be permitted to use, or disclose, the ACIS source code. (See *Southern Pacific Transportation Co. v. Santa Fe Pacific Pipelines, Inc.*, *supra*, 74 Cal.App.4th at p. 1243 [testimony from railroad general manager who was involved in negotiating agreements at issue was admissible to prove the parties' mutual intent, and exclusion of the testimony was error].) In testimony to which Spatial did *not* object, Sowar explained why it was actually beneficial to Spatial for Autodesk to share the source code with internal collaborators like D-Cubed, and he cited paragraph 3.2 of the 1991 contract as the provision that was meant to lighten the prior ban against such disclosures by Autodesk. Sowar was intimately involved in the negotiation of the 1991 contract, and it makes no difference to the admissibility of his testimony that he did not personally draft the

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[6] In arguing that testimony about a party's understanding of contract terms is inadmissible, Spatial repeatedly directs us to a decision from Division Four of this district, *Oakland Bank of Commerce v. Washington* (1970) 6 Cal.App.3d 793 (*Oakland Bank*), but that case is distinguishable. *Oakland Bank* concerned testimony about the plaintiffs' unilateral understanding of a contract they had not read (or, with respect to one, read carefully). (*Id.* at pp. 798-799.) While noting that parol evidence of the contracting parties is admissible to expose a latent ambiguity in a written contract, the *Oakland Bank* court concluded the testimony before it was not sufficient to prevent entry of a directed verdict because these plaintiffs took no part in the contract negotiations and, indeed, had no contact whatsoever with the other contracting party. (*Id.* at pp. 798-799.) *Oakland Bank* did not disturb the long-standing rule that evidence of a party's expressed understanding and intent is admissible to construe a decidedly ambiguous contract term.

language of the disputed provision or recall who did. Indeed, it is hard to imagine how a lawyer's testimony about drafting issues could be more relevant than testimony from a corporate founder and board member about the company's motivations and intentions in entering a contract.

Spatial's characterization of Sowar's testimony as nothing more than "personal musings" dissociated from the contract rests on a gross distortion of this witness' words. Sowar was competent to testify, and did testify, about Spatial's intention with respect to the confidentiality of its source code. This evidence was not rendered inadmissible when, at the end of his deposition, he resisted the questioning lawyer's repeated inquiries about the contractual source of Autodesk's rights by retorting, "I am not talking about contract." At the time, Spatial's lawyer was asking Sowar about a declaration he had previously submitted. In particular, with regard to a paragraph in which Sowar declared " 'it was always my understanding and intention that Autodesk had the right to use third-party contractors, such as D-Cubed . . ., to do . . . ACIS development work,' " counsel pressed Sowar to identify the contractual basis of this right. Sowar acknowledged that he had not seen the 1991 contract for at least two years when he executed the declaration, and he explained that he was not referring to any contract in the declaration, but was simply saying what he understood and intended. Read in context, this testimony is not a confession of ignorance about the contract provisions—as Spatial would have it—but simply an explanation of why the witness said what he did in a prior declaration.

Moreover, we disagree with Spatial's assertion that Sowar's understanding about the contracting parties' rights was irrelevant because it was not expressed as an interpretation of specific contractual language. It is often said that "the rules of interpretation of written contracts are for the purpose of ascertaining the meaning of the words used therein[, and] evidence cannot be admitted to show intention independent of the instrument." (1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 744, p. 832, italics omitted; *Miscione v. Barton Development Co.* (1997) 52 Cal.App.4th 1320, 1326.) "However, the circumstances surrounding the execution

of the contract may be considered in determining the meaning of the language used therein. (Code Civ. Proc., § 1860.)" (*Department of Industrial Relations v. UI Video Stores, Inc.* (1997) 55 Cal.App.4th 1084, 1094.) Sowar was testifying about his understanding and intention as a corporate officer of Spatial and one of the primary negotiators of the 1991 contract. His failure to tie his testimony to specific contractual provisions does not mean the evidence was received merely "to show intention independent of the instrument." On the contrary, Sowar's testimony was relevant extrinsic evidence about the surrounding circumstances when the parties entered the contract. (*Morey v. Vannucci*, *supra*, 64 Cal.App.4th at p. 912.) In addition, his testimony about Spatial's desire to encourage a collaborative relationship between Autodesk and D-Cubed was relevant to show the subsequent conduct of the parties under the contract. (*Ibid.*; see also *Crestview Cemetery Assn. v. Dieden* (1960) 54 Cal.2d 744, 753 [the acts of parties under a contract, before any controversy has arisen, " 'afford one of the most reliable means of arriving at their intention' "].)

Sowar's fuzzy memory about the details of the contract discussions and the contractual basis of Autodesk's rights were matters going to the weight of the evidence, which Spatial was free to exploit in cross-examination and argument.[7] In this regard, we are not persuaded by Spatial's self-serving interpretations of Sowar's testimony. For example, Spatial's assertion that Sowar was repeating what Autodesk's lawyers told him about the company's contractual rights is but one interpretation of Sowar's statement that he was "echoing back" information he had been told in discussions with both sides. Likewise, Spatial's repeated contention that Sowar had absolutely no knowledge of or involvement in negotiating paragraph 3.2 of the 1991 contract—based largely on testimony that he did not recall details about the drafting of this provision more than 10 years earlier—is impeachment that affects the weight of

[7] Indeed, Spatial's attorney savaged Sowar at length in his closing argument, depicting him as someone who had no idea what the parties agreed to in the contract and was merely repeating things his lawyers had told him.

his testimony, not its admissibility. Such factual arguments are properly directed to the jury, not this appellate court. (Cf. *Morey v. Vannucci*, *supra*, 64 Cal.App.4th at p. 913 ["As trier of fact, it is the jury's responsibility to resolve any conflict in the extrinsic evidence properly admitted to interpret the language of a contract"].)

Finally, we do not agree with Spatial that the testimony should have been excluded under Evidence Code section 352 because it was "unduly and greatly prejudic[ial]" to Spatial's case. "We will not overturn or disturb a trial court's exercise of its discretion under [Evidence Code] section 352 in the absence of manifest abuse, upon a finding that its decision was palpably arbitrary, capricious and patently absurd. [Citations.]" (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1314.) Spatial does not even attempt to make such a showing, but merely asserts the jury was likely "overwhelmed and confused" into believing it should decide the case based on Sowar's personal intentions rather than on the contractual language. In essence, Spatial's argument here, and in its claim that a miscarriage of justice resulted from erroneous admission of the evidence, is that Sowar's testimony should have been excluded because it was especially damaging to Spatial's case. However, " '[t]he "prejudice" referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias . . . and which has very little effect on the issues. In applying section 352, "prejudicial" is not synonymous with "damaging." ' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 320.) Sowar's testimony was not inflammatory. Nor was the jury likely to have been misled into basing its decision on an improper consideration. Among several instructions describing principles of contract interpretation, the court instructed the jury to decide what the parties intended at the time the contract was created, considering the usual and ordinary meaning of its language and the circumstances surrounding the making of the contract. We presume the jury understood and followed these instructions. (*People v. Harris* (1994) 9 Cal.4th 407, 426; *Goehring v. Chapman University* (2004) 121 Cal.App.4th 353, 374.)

Because we conclude the trial court did not err in admitting the challenged testimony, we need not address the parties' arguments regarding whether any such error resulted in a miscarriage of justice under the facts and circumstances of this case.

DISPOSITION

The judgment is affirmed. Autodesk shall recover its costs on appeal.

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McGuiness, P.J.

We concur:

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Parrilli, J.

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Siggins, J.