

When 70 Percent Is Sufficient . . . . Court of Appeal Rules That Trial Court Must Award Attorney's Fees In Breach Of Contract Action To Party Which Achieved A Significant Majority Of The Relief It Sought

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In a case which further delves into the limits of a Trial Court's discretion to determine whether there is a "prevailing party" in a breach of contract case where attorney's fees may be awarded, the California Court of Appeal, Fourth District ruled in Reginald De La Cuesta v. Esther Benham (2011) DJDAR 4606 ("De La Cuesta Case") that, in a commercial landlord dispute, where the landlord was awarded approximately 70 percent of the damages sought and the tenant's fraud defenses were rejected, the Trial Court was required to award attorney's fees to the landlord as a prevailing party.

Under California Civil Code § 1717, attorney's fees are awardable in a breach of contract case where the contract provides that the prevailing party is entitled to fees. The important question, of course, is whether there is a prevailing party in the first place. Civil Code § 1717(b)(1) provides some guidance as to that issue in providing that:

"[t]he court . . . shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment . . . . the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section."

In 1995, the California Supreme Court in Hsu v. Abbara (1995) 9 Cal.4th 863 ("Hsu Case") provided further guidance in ruling that a Trial Court was required to award attorney's fees where there was an "unqualified win". In the Hsu Case, a real estate dispute between would be buyers and erstwhile sellers, the buyers brought suit for specific performance and then lost at trial when the Trial Court ruled that a new offer made by the prospective buyers after a purported acceptance by the sellers had extinguished a prior counteroffer. The Supreme Court, in that case, first ruled that attorney's fees must be awarded under Civil Code § 1717 where one party has achieved an "unqualified" victory and then awarded fees to the sellers. Insofar as cases where there is not an "unqualified

win", the California Supreme Court went on to comment that the Trial Court is to examine the totality of the case and then compare the extent to which each party has won and lost. Hsu Case, supra, 9 Cal.4th at 876.

In 2009, the California Court of Appeal in Silver Creek, LLC v. BlackRock Realty Advisors, Inc. (2009) 173 Cal.App.4th 1533 ruled, in another real estate transaction case, that where one party had achieved, by its calculations, an award valued at \$29,750,000.00, and the other party had achieved an award which was valued at \$1,130,000.00, the Trial Court had no discretion to withhold attorney's fees from the party which obtained the greater relief.

The De La Cuesta Case sheds even more light.

In the De La Cuesta Case, another real estate dispute, Richard De La Cuesta rented five suites to Esther Benham and an entity she owned for \$15,000.00 a month in Laguna Hills, California. In November 2008, Benham stopped making rental payments and in December 2008 a three day notice was served by De La Cuesta. An unlawful detainer complaint followed in January 2009, with a trial on the unlawful detainer matter being set for February 23, 2009. Benham answered the unlawful detainer complaint and denied that she owed any money on the basis that the rental value was zero due to sewer and water leaks. The day before the unlawful detainer trial, Benham vacated the premises and the matter was converted to an ordinary civil litigation matter, which went to trial on November 30, 2009. At the trial, the Trial Court rejected all of Benham's fraud claims. As for the landlord's damages, De La Cuesta had sought \$103,000, but the Trial Court reduced that amount to \$69,500 due to water leaks and for overcharges in regard to common area charges. The Trial Court, in ruling on a post-trial motion for attorney's fees, found that the judgment resulted in a "good news/bad news situation" for both parties and awarded no attorney's fees to either party.

On appeal, after reviewing Civil Code § 1717 and case law construing it, including the Hsu Case, the Court of Appeal ruled that, because the tenant had failed to obtain any relief on her fraud claims and that the landlord had recovered a solid majority of all sums which were sought in the litigation, the Trial Court was required to find the landlord had prevailed for purposes of entitlement to attorney's fees. Apparently important in its ruling, the Court of Appeal noted that plaintiff's counsel often "err on the side of overstating the extent of the claims" in an exercise of caution and should not be penalized for doing so.

The De La Cuesta Case is important for counsel in evaluating breach of contract cases inasmuch as the Trial Court may now well be compelled to award attorney's fees to a "solid" but not unequivocal winner in court.

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