

(Copenbarger v. Morris Cerullo World Evangelism, (2018) 29 Cal.App.5th 1.)

Invoices must be presented at trial and be admitted into evidence to become admissible under the business record exception and the second evidence rule.

FACTS/PROCEDURE

In August 2012, Morris Cerullo World Evangelism, Inc. (MCWE) and the Maag Trust entered into a settlement agreement whereby MCWE “will dismiss an unlawful detainer action with prejudice.” In October 2012, MCWE sent a letter to the Maag Trust purporting to rescind the settlement agreement. Lloyd Copenbarger (Copenbarger), A Trustee of the Maag Trust sued MCWE for declaratory relief and breach of the settlement agreement made to resolve various disputes, including the unlawful detainer action.

The Maag Trust alleged that MCWE breached the settlement agreement by failing to dismiss the unlawful detainer action with prejudice. They sought, as damages, attorney fees incurred in that action from the date of the settlement agreement to the date on which MCWE did not dismiss the action. In 2015, MCWE amended its cross-complaint to assert reformation and specific performance of the settlement agreement. After the amended cross-complaint, MCWE finally dismissed the unlawful detainer action without prejudice.

At trial, the Maag Trust’s only theory for damages were the \$118,000 dollars it incurred in attorney fees during the unlawful detainer action. To support their claim for attorney fees, Copenbarger testified that he had received invoices from his attorney in the amount of \$118,000. Copenbarger did not produce the invoices or his attorney. MCWE objected to Copenbarger’s testimony based on hearsay and it violated the secondary evidence rule. The trial court awarded the Maag Trust \$118,000 in damages. MCWE appealed, arguing that the Maag Trust failed to present competent evidence to prove the amount of damages.

DISCUSSION

On appeal, the Court of Appeal for the Fourth District reversed. The court agreed that if the invoices had been properly authenticated, they would have been admitted as a business record. However, Copenbarger had failed to even produce the invoices at trial or admitted them into evidence.

Additionally, Copenbarger failed to produce any testimony from its attorneys, or anyone else, of billing rates and the worked performed in the unlawful detainer action. The Maag Trust only offered the testimony of Copenbarger, whose testimony about the invoices was hearsay and violated the secondary evidence rule. As the evidence was insufficient to support the judgment, the court reversed the decision and entered judgment in favor of MCWE.

The court did note that the Maag Trust could recover, as damages for breach of the settlement agreement, its attorney fees incurred in the unlawful detainer action. The purpose for the Maag Trust entering the settlement agreement was to avoid continuing to run up attorney fees in the unlawful detainer action. The problem, however, was the Maag Trust failed to provide evidence to support its attorney fees.