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When A Win Is A Win: Court Of Appeal Rules That Attorney's Fees Under Contract Must Be Awarded Under Civil Code Section 1717 To That Party Which Achieves Its Main Litigation Objective Even Though There Were Two Contract Claims In The Case And Each Side Won A Claim

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It has long been the rule in California law that a victorious party in a breach of contract case is entitled to attorney's fees where the parties' contract provides for the award of attorney's fees to the prevailing party. See, Civil Code section 1717 and Hsu v. Abbarra (1995) 9 Cal.4th 863. Thorny issues have arisen, however, as to whether attorney's fees are to be awarded, and to which party, where a party does not achieve all relief sought or where there are competing contract claims and both sides obtain a measure of relief. The recently published opinion in Silver Creek, LLC v. BlackRock Realty Advisors, Inc. (2009) Westlaw 1394183 ("Silver Creek Case"), issued by the California Fourth District Court of Appeal on May 20, 2009, sheds further light on this important issue. The Silver Creek Case is noteworthy given that attorney's fees were awarded even though the prevailing party (i) had lost on one of two contract claims and (ii) was ordered to return a deposit of \$1,130,000.

When Attorney's Fees Are Awardable Under Contract

If neither party achieves a complete victory on all the contract claims, the courts have ruled that it is "within the discretion of the trial court to determine which party prevailed on the contract or whether, on balance, neither party prevailed sufficiently to justify an award of attorney fees." Scott Company of California v. Blount, Inc. (1999) 20 Cal.4th 1103, 1109. The presumption is that, because the statute governing recovery of attorney's fees (Civil Code section 1717) allows such discretion, the trial court has also been "empowered to identify the party obtaining 'a greater relief' by examining the results of the action in relative terms: the general term 'greater' includes '[l]arger in size than others of the same kind' as well as 'principal' and '[s]uperior in quality.'" [citations omitted]. Sears v. Baccaglio (1998) 60 Cal.App.4th 1136, 1151. In making that determination, the trial court "is to compare the relief awarded on the contract claim or claims with the parties' demands on those same claims and their litigation objectives as disclosed by the pleadings, trial briefs, opening statements, and similar sources." Hsu v. Abbarra, supra, 9 Cal.4th at 876.

Silver Creek Case Decision

The facts of the Silver Creek Case are common enough.

In that matter, Silver Creek, LLC ("Silver Creek") and another entity entered into agreements in 2005 with BlackRock Realty Advisors, Inc. ("BlackRock") to convey two commercial properties for a total purchase price of \$29,750,000. BlackRock, in turn, deposited a total of about \$1,130,000 into escrow accounts. The purchase agreements specified that, among other things, BlackRock would assume existing loans on the two properties, the loan assumption agreements had to be satisfactory to Silver Creek and the sale transactions would close no later than July 1, 2005.

During the escrow period, a dispute arose between the parties regarding the terms of the loan assumption agreements. Shortly after the July 1, 2005 deadline for closing, Silver Creek notified BlackRock that it considered the agreements and escrow terminated for failure to comply with the closing deadline and to obtain satisfactory loan assumption agreements. After BlackRock declined to acknowledge the termination, Silver Creek notified BlackRock of its position that it was entitled to terminate the agreements but offered to relinquish its rights to the \$1,130,000 deposit upon execution of an acceptable settlement agreement.

After BlackRock declined to at least formally respond to that notice, Silver Creek filed a declaratory relief action seeking a declaration that it had validly terminated the agreements and was entitled to retain the \$1,130,000 deposit. BlackRock filed a cross-complaint alleging that Silver Creek had breached its obligation to act reasonably in approving a loan release and that its purported termination of the agreements was invalid. BlackRock sought damages and return of its deposit for Silver Creek's alleged breach of the agreements or, alternatively, specific performance of the agreements. Before trial, the parties confirmed that entitlement to the \$1,130,000 deposit was a disputed issue.

The matter proceeded to a bench trial and the court heard testimony from a Silver Creek representative that it did not want the deposit, but wanted to get the properties back on the market. BlackRock representatives testified that their goal was to obtain title to the two properties and the entity was not willing to merely accept its deposit and walk away from the deal. The trial court later issued a detailed statement of decision finding in favor of Silver Creek on the complaint and BlackRock's cross-complaint, but concluded that BlackRock was entitled to a return of the \$1,130,000 deposit.

In its statement of decision, the trial court noted that the primary issue before it was whether Silver Creek was in default of the agreements when it gave notice of the termination and “secondarily” the proper disposition of the deposit. The trial court found that Silver Creek did not act in bad faith or engage in any financial impropriety or deceptive or sharp practices and had “in every respect acted in good faith.” The trial court further found that BlackRock had not done what it was required to do under the agreements and was not “in any respect ready to perform” under the agreements by the July 2005 deadline. However, based on the language of the agreements which provided that BlackRock was to receive the deposit back if it was unable to negotiate an assumption of the loans, the trial court also found that BlackRock was entitled to the return of the seven figure deposit.

Silver Creek later filed a motion for attorney's fees claiming it was the prevailing party on the contract under Civil Code section 1717 and the agreements. Silver Creek noted that the attorney's fee clause in the agreements awarded fees to the prevailing party and contained expansive language which provided “[t]he parties intend this provision to be given the most liberal construction possible and to apply in any circumstances in which such party reasonably incurs expenses.”

The trial court denied Silver Creek's motion for attorney's fees on the basis that it failed to obtain “an unqualified victory” because BlackRock was entitled to return of the deposit. On appeal, the Court of Appeal first dismissed Silver Creek's contention that the issue of the deposit had not been litigated. The Court of Appeal also acknowledged that there were two contract issues which were litigated (i) the propriety of Silver Creek's claim of default on the part of BlackRock and (ii) the return of the deposit. The Court of Appeal further acknowledged that Silver Creek had been defeated on one of the two issues before the trial court and had not achieved an unqualified victory.

Nevertheless, the Court of Appeal ruled that the trial court had indeed abused its discretion by finding neither party had obtained greater relief than the other because each party won a contract issue and lost a contract issue. The Court of Appeal ruled that an award of attorney's fees was mandated because, in that case, the disposition of the properties was the primary issue which was litigated and the value of the properties, over \$29,000,000, vastly eclipsed the amount of the deposit. Therefore, a finding that Silver Creek had achieved its main litigation objective was mandated.

We note that the Court of Appeal rejected BlackRock's equitable argument that there had been no finding of wrongdoing on its part. The Court of Appeal, in that regard, stated that any equitable considerations must be tied to litigation success on the claims presented.

The Silver Creek Case will likely be cited for quite some time. It is indeed an important decision. Where a party to a contract matter prevails on the "primary" issue in the case, it would appear that an award of attorney's fees is mandated. Equitable considerations unrelated to "litigation success" also appear to now be irrelevant. Nevertheless, the reach of Silver Creek Case may be limited. This is so because the disposition and gross value of the two commercial properties greatly outweighed, in dollar terms, the deposit. Also, it appears that the litigants agreed as to what the "main litigation objective" was. The attorney's fees clause was also especially broad. Therefore, there may be many cases where, based on the measurement of litigation success, attorney's fees will not be awarded.

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We are pleased to present you with the May 2009 edition of The Morrison Law Journal. In this edition, we discuss the decision of the California Court of Appeal, Fourth District decision in Silver Creek, LLC v. BlackRock Realty Advisors, Inc. (2009) Westlaw 1394183 where the Court ruled that attorney's fees under contract must be awarded under California Civil Code section 1717 to that party which achieves its main litigation objective even though (i) there were two contract claims in the case and each side won a claim and (ii) the prevailing party was ordered to return a \$1,130,000 deposit. We trust you will find this to be interesting and informative reading.