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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

ALCHEMY COMMUNICATIONS, INC., Plaintiff and Appellant, v. CARLSBERG LAX CENTER, LLC, et al., Defendants and Respondents.	B278068 (Los Angeles County Super. Ct. No. BC538178)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard L. Fruin, Jr., Judge. Affirmed in part, reversed in part.

Saied Kashani for Plaintiff and Appellant.

David M. Bass & Associates, David M. Bass; Law Offices of Edward A. Hoffman and Edward A. Hoffman for Defendants and Respondents.

Plaintiff and appellant Alchemy Communications, Inc. (Alchemy) leased a portion of a commercial building from defendant and respondent Carlsberg LAX Center, LLC (Carlsberg) for 10 years beginning in 2006 for use as a data center.[1] In 2011, Carlsberg determined that it had not been billing Alchemy for the large amounts of electricity required to power the chillers that cooled the equipment in the data center. In 2012, Carlsberg installed meters to measure the electricity used by the chillers for the data center and demanded that Alchemy pay the full cost of this electricity. Carlsberg also invoiced Alchemy for a portion of the cost for the power and maintenance of the chillers before the meters were installed. Alchemy refused to pay, asserting that the lease required Carlsberg to pay these expenses for the chillers.

Alchemy filed suit on March 4, 2014 against Carlsberg and its owner, defendant and respondent Rancho Carlsbad Partners (Rancho). The complaint alleged causes of action for declaratory relief, breach of contract, unjust enrichment, and specific performance. Carlsberg filed a cross-complaint, alleging causes of action for breach of contract, unjust enrichment, and declaratory relief, among others. Alchemy amended its complaint in 2015 to add defendant and respondent, 6171 Century, LLC (Century), to the case after Century purchased the property from Carlsberg. Century thereafter joined in Carlsberg's cross-complaint, and the two companies

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[1] The building Alchemy leased was known at the time as the Carlsberg LAX Center. To distinguish between the building and defendant Carlsberg LAX Center LLP, in this opinion we refer to the defendant as "Carlsberg" and the building as the "LAX Center."

acted together under the same representation throughout the remainder of the case.

After a bench trial, the court found that the lease required Alchemy to pay for the electricity needed to run the chillers. The court awarded Carlsberg $379,888.70 in damages, and Century $205,494.91. The court also awarded the defendants $895,163.42 in attorney fees and costs.

Alchemy contends that the trial court erred in its interpretation of the lease, and that the attorney fee award was excessive. We reverse with respect to the court's award of damages for the six-month period before Carlsberg installed meters on the chillers. In all other respects, we affirm.

FACTUAL AND PROCEDURAL SUMMARY

This dispute arises from Alchemy's lease from Carlsberg of space in an office building located on Century Boulevard, near Los Angeles International Airport. The building, then known as the Carlsberg LAX Center (LAX Center), consisted of three stories and a basement. At some point in the past, Western Airlines had used the building's basement as a data center for its computer operations, but the basement had been vacant for several years in 2005, when Carlsberg advertised the 21,904 square foot space as suitable for a modern data center. On December 30, 2005, Alchemy agreed to lease the basement from Carlsberg for 10 years, from March 2006 to March 2016, at a base rent that rose from $30,665.60 per month to $37,236.80 over the course of the lease term. Alchemy retained an option to renew for two additional five-year terms at prevailing market rates.

Alchemy's data center business gives its customers the ability to store large amounts of data and make that data accessible via the Internet. To offer this service, Alchemy

operates large numbers of computer servers that are always powered on and connected to the Internet. As a result, Alchemy requires vastly more electricity than a typical tenant of an office building, both to power the servers and to prevent them from overheating. In addition, Alchemy needs a fast connection to the Internet and a backup power supply to protect against power outages.

Alchemy estimates that it spent approximately $1.5 million at the beginning of the lease term to modernize the facility to fit its needs. This included installing redundant generators in the building's parking lot to provide additional backup power, and digging under the nearby streets to install a fiber optic connection to the Internet. Some of the other infrastructure Alchemy needed was already in place at the LAX Center when Alchemy signed the lease, including an uninterruptible power supply (UPS) system for immediate backup power.

The building also had a suitable heating, ventilation and air conditioning (HVAC) system in place at the beginning of the lease term. A data center needs an enormous amount of cooling power to keep the computer and telecommunications equipment from overheating. At the beginning of Alchemy's lease, the data center had three large chillers, which were functional but at more than 25 years old were nearing the end of their useful lives. The chillers, which form the heart of the HVAC system, were located in the basement outside the data center. They take in water, cool it, and send it into the data center. When the cold water enters the data center, air handlers inside the data center use the cold water to circulate cool air through the data center. Thus, the chillers and air handlers work together to cool the building, but they are separate components of the HVAC system.

Most relevant for the purposes of this case, the chillers and air handlers are powered separately. The air handlers receive their power from inside the data center, but the chillers are located outside the data center and have a power supply outside the data center. Two of the three chillers at the LAX Center were used solely to cool the data center. The third chiller provided air conditioning to the three aboveground stories of the building. According to Carlsberg, the third chiller originally also provided ordinary air conditioning to the data center in the basement, but the parties agree that at least for most of the duration of the lease, the third chiller did not provide any cooling to the data center.

The Los Angeles Department of Water and Power (DWP) used a single meter to measure the use of electricity in the entire building. Carlsberg, as the landlord, was responsible for paying the full amount of the bill to the DWP, and separately billed Alchemy and other tenants in the building for their share of the bill. At the time Alchemy's lease began, there were three submeters in the data center. These could be used to measure electricity used inside the data center and for the UPS. This allowed Carlsberg to track Alchemy's power consumption for its computer and telecommunications equipment, and for the air handlers. But there was no submeter to measure the power used by the chillers.

A. *The Lease Documents*

The lease agreement between the parties does not explicitly state who is responsible for paying for the electricity for the chillers. The agreement consists of a 32-page document labeled "Lease," and a 17-paragraph document labeled "Addendum to

Lease."[2] (Full capitalization omitted.) Both the Lease and Addendum contain sections addressing electrical usage.

The Lease is a standard lease used by the landlord, with minimal adaptations. Section 10(a) required Carlsberg to furnish "such amounts of air[ ]conditioning, heating and ventilation as may be required for the comfortable use and occupation of the [p]remises" during "normal business hours." Normal business hours were defined as Monday through Friday from 8:00 a.m. to 6:00 p.m., and Saturdays from 9:00 a.m. to 1:00 p.m., except holidays. Carlsberg was also required "to furnish the [p]remises with reasonable amounts of electric current for normal lighting . . . and water for lavatory and drinking purposes." Carlsberg was allowed to "impose a reasonable charge for any utilities or services, including electric current, required to be provided by [it] by reason of any substantial recurrent use of the [p]remises at any time other than normal business hours."

Section 10(b) addressed Alchemy's use of additional electricity beyond that described in section 10(a). It provided that Alchemy could not "without the written consent of [Carlsberg] use any apparatus or device outside of the [p]remises which will increase the amount of electricity or water usually supplied for use of the [p]remises as a general office space; nor connect any apparatus, machine or device with water pipes or electric current (except through existing electrical outlets in the [p]remises)." If Alchemy required electrical power "in excess of that which [Carlsberg] is obligated to furnish under

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[2] For the sake of clarity, we use the term "Lease" to refer to the primary 32-page lease document, and "Addendum" to refer to the 17-paragraph section labeled "Addendum to Lease." (Full capitalization omitted.)

[s]ection 10(a), [Alchemy] shall first obtain the consent of [Carlsberg] to such excess use, which [Carlsberg] may refuse or condition in its absolute discretion. [Carlsberg] may cause an electric current meter to be installed in the [p]remises to measure the amount of electric current consumed for any such excess use." Alchemy agreed "to pay to [Carlsberg] promptly upon demand the cost for all such electric current consumed for any such excess use as shown by such meter."

The Lease included a provision allowing Carlsberg to bill Alchemy for increases in common expenses as "additional rent." (Capitalization omitted.) This included the cost of utilities, as well as property taxes, insurance, and operating expenses. To the extent these expenses rose in subsequent years above their 2006 levels, Carlsberg was entitled to bill Alchemy for its share of the increase. Because Alchemy rented 26.9 percent of the building's square footage, it was required to pay 26.9 percent of the increased cost.

The Addendum provided that, in case of a "conflict between any terms and conditions in the Lease and the terms and conditions in [the] Addendum, [the] Addendum shall control." The Addendum's terms were specific to Alchemy's use of the basement space. The Addendum contained two paragraphs addressing the provision of electricity. Paragraph 6 required Carlsberg to "install a submeter to measure [Alchemy]'s use of electrical power in the [p]remises for the operation of [Alchemy]'s data processing, air handling and telecommunications equipment. Notwithstanding anything in this Lease to the contrary, [Alchemy] shall pay for all such electrical power. This power shall be available . . . [24] hours per day, seven . . . days a week." Paragraph 7 provided that, "[n]otwithstanding anything

in this Lease to the contrary, except for the submetered electrical power referred to in [Paragraph 6] above, [Carlsberg] shall supply electrical power to the premises for light and HVAC at all hours (24 hours/7days) without charge to [Alchemy]."

B. *The Parties' Performance Under the Lease*

In the initial years of the lease term, Carlsberg billed Alchemy for the power usage indicated on the submeters as well as for Alchemy's 26.9 percent portion of increased shared expenses. It did not bill Alchemy for any electricity used by the chillers, which did not have separate submeters. In May 2009, Carlsberg came to suspect that Bill Geary, the primary facility manager for the building, was embezzling funds and mismanaging the properties in his portfolio, and Carlsberg terminated its contract with Geary's management company.[3] According to Carlsberg, Geary kept poor records and refused to cooperate with Carlsberg's efforts to obtain information. As a result, Carlsberg had a poor understanding of the building's finances at the time.

Carlsberg hired a new management company, which soon realized that the building's utility bills were much higher than expected, but it did not initially understand why. Carlsberg estimated that for the first nine months of 2010, it paid $782,848 in electric bills, but received reimbursements from tenants for only $512,303, leading to a deficit of $270,545, or more than $30,000 per month. Steven Weed, an employee of Carlsberg's parent company, wrote in an email to Alchemy that he expected that the total electric bills for an office building of that size

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[3] Carlsberg does not allege that Alchemy was involved in the embezzlement.

without a data center would be only around $200,000 per year. In September 2010, the cost of electricity reached a financial crisis for Carlsberg, and the DWP placed a notice on the building that its power was scheduled to be cut off due to nonpayment.

At around this time, Carlsberg hired a consultant to investigate the problems with the building's power usage. The consultant filed a report in February 2011 pinpointing two primary sources of the problems: aging infrastructure and inadequate metering. The building's three chillers, which had been manufactured in 1977, were past their useful life and were operating inefficiently. In addition, there were no submeters to track Alchemy's use of power to operate the chillers, and the existing submeters did not take into account fluctuations in electrical billing based on demand. The consultant recommended replacing the three chillers with larger, more efficient ones, and adding new submeters to allow Carlsberg to measure Alchemy's use of electricity for the chillers in the data center. In their trial testimony, Carlsberg's new building manager and Weed stated that until the consultant's report, they had no idea that Alchemy was not being billed for the electricity used to power the chillers.

Carlsberg presented the consultant's findings to Alchemy, but the parties disagreed about who should bear the burden to pay for the issues the consultant had identified. Carlsberg took the position that because Alchemy used the two chillers exclusively for its business, Alchemy was responsible for paying for their electricity and maintenance. Alchemy disagreed, contending that the parties' agreements required Carlsberg to pay those expenses. Thus, when Carlsberg sent Alchemy a bill in June 2011 for $341,195.90 for repair and maintenance of the two chillers, as well as additional other expenses for the years

2009 and 2010, Alchemy rejected the bill.[4] Alchemy relented 10 days later, when Carlsberg's management company notified Alchemy that there were "no available funds to cover the [DWP] bills."

The parties attempted to negotiate a solution to stabilize the building's finances and prevent disruption of electricity service. They ultimately agreed that, as of November 2011, Alchemy would begin paying Carlsberg $150,000 per month while they negotiated a permanent resolution. According to Carlsberg, this was part of a "standstill agreement," and the payments were estimates of the amount Alchemy actually owed for rent and utilities each month, to be adjusted once the parties came to an agreement on the exact amount Alchemy owed. For its part, Alchemy characterized these payments as "advances" or "prepayments" of amounts owed in the future rather than estimates of what Alchemy actually owed at that time.

By February 2012, Carlsberg had installed submeters on the chillers and was able for the first time to measure the electricity use for those chillers.

In September 2013, Carlsberg sent Alchemy an invoice for $504,669.03 for utility and maintenance expenses for the years 2009 through 2012. Alchemy refused to pay any part of the $504,669.03 on the ground that the parties' agreements made Carlsberg responsible for all expenses pertaining to the data center chillers.

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[4] This invoice in July 2011 did not include any bill for Alchemy's use of electricity to power the chillers because Carlsberg did not yet know how much power Alchemy was using for this purpose.

C. *Trial Court Proceedings*

Alchemy filed suit in 2014, alleging 13 causes of action, including breach of contract, unjust enrichment, and declaratory relief. Carlsberg filed a cross-complaint, in which Century later joined when it purchased the property from Carlsberg, alleging causes of action for breach of contract, unjust enrichment, and declaratory relief, among others.

After a bench trial, the trial court found that Carlsberg and Century were entitled under the parties' agreement to charge Alchemy for the electricity to power the two chillers that served its data center. The court awarded Carlsberg and Century damages as follows: For the period beginning February 2012 until the end of the lease in 2016, when the new submeters were in place and directly measured the amount of electricity Alchemy was using, the court allowed Carlsberg and Century to collect the full cost of the power as shown on the meters. For the preceding six months, from late August 2011 to February 2012, the court allowed Carlsberg to use meter readings to estimate Alchemy's use of electricity for the chillers, and to collect the full amount of that estimate. Finally, the court awarded contractual attorney fees in favor of Carlsberg and Century.[5]

Carlsberg and Century prepared an accounting of the amount Alchemy owed pursuant to the court's decision and subtracted the amount Alchemy had previously paid in estimated payments. Alchemy submitted objections to Carlsberg's and Century's calculations. The court issued a judgment in favor of

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[5] The court also determined that Alchemy was required to pay a share of the cost to replace the existing chillers with newer, more efficient models, as well as other costs that Alchemy does not challenge in this appeal.

Carlsberg in the amount of $379,888.70, and in favor of Century in the amount of $205,494.91. The court also awarded the defendants $895,163.42 in attorney fees and costs.

DISCUSSION

Alchemy contends that the trial court erred in its interpretation of the lease, and that the lease in fact requires Carlsberg to pay the full cost of electricity for the chillers serving the data center. To the extent the lease was ambiguous on this point, Alchemy contends that the parties' course of performance indicates that Alchemy's interpretation is correct. In the alternative, Alchemy contends that even if Carlsberg's interpretation of the lease is correct, the trial court erred by awarding damages for periods outside the relevant statute of limitations. It further contends that, in any case, the court erred by allowing Carlsberg to recover for Alchemy's estimated power usage for the period from August 2011 to February 2012. Next, Alchemy contends that the trial court could not properly award damages for the period from 2014 to 2016, for which Carlsberg and Century presented no evidence at trial. Finally, Alchemy contends that the trial court's award of attorney fees to Carlsberg and Century was excessive. We agree with Alchemy's argument that the parties' agreements did not allow Carlsberg to collect for Alchemy's power usage for the period from August 2011 to February 2012 on the basis of estimates, but we otherwise affirm.

A. *Responsibility to Pay Cooling Under the Lease*

Alchemy contends that the lease required Carlsberg, and later Century, to provide power for the chillers for the data center at no charge, and that the trial court erred when it concluded otherwise. We disagree. Alchemy's contention is unreasonable

in its interpretation of the language of the Lease and Addendum and is in conflict with the reasonable expectations of the parties. If Alchemy were correct, it would mean that Carlsberg agreed to take on an increasing substantial financial liability without the ability to recoup it from Alchemy.

"The interpretation of a contract is subject to de novo review where the interpretation does not turn on the credibility of extrinsic evidence." (*Morgan v. City of Los Angeles Bd. of Pension Comrs.* (2000) 85 Cal.App.4th 836, 843.) " 'The fundamental rules of contract interpretation are based on the premise that the interpretation of a contract must give effect to the "mutual intention" of the parties. "Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. (Civ. Code, § 1636.) Such intent is to be inferred, if possible, solely from the written provisions of the contract. (*Id.,* § 1639.) The 'clear and explicit' meaning of these provisions, interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage' (*id.,* § 1644), controls judicial interpretation. (*Id.,* § 1638.)" ' " (*E.M.M.I. Inc. v. Zurich American Ins. Co.* (2004) 32 Cal.4th 465, 470.)

Alchemy first argues that the Lease required Carlsberg to provide free electricity for the chillers for the data center. Alchemy notes that section 10(a) of the Lease required Carlsberg to provide, at no extra charge, "such amounts of air[ ]conditioning, heating and ventilation as may be required for the comfortable use and occupation of the [p]remises." Elsewhere, at section 9(a), the Lease provides that "[t]he [p]remises shall be used and occupied only for the purpose

set forth in [s]ection 1(g)." Section 1(g) in turn states that Alchemy's business was a "data and telecommunications center." Alchemy thus argues that in section 10(a), Carlsberg agreed to provide all the electricity for cooling necessary for Alchemy to operate the property for its intended use and occupancy, namely as a data center.

We are not persuaded. The purpose of section 9(a) is not to define "use" or "occupancy," but to limit Alchemy's use of the premises so that it could not change the nature of its business without the landlord's consent. And Alchemy's interpretation of section 10(a) is incompatible with the adjective "comfortable," which modifies "use and occupation." This is the basis of the trial court's interpretation that Carlsberg was required to provide only "comfort air" at no charge. Alchemy objects to the trial court's use of this term, correctly noting that the words "comfort air" do not appear in the Lease or Addendum. But the concept directly follows from the phrase "comfortable use and occupation." The most reasonable interpretation of this phrase is that it refers to the physical comfort of the employees at the facility. It is not reasonable to interpret a standard lease form to include electricity for industrial cooling required to allow hundreds of servers to continue operating without overheating as "comfortable use."[6]

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[6] One other section of the Lease refers specifically to Alchemy's data center operation. In section 10(d), which grants Carlsberg the right to perform inspections and repairs, the Lease states that Carlsberg "understands that [Alchemy] will be operating a data center that is required to be up at all times; [Carlsberg] will make a best effort to schedule such repairs in such a way as to prevent service outages." Although Alchemy argues otherwise, this statement has nothing to do with the

The remainder of section 10(a) supports our conclusion that the phrase "comfortable use and occupation" refers to the cooling required for an office environment. The section requires Carlsberg to provide electricity "for normal lighting . . . , for fractional horsepower office machines and water for lavatory and drinking purposes." The entire section was designed to require Carlsberg to provide enough electricity and other services to allow the facility to be used for ordinary office use.

Indeed, the Lease as a whole is written with the expectation that the tenant would not use significantly more power or water than any other tenant with the same amount of space in the building. As long as this is the case, any annual increase in the building's utility bills can be divided proportionally. Because Alchemy leased 26.9 percent of the building's square footage, it would be responsible for 26.9 percent of any increase. Other tenants in the building would presumably be assessed in the same manner. To prevent any single tenant from benefiting by using a disproportionate amount of electricity, the Lease requires the tenant to "obtain the consent of [l]andlord" before beginning any use of electricity in excess of the ordinary amount. In such a case, Carlsberg was entitled to "cause an electric current meter to be installed in the [p]remises to measure the amount of electric current consumed for any such excess use," and Alchemy agreed "to pay to [Carlsberg] promptly upon demand the cost for all such electric current consumed for any such excess use as shown by such meter."

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amount of electricity Carlsberg must provide. Rather, it simply requires the landlord to schedule its repairs in a way that limits interruptions to the power supply.

Thus, if the agreement between the parties were limited to the Lease without the Addendum, it would be clear enough that Carlsberg was entitled to meter and bill Alchemy for all of the electricity and water it needed to run a data center in excess of the ordinary light, heating, cooling, and water that an ordinary office tenant would use. The electricity the chillers used to provide cooling to the data center was "in excess of that which [Carlsberg] is obligated to furnish under [s]ection 10(a)."

But the agreement between Alchemy and Carlsberg also includes the Addendum, which by its own terms would "control" in case of any "conflict between any terms and conditions in the Lease and the terms and conditions in [the] Addendum." Most relevant are sections 6 and 7 of the Addendum, which deal with Alchemy's use of electricity for its data center. We conclude that those sections do not conflict with sections 10(a) and 10(b) of the Lease with regard to paying for electricity for the chillers.

Section 6 provides that Carlsberg "shall install a submeter to measure [Alchemy]'s use of electrical power in the [p]remises for the operation of [Alchemy]'s data processing, air handling and telecommunications equipment. Notwithstanding anything in this Lease to the contrary, [Alchemy] shall pay for all such electrical power. This power shall be available . . . [24] hours per day, seven . . . days a week." Section 7 provides that, "[n]otwithstanding anything in this Lease to the contrary, except for the submetered electrical power referred to . . . above, [Carlsberg] shall supply electrical power to the premises for light and HVAC at all hours (24 hours/7days) without charge to [Alchemy]." The parties agree that "data processing, air handling and telecommunications equipment" does not include chillers.

Alchemy contends that the two sections together require the landlord to provide unlimited free electricity for Alchemy's chillers. According to Alchemy, section 6 allows Carlsberg to meter Alchemy's usage of electricity in three specific areas: data processing, air handling, and telecommunications equipment. Alchemy does not dispute that it was responsible for the full cost of electricity for these three areas. But Alchemy contends that section 7 forbids Carlsberg from metering or billing Alchemy for any other aspect of the HVAC system. Because the chillers were part of the HVAC system, Alchemy argues that Carlsberg was required to supply electrical power for the chillers "at all hours . . . without charge." At most, according to Alchemy, Carlsberg (or Century as Carlsberg's successor) would be entitled to bill Alchemy for a 26.9 percent share of the increased total electrical bill resulting from the use of the chillers.

Carlsberg disagrees with Alchemy's interpretation of section 7. It argues that the function of section 7 is not to provide Alchemy with an unlimited amount of free electricity to power its chillers, but rather to modify section 10(a) of the Lease. Section 10(a) required Carlsberg to provide sufficient utility service for the "comfortable use and occupation of the [p]remises" only during "normal business hours." Outside those hours, the Lease allowed Carlsberg to charge Alchemy separately for power usage. According to Carlsberg, section 7 of the Addendum entitles Alchemy to ordinary amounts of electricity 24 hours per day, seven days a week, in recognition of the fact that Alchemy's business is not limited to normal business hours.

We agree with the trial court that Carlsberg's interpretation is superior. The function of section 7 was to

extend the obligation to provide ordinary amounts of power 24 hours per day. This interpretation harmonizes sections 10(a) and 10(b) of the Lease with the Addendum and appears to fit what would be the reasonable expectation of the parties. The Lease provided, as is common in commercial leases in Los Angeles, that each tenant pay its share of electricity, here using the proportional footage formula, and allowed the landlord to increase rent as the landlord's expenses for utilities, including electricity, increased. If the parties intended to depart from that principle with respect to a single very large expense, we would expect an explicit statement to that effect in the contract. Moreover, no extrinsic evidence supports a conclusion that the parties intended to abandon the principle that a tenant pay its proportional share of these changing costs. Indeed, the most relevant extrinsic evidence was Alchemy's lease, in 2009, of space in another Los Angeles data center in which Alchemy agreed to pay for the electricity used to cool its equipment.

Further, the cost of providing free electricity for a high user like Alchemy was limited only by the physical capacity of the rented space to hold servers. In his trial testimony, Weed, who worked for Carlsberg's parent company Rancho, estimated the cost to operate the chillers for the data center at $25,000 to $30,000 per month.[7] Alchemy's base rent ranged from $30,665.60 to $37,236.80 per month over the course of the lease term, not including its 26.9 percent share of increases in common expenses. If Alchemy's interpretation of the contract

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[7] Alchemy does not challenge the accuracy of this estimate, and both parties' calculations of the amount of electricity Alchemy used suggest that Weed's estimate was not far from the mark.

were correct, then Carlsberg's payments to run the chillers would amount to significantly more than half of the rent payments it received from Alchemy. And as Carlsberg points out, nothing in the contract prevented Alchemy from expanding the number of servers in the data center, requiring greater and greater amounts of electricity for cooling. Under Alchemy's interpretation, Alchemy would be free to expand its electricity use while paying for only 26.9 percent of the increased cost. It would not require a massive increase in either electric rates or the number of servers in the data center for Carlsberg's electrical payments for Alchemy's benefit to equal or even outstrip the rent it was receiving each month.

Alchemy argues that Carlsberg received additional benefits beyond the payment of rent, and that these benefits made it worthwhile for Carlsberg to pay for Alchemy's cooling expenses. Alchemy notes that it paid more than $1 million to upgrade the facility, including installing new generators and adding a better fiber optic connection to the data center. These improvements would remain with the building after Alchemy's tenancy ended. We are persuaded by Carlsberg's response—that there is no evidence that the improvements were part of the consideration at the time the contract was signed, and that the benefits of the improvements after 10 years of depreciation during Alchemy's occupancy would be questionable at best.

Alchemy also argues that Carlsberg's interpretation of the contract is absurd because it was impossible for Carlsberg to separate electricity used by the chillers to provide "comfort air" from electricity that cooled the equipment in the data center. At least for the majority of the duration of the lease, all cooling in the data center came from the same two chillers. The submeters

could not and did not separate the electricity used to keep the data center at a reasonable temperature for employees from the electricity used to keep Alchemy's equipment from overheating. Carlsberg acknowledges this problem. It explains that the building's cooling system was originally designed to use the third chiller to provide normal air conditioning to the entire building, including the data center. Thus, the shared chiller would have provided "comfort air" to Alchemy. At some point before 2011, however, the building's HVAC system was changed so that the shared chiller provided no cooling at all to the data center. To compensate for the free air conditioning Alchemy was entitled to, Carlsberg deducted $1,500 per month from Alchemy's electric bill. We find Carlsberg's explanation reasonable.

Finally, Alchemy argues that the course of the parties' performance favors its interpretation of the contract. Because Carlsberg did not measure or bill Alchemy for the electricity to power the chillers for the first several years, we should infer that the parties intended for Alchemy to be entitled to free electricity all along. We disagree. The course of performance evidence here supports that Carlsberg's failure to bill Alchemy for electricity was not based on its interpretation of the contract, but rather on its negligence in recognizing that it was not being fully compensated for Alchemy's high electricity usage.

B. *Damages Based on Estimated Electric Usage*

Alchemy contends that the trial court erred by awarding Carlsberg damages for the full cost of cooling the data center for the six-month period before Carlsberg installed functioning submeters on the chillers. This is purely a question of contractual interpretation, and we therefore review de novo. (*Morgan v. City of Los Angeles Bd. of Pension Comrs.*, *supra*,

85 Cal.App.4th at p. 843.) We agree with Alchemy that Carlsberg was allowed to collect damages based only on actual meter readings, and we, therefore, reverse this portion of the judgment.

Carlsberg began installing new submeters in September 2011, but these new meters did not begin to measure Alchemy's use of electricity for the chillers until approximately six months later, in February 2012. Carlsberg nevertheless demanded in its complaint that Alchemy pay the cost of electricity for the chillers as early as 2009. The chillers were not metered during that time, so Carlsberg based its claims on estimates. Because Alchemy used at least 85 percent of the building's electricity in the years after the meters were installed, Carlsberg billed for 85 percent of the total cost of electricity for the years 2009 through 2011.

The trial court awarded damages in favor of Carlsberg for only the six months immediately prior to the installation of the new submeters. The court noted that in order to collect from Alchemy for excess use of electricity, section 10(b) of the Lease required Carlsberg to install a submeter to measure the amount used. In return, Alchemy "agree[d] to pay to [Carlsberg] promptly upon demand the cost for all such electrical current consumed for any such excess use *as shown by such meter*." (Italics added.)

The court disallowed Carlsberg's manner of estimating the amount of electricity Alchemy used. Rather, the court ordered Carlsberg to prepare a new estimate based on actual meter readings. The court explained that it "assumes that actual meter readings may be extrapolated backwards, incorporating the DWP rates for the earlier period, without loss of accuracy. However, the testimony is that such adjustments are only valid for a

limited time period, and the court has limited that time period to six months."

The trial court's ruling on this point was inconsistent with the terms of the lease. Alchemy was required to pay only for the cost of excess electricity "as shown by [the] meter." And until the meter was installed, there could not be anything "shown by [the] meter." In determining Alchemy's use of electricity for the six months prior to the installation of electric meters, Carlsberg calculated Alchemy's average use of electricity per hour for the first six months that the meters were in operation and assumed that Alchemy used the same amount of electricity for the preceding six months. This calculation was thus based on meter readings, but not meter readings of the actual amount of electricity Alchemy used for the six-month period in question. This method may have yielded a reasonably accurate estimate, but the accuracy of Carlsberg's estimates is beside the point. It was not what the parties had agreed to under the Lease and Addendum.

C. *The Statute of Limitations*

Alchemy contends that the trial court erred by allowing Carlsberg to recover damages for 2009 and the beginning of 2010, which Alchemy argues were outside the four-year statute of limitations for claims arising from a written contract. (See Code Civ. Proc., § 337, subd. (a).) "It is a question of law whether a case or a portion of a case is barred by the statute of limitations, and we are not bound by the trial court's determination and instead conduct a de novo review." (*Pugliese v. Superior Court* (2007) 146 Cal.App.4th 1444, 1448.)

In its tentative statement of decision, the trial court instructed Carlsberg and Century as prevailing parties to

prepare a judgment. In support of its proposed judgment, Carlsberg prepared a detailed statement of the amount of damages it believed it was entitled to. This statement included an accounting of the amounts Carlsberg claimed Alchemy was required to pay for the years 2009 to 2014 in multiple categories, including utilities, repairs and maintenance. For example, for the year 2009, Carlsberg stated that Alchemy was responsible for $14,850.72 for water, $6,078.36 for sewer, $531,872.36 for electricity, and $22,904.73 for administrative expenses such as office and telephone charges, among other payments. With respect to its claims for electricity use, Carlsberg explained that it was assessing Alchemy "based on the actual meter readings and [DWP] bills for the period of January 2009 through July 2011."

Alchemy argued that Carlsberg was not entitled to damages for the years 2009 and early 2010 because it had failed to make a timely demand for payment. Carlsberg first demanded payment for the expenses in question in a reconciliation statement issued in September 2013 and revised in January 2014. It reasserted the claims in its cross-complaint, which it filed on June 16, 2014. Alchemy advanced two theories in support of its claim that these demands were untimely. First, it argued that section 5 of the Lease required Carlsberg to submit its claim for all expenses other than basic rent for each year "[w]ithin 120 days following the end of [the] . . . year, or as promptly thereafter as practicable." Second, Alchemy argued that Carlsberg had failed to meet the four-year statute of limitations for damages arising from a written contract. (See Code Civ. Proc., § 337, subd. (a).) The trial court implicitly

rejected these arguments when it issued a judgment awarding Carlsberg the full amount it claimed.

On appeal, Alchemy advances only the second of these two contentions and argues once again that Carlsberg failed to file its cross-complaint within the four-year statute of limitations. We are not persuaded. Parties may be estopped from asserting the statute of limitations under Code of Civil Procedure section 337, subdivision (a), if they have induced the opposing party to delay bringing suit. As the court explained in *County of Santa Clara v. Vargas* (1977) 71 Cal.App.3d 510, 524, " 'one cannot justly or equitably lull his adversary into a false sense of security and thereby cause him to subject his claim to the bar of the statute of limitations, and then be permitted to plead the very delay caused by his conduct as a defense to the action when brought.' " (Accord, *Woollomes v. Gomes* (1938) 26 Cal.App.2d 461, 463 [" 'where a party has been induced by the debtor to forbear suit until his right of action is barred by the statute, the latter will be estopped to say that the action is brought too late' "].)

Carlsberg argues, and we agree, that Alchemy induced it to delay asserting its claims by agreeing to a "standstill agreement," in which they deferred their claims against one another in the hope that they could reach a compromise out of court. Alchemy does not deny that estoppel would apply if such an agreement existed. Rather, Alchemy argues that it never made any such agreement. We disagree.

In October 2012, Alchemy and Rancho, Carlsberg's parent company and codefendant, entered into a written contract in which they agreed to replace the existing chillers, with Alchemy paying two-thirds of the cost of the replacement. Although that agreement primarily dealt with questions concerning the

replacement of the chillers, it also included a provision regarding the status of the parties' other disagreements. The contract stated, "Alchemy acknowledges that the obligations created by this letter-agreement are entirely separate and independent of any other obligations that Alchemy may have to [Rancho] under its lease, and are not subject to offset of any kind. In particular, the parties acknowledge that they will continue to negotiate in good faith to resolve claims by [Rancho] for reimbursements of utility usage, equipment repair, and expense-over-base-year costs. While this negotiation continues, Alchemy agrees to continue making estimated payments of $150,000 per month, *plus* . . . $11,925 [per month for the new chillers]. However, either party may, with 30[-]day written notice, elect to terminate this estimated payment arrangement . . . and instead move to enforce its rights under the lease."

The contract thus explicitly paused the dispute regarding payment of utility expenses on the property, and Carlsberg could reasonably rely on this standstill agreement as assuring that it could continue working to resolve the broader dispute with Alchemy without prejudice to its right to enforce the contract in a subsequent suit. Having induced Carlsberg into this position until more than four years had expired on some of its claims, Alchemy is now estopped from claiming that Carlsberg's action is time-barred.

D. *Damages Post-Dating the Pleadings and Trial*

The parties filed their initial pleadings in this case in 2014, and the bench trial finished in September 2015. In June 2016, the trial court issued a tentative decision in defendants' favor but did not specify the amount of damages defendants were entitled to. The court requested that the attorneys for defendants

prepare a judgment. The proposed judgment included an award of damages that accrued during 2015 and 2016, a time period for which no evidence was presented at trial. Alchemy contends that the trial court erred by awarding these damages to defendants incurred during 2015 and 2016. We are not persuaded.

Alchemy contends that defendants did not include a demand for damages for the years 2015 and 2016 in their cross-complaint, and that there was no evidence in the record pertaining to those years. This misstates the record. In its cross-complaint, Century, which purchased the building from Carlsberg at the end of 2014, requested declaratory relief stating that it was entitled to reimbursement for expenses pertaining to the chillers Alchemy used through the end of the lease. Thus, Alchemy had notice from the beginning that money for the years 2015 and 2016 was at stake in the litigation. Moreover, the evidence both sides presented at trial principally concerned the question of who the contract made responsible for the electricity and maintenance of the chillers, not the exact amount of money one party owed another. Questions involving the amount of damages, whether pertaining to the time before December 2014 or after, were left until after the trial court issued its tentative decision in the matter.

At that point, defendants submitted a voluminous accounting and explained in detail their calculations of how much Alchemy owed, and for which time periods. If Alchemy needed more time to sift through the evidence and perform its own analysis of the data, it could have requested a continuance. If Alchemy wanted a hearing to cross-examine defendants' witnesses regarding the way they calculated Alchemy's damages,

it could have requested one.[8] It did neither. Instead, Alchemy filed detailed objections to the substance of defendants' claims of damages, arguing that defendants failed to include an allotment for the free comfort air it was owed under the contract, and that defendants attributed an excessive amount of the building's water, sewage, and UPS expenses to Alchemy. The trial court, in awarding the amount of damages defendants requested, implicitly rejected Alchemy's arguments. In other words, the trial court provided Alchemy with an opportunity to challenge all aspects of the damages award, and Alchemy took that opportunity. Alchemy thus cannot complain that the trial court's method of reaching its decision robbed it of due process.

E. *Attorney Fees*

Alchemy contends that the trial court erred by awarding excessive attorney fees in favor of defendants. Alchemy does not deny that the lease contained a provision allowing for an award of attorney fees to the prevailing party in any action to enforce the terms of the lease, nor does Alchemy deny that defendants were the prevailing party at trial. In such a case, we review the amount of the award for abuse of discretion. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213.) This is a deferential standard of review: " 'The "experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will

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[8] It was not sufficient for Alchemy to complain, in two sentences of its 28-page document in opposition to damages, that it did not have an opportunity to cross-examine Century's declarant regarding the method of his calculations. If Alchemy wanted a hearing with live testimony on this matter, it should have requested one.

not be disturbed unless the appellate court is convinced that it is clearly wrong." ' " (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) Thus, reversal is appropriate if "there is no reasonable basis for the ruling." (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 634.)

Alchemy raises essentially the same arguments that it did before the trial court, contending that defendants' attorneys billed an excessive number of hours on a relatively simple contract dispute, that they duplicated efforts at various stages of the proceedings, that their work was more expensive than attorneys claimed in similar cases, and that their award should be reduced because they did not achieve a full victory on behalf of the defendants.

Although there is room for disagreement with respect to the amount of the award, the attorneys' work on behalf of defendants is fully documented in the record. Furthermore, the amount of the award—$850,000 for attorney fees, not including costs—is not so disproportionate to the value of the legal services provided. The court awarded defendants $585,383.61 in damages, and also denied Alchemy's claim for reimbursement of more than $1.7 million that it claimed it overpaid to defendants. The trial court's decision does not amount to an abuse of discretion, and we must therefore affirm it.

DISPOSITION

The judgment is reversed with respect to the award of damages for the six months prior to February 2012, when Carlsberg had not yet installed meters to measure Alchemy's power usage. The court is ordered to amend the judgment to so reflect. In all other respect, the judgment is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.