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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE UNIVERSAL CHURCH,

Plaintiff, Cross-defendant and
Respondent,

v.

UNITED BROADWAY REAL ESTATE
COMPANY, LLC,

Defendant, Cross-complainant and
Appellant.

B233904

(Los Angeles County Super. Ct.
No. BC393572)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Abraham Khan, Judge, and Thomas Schneider, Temporary Judge. (Pursuant to Cal.
Const., art. VI, § 21.) Affirmed.

Steckbauer Weinhart & Jaffe, William W. Steckbauer, Sean A. Topp; Pine & Pine,
Norman Pine and Stacy L. Tillett for Defendant, Cross-complainant and Appellant.

Hamburg, Karic, Edwards & Martin, Steven S. Karic and David A. Householder
for Plaintiff, Cross-defendant and Respondent.

Defendant, cross-complainant, and appellant United Broadway Real Estate Company, LLC (Landlord) appeals from a judgment and postjudgment order in favor of plaintiff, cross-defendant, and respondent Universal Church (Tenant) in this dispute arising from two related commercial lease agreements. Landlord contends: 1) the fair market rental value of the basement area stated in the judgment must be corrected; 2) Tenant was required to file a noticed motion to determine the prevailing party in the action; 3) the trial court should have made a prevailing party determination as to each of the parties' agreements; 4) the trial court abused its discretion by awarding attorney fees for work performed on noncontract claims, including breach of the covenant of good faith and fair dealing, reformation, and negligent misrepresentation; and 5) Tenant forfeited any right to attorney fees as the prevailing party by failing to apportion fees between successful and unsuccessful claims. We conclude that no correction of the judgment is required. The prevailing party issue was presented to the trial court at trial, Tenant filed a noticed motion for an award of attorney fees, and Landlord has not shown that any different result would have resulted from a second determination of the prevailing party. We also find no abuse of discretion as to the amount of fees awarded. Therefore, we affirm the judgment and the postjudgment order awarding attorney fees.

FACTS AND PROCEDURAL BACKGROUND

Lease Agreements and Options

In October 1998, Tenant leased the theater area of Landlord's building from Landlord's predecessor-in-interest. The initial term was 10 years, ending on October 31, 2008. Tenant had an option to extend the lease until October 31, 2017, on the same terms and conditions, except that the rent for the option period would be the "fair market rental value" but not less than the current rent. The use of the premises was limited to church religious assembly or as a movie theatre. The theater lease provided that if any party to the lease "brings an action to enforce the terms hereof or declare rights hereunder, the

prevailing party in any such action” is entitled to reasonable attorney fees. The theater lease was later amended to add two offices on the mezzanine level.

In November 1998, Tenant entered into a second lease agreement with Landlord’s predecessor-in-interest to rent office suites on the second floor of the building. Several amendments over five months added office suites, until Tenant eventually had leased all of the second floor office space. The term of the office lease ended on the same date as the theater lease. It also contained an option to extend the lease through October 31, 2017, on the same terms and conditions, with the same exception that the rent for the option period would be the fair market rental value but not less than the current rent. The office lease provided that if the landlord initiated an action against the tenant for violation of any of the covenants or conditions of the office lease, or for the recovery of possession, and prevailed, then the tenant would pay the landlord a reasonable amount of attorney fees.

Landlord purchased the building in 2001. On September 15, 2002, Landlord and Tenant amended the theater lease to add the basement, which was stated to be “approximately 16,000 square feet.” The term of the amendment ended on October 31, 2008. However, Tenant had an option to extend the basement amendment for two periods of five years on the same terms and conditions as the theater lease. When each option was exercised, the rent was to be set at the fair market value, but not less than the current rent being paid, and increase three percent per year beginning in the second year of the option period. The amendment restricted the use of the basement to a children’s waiting area for church services.

On October 29, 2002, Tenant executed an estoppel certificate for each lease in connection with a loan being sought by Landlord. Among other provisions, Tenant certified that the lease agreements were in full force and effect, no uncured default or breach by Landlord existed, and Tenant was not entitled to any rent rebate.

In February 2008, Tenant exercised its options to extend the office lease and the theater lease, including the first option to extend the basement amendment. At the time, Tenant was paying a total rent of \$35,880 per month as follows: \$12,000 for the theater

area, \$1,600 for the mezzanine offices, \$14,375 for the basement area, and \$7,905 for the second floor office space. Tenant offered to increase the rental amount by three percent as to all of the leases.

Landlord obtained information from a local real estate broker and proposed a substantially higher fair market rental value in May 2008, based on the best potential uses for the premises. Landlord provided a copy of the broker's report which contained the following estimated rental rates: \$60,000 per month for the theater area, \$12,800 for the mezzanine offices, \$21,085 for the basement premises based on an estimated square footage of 16,868, and \$13,000 for the second floor office space.

Complaint and Pretrial Proceedings

On June 30, 2008, Tenant filed a complaint against Landlord alleging causes of action as to each lease for declaratory relief, breach of contract, and breach of the covenant of good faith and fair dealing. Tenant alleged that the fair market rental value must be based on the use restrictions specified in the lease agreements. Tenant sought a declaration that the fair market rental value must be evaluated based on the use set forth in the agreements and a declaration of the fair market rental value of the respective premises in the respective option periods, as well as compensatory damages, attorney fees, and costs. On July 3, 2008, Tenant filed a substantially similar amended complaint, which simply divided the causes of action for declaratory relief.

On August 27, 2008, Landlord filed a cross-complaint against Tenant seeking a declaration of the fair market rental value of the premises and a declaration of the prevailing party for the purposes of an award of attorney fees.

On November 17, 2008, Tenant filed a motion for summary adjudication of two of its causes of action, seeking declarations that the fair market rental value must be based on the use restrictions in the leases, not the best potential uses of the premises, as provided in *Wu v. Interstate Consolidated Industries* (1991) 226 Cal.App.3d 1511 (*Wu*). Tenant sought an award of attorney fees in connection with the motion as well.

Landlord opposed the motion for summary adjudication. Landlord agreed that the fair market rental value should be determined based on the best use of the premises within the use restrictions specified in the lease agreements. However, Landlord disagreed that the value should take into consideration Tenant's actual use of the premises. Landlord also argued that the issue did not satisfy the criteria for summary adjudication. Tenant filed a reply.

A hearing was held on February 2, 2009, before Judge Abraham Khan. Landlord argued that summary adjudication should not be granted when there was no dispute. Both parties agreed that the *Wu* case was controlling, but Tenant stated Landlord had refused to stipulate that there was no controversy. Landlord's attorney stated that he agreed to a stipulation if Tenant's attorney waived attorney's fees, which Tenant refused to do, and Tenant had refused to sign a stipulation that would clarify the use restriction in the manner that Landlord interpreted it. The trial court concluded Tenant's position was an accurate statement of existing case law, in that the rent increase must be based on the use of the premises agreed to by the parties, not other highest and best uses. Therefore, the court granted the motion as to the declarations but denied the motion without prejudice as to attorney fees.

Landlord filed an ex parte application for clarification of the order granting summary adjudication and provided a stipulation clarifying the order. The trial court entered the order of clarification on February 23, 2009. The trial date was July 21, 2009.

On May 11, 2009, Tenant wrote a letter to Landlord purporting to terminate the basement amendment based on an order to comply sent by the City of Los Angeles in June 2006 listing several building and safety code violations on the property. Tenant asserted that it had been relieved of the obligation to pay any rent for the basement premises as of June 2006. Landlord rejected the termination letter.

On June 12, 2009, Tenant filed a motion to continue the trial date and requested leave to amend the complaint. The proposed second amended complaint added three causes of action: negligent misrepresentation as to the area of the basement, reformation of the basement amendment on the ground that the square footage had been incorrectly

stated, and a declaration that Tenant had properly terminated the basement amendment. Tenant sought restitution of excess rent that had been paid under the basement amendment and a declaration that the basement amendment had been terminated, effective June 10, 2009.

Landlord opposed the motion for leave to amend, and Tenant filed a reply. After a hearing, the trial court continued the trial to November 10, 2009, and allowed Tenant to file the second amended complaint. Landlord filed an amended cross-complaint, which added a cause of action for a declaration that the termination notice was invalid and a cause of action for breach of contract in failing to remedy the violations set forth in the City's order to comply.

On October 2, 2009, Tenant filed a request for dismissal without prejudice of all of its causes of action for breach of contract and breach of the covenant of good faith and fair dealing. The remaining causes of action were declaratory relief, reformation, and negligent misrepresentation. On October 26, 2009, Landlord dismissed the cause of action for breach of contract from the cross-complaint.

A hearing was held on November 2, 2009. The parties informed the trial court that the original time estimate of 3 to 5 days for trial was inadequate and had been based on Tenant's earlier complaint. In the parties' estimate, trial of the causes of action in the second amended complaint would require between 10 and 12 days. However, Landlord's attorney informed the court that Tenant intended to dismiss the cause of action for declaratory relief regarding termination of the basement amendment. Dismissal of this cause of action would reduce the number of witnesses that Landlord needed to call at trial, since that cause of action had involved issues with building and safety codes. Tenant subsequently filed a request for dismissal without prejudice of the cause of action for declaratory relief concerning termination of the basement lease. The trial date was continued to March 2, 2010, and the parties stipulated to have the trial heard before retired Los Angeles Superior Court Judge Thomas Schneider, appointed as a judge pro tempore by reference.

Trial

The parties agreed that the fair market rental value should be set as of November 1, 2008. In Landlord's trial brief, Landlord argued that the negligent misrepresentation claim failed for several reasons, including the estoppel certificate barred the claim, the square footage of the basement area was actually greater than the area stated in the lease, and Tenant's subdivision of the basement space had reduced the useable square footage. Landlord stated its expert would testify that as of November 1, 2008, the fair market monthly rent for the theater was \$60,000, plus an additional \$2,550 per month for offices on the mezzanine floor. The fair market rent for the basement is \$20,000 and for the office space is \$11,263. The total amount for all of the leases was \$93,813. Landlord argued that the reformation cause of action was barred by principles of equity and laches. Landlord stated in its conclusion that it should be declared to be the prevailing party and granted its reasonable attorney fees and costs pursuant to Civil Code section 1717.

In Tenant's trial brief, Tenant sought a declaration that the fair market rental values of the theater premises, including the mezzanine offices, was \$13,000 per month, the basement premises was \$8,400 per month, and the office premises was \$10,100 per month. The total fair market rental value was \$31,500, which was \$4,380 per month less than Tenant had been paying at the time it exercised the options. Tenant sought to reform the basement amendment to reflect a smaller square footage. In addition, Tenant requested damages of \$455,299 to \$479,242 for overpayment of rent based on negligent misrepresentation of the size of the basement premises. Tenant similarly stated in conclusion that it should be awarded its attorney fees and costs, the amount of which would be proven in post trial motions.

Landlord filed a supplemental brief requesting a finding that Tenant is bound by the estoppel certificate and granting a directed verdict at the close of Tenant's case-in-chief on the causes of action for negligent misrepresentation and reformation. Tenant responded that there was no estoppel as to the facts at issue. The parties also filed

supplemental briefs at the trial court's request concerning the permissible scope of reformation.

A bench trial began on February 3, 2011. Landlord filed a motion for judgment under Code of Civil Procedure section 631.8 on February 22, 2011, as to the causes of action for reformation and negligent misrepresentation. Tenant filed a supplemental brief on the effect of the estoppel certificate on the reformation claim. After hearing argument, the trial court granted the motion as to reformation on the ground that essential elements of the cause of action had not been proven. After additional argument on February 24, 2011, the court granted the motion for a directed verdict as to negligent misrepresentation on the ground that essential elements had not been proven.

Landlord's expert initially testified that the fair market rental values were as follows: \$60,000 per month for the theater, \$2,723 per month for the mezzanine office spaces, \$18,956 per month for the basement, and \$11,263 per month for the second floor offices. However, after reviewing certain lease terms that he had not seen previously, Landlord's expert adjusted his opinion of the rental value for the theater to between \$42,000 and \$44,000 per month. Landlord's expert calculated the amount for the basement based on an area of 15,165 square feet.

Tenant's expert testified to the following fair market rental values: \$13,000 per month for the theater, nothing additional for the mezzanine offices; \$8,400 per month for the basement; and \$10,100 per month for the second floor office space. Tenant's expert calculated the amount for the basement based on an area of 11,170 square feet.

The trial was held over 10 days. Closing arguments were made on March 8, 2011. In Tenant's further closing argument, Tenant's attorney argued that Tenant was the prevailing party. He asserted that Tenant's litigation objectives were to avoid arbitration, have the *Wu* case applied to determine the fair market values, and achieve a better outcome than Landlord offered prior to litigation. He emphasized that Tenant won summary adjudication, and under Code of Civil Procedure section 1717, there is no prevailing party in the case of a voluntary dismissal of causes of action. He argued that the ruling on the negligent misrepresentation claim was irrelevant, because it was not a

contract claim. Tenant's attorney anticipated that Tenant would recover the greater relief in the action on the contract and, therefore, should be found to be the prevailing party.

In Landlord's further closing argument, Landlord's attorney argued that Landlord was the prevailing party, because Tenant's expert witnesses were not credible. He emphasized that the first three weeks of trial were spent on witnesses relating to the reformation cause of action and the claim to recover more than half a million dollars, which Landlord won. He noted that Landlord did not seek arbitration either, so Tenant could not claim to have achieved a litigation objective by avoiding arbitration. He pointed out that Tenant never responded to Landlord's initial offer and never suggested that Landlord look at the *Wu* case to estimate the fair market rental value. Tenant simply filed its complaint. Tenant lost on all of the punitive damages and tort causes of action. Looking at the numbers provided for the rental values, Landlord argued that it was the prevailing party under the office lease and in the action. The trial court took the matter under submission.

On March 14, 2011, the trial court issued a tentative decision. The tentative decision reviewed the disposition of each of the 11 causes of action pled in the second amended complaint. The court announced its tentative decision on the two declaratory relief causes of action remaining. As to the theater lease, the court found the fair market rental value of the theater premises was \$12,996.75, the fair market rental value of the offices on the mezzanine was \$2,475, and the fair market rent of the basement area was \$14,166, based on finding the entire basement area leased to Tenant was approximately 15,000 square feet. As to the office lease, the court found the fair market rental value of the second floor offices was \$10,688. The court evaluated the litigation objectives of the parties as disclosed by the pleadings, trial briefs, and opening statements, and found Tenant to be the prevailing party entitled to costs and attorney fees.

On March 17, 2011, Landlord filed a motion to clarify or modify the trial court's statement that Tenant was the prevailing party in the action. Landlord argued that Tenant was not the prevailing party as to the entire action, because Landlord had prevailed on the causes of action for reformation and negligent misrepresentation. In addition, Tenant was

not the prevailing party as to the office lease, because the fair market rental value for the office lease was closer to Landlord's pre-litigation position and squarely in the middle of the parties' revised trial positions. Landlord argued that it was the prevailing party as to the basement amendment, because the court had found the area of the basement was closer to Landlord's estimate and the rental value was closer to Landlord's proposed rent than Tenant's. At most, Landlord conceded Tenant could be considered the prevailing party as to the fair market rental value of the theater premises, which was one of four fair market rental values determined by the trial. Landlord argued that it was entitled to recover attorney fees and costs related to the reformation and negligent misrepresentation causes of action adjudicated in favor of Landlord.

On March 21, 2011, the trial court issued a minute order concerning the motion to clarify or modify the tentative decision. The court noted that when neither party achieves a complete victory on the causes of action allowing for attorney fees, it is within the court's discretion to determine which party "prevailed." Therefore, the court had exercised its discretion to find Tenant was the prevailing party in the action. "In the instant case, the leases and amendments as well as the causes of action in both the complaint and cross-complaint, are inextricably intertwined allowing this Court to find a prevailing party notwithstanding that there were multiple leases and amendments." The court found the motion to be premature. The court noted that Landlord's rights to offsets and other arguments may be considered when determining the costs and attorney fees award. "Nothing in the Tentative Decision filed and served by this Court was intended to state that Plaintiff prevailed in the 'entire' action. Rather the words 'this action' in the Tentative Decision makes reference to and identifies the matter tried by this Court only."

Tenant submitted a proposed final judgment. On April 8, 2011, Landlord objected to the proposed final judgment on the ground that it identified Tenant as the prevailing party in the entire action. Landlord argued it was the prevailing party entitled to attorney fees and costs incurred in connection with the causes of action for reformation and negligent misrepresentation. In addition, Landlord argued the judgment must differentiate the prevailing party as to each lease, regardless of which party prevails in the

overall action. Tenant responded the judgment was consistent with the trial court's decision, and the court had discretion to determine the prevailing party.

A hearing was held on April 21, 2011. Landlord argued the office lease was not inextricably intertwined with the theater lease and the prevailing party must be determined as to each lease. Landlord also objected the trial court's prevailing party determination, based on a five- or ten-minute summation, was premature, and unfair. Landlord argued the prevailing party determination could only be made after a noticed motion under Civil Code section 1717.

The trial court explained the finding that the leases were inextricably intertwined was based on the fact that Tenant needed the office space for support services in conjunction with its activities in the theater space and the options were exercised at the same time. The whole constellation of the economic relationship was intertwined and it was legal sophistry to argue they were different contracts with different attorney fee provisions. The court did not agree that the prevailing party could be picked by individual victories by either side.

Landlord argued a noticed motion was required, because the trial court did not have the history of the pretrial proceedings. The court noted it had the summary adjudication order to apply the *Wu* case. Landlord emphasized Tenant had tried to terminate the basement agreement and removed their improvements but abandoned that claim a week before trial. With a noticed motion, Landlord could show that Tenant did not achieve its objectives as to the office lease.

The trial court explained the office lease issue was easy to decide, because the parties' positions were close and the court decided it equitably. The amount in dispute was minimal, and the issues related to the office lease consumed little time at trial. The value of the theater premises was far more difficult to determine. The result was the tentative decision was closer to the aggregate of the values proposed by Tenant. Tenant came closer to its vision of the case, obtained a fair market rental value closer to its target, and the prevailing party determination was based on the economics. The court noted it had evaluated each of the contracts separately.

Landlord argued Tenant lost on every issue raised related to the basement, which had consumed extensive litigation resources. Landlord noted some of the building and safety code issues were pursued prior to Tenant's dismissal of the cause of action. Tenant argued that requiring a noticed motion would elevate form over substance. The trial court stated, "I don't believe that a motion would serve any purpose that would motivate this court to change its opinion about prevailing party." The court ruled that the prevailing party ruling would remain.

The trial court entered judgment on April 22, 2011. The court declared as to the theater lease, the fair market rental value of the theater premises was \$12,996.75, the fair market rental value of the offices on the mezzanine was \$2,475, and the fair market rent of the basement area was \$14,166, based on finding the entire basement area leased to Tenant was approximately 15,000 square feet. As to the office lease, the court found the fair market rental value of the second floor offices was \$10,688. The court evaluated the litigation objectives of the parties as disclosed by the pleadings, trial briefs, and opening statements, and found Tenant was the prevailing party entitled to costs and attorney fees. Landlord filed a notice of appeal from the judgment on June 21, 2011.

Posttrial Proceedings

Tenant filed a memorandum of costs seeking \$88,575.41. Tenant also filed a motion for attorney fees under Civil Code section 1717 seeking recovery of all of the attorney fees that Tenant had incurred in connection with the litigation, for a total attorney fees award of \$832,445, plus amounts incurred in connection with the motion. Tenant argued there was no basis for apportionment between the different leases, between contract and noncontract claims, or between winning claims as opposed to losing claims, because the issues were inextricably intertwined and the leases were not sufficiently independent.

Landlord opposed the motion for attorney fees on the grounds that the fees were unconscionable for such a simple dispute. Landlord argued the parties had the ability to

segregate fees among the various causes of action and the trial court was authorized to reduce the amount to an award that was reasonable in light of the procedural history of the case. Landlord reviewed the time sheets submitted in connection with the motion in detail. Landlord argued that \$229,744 billed in connection with the negligent misrepresentation and reformation claims, which Tenant lost, should be denied. Landlord argued the billing records reflected \$80,004 for work on causes of action that Tenant unilaterally voluntarily dismissed. Landlord viewed the motion for summary adjudication as unnecessary and argued the fees of \$30,268 to bring the motion for summary adjudication should be denied. Landlord asserted the trial had been overstaffed, because one attorney billed \$30,932 for attendance at trial but did not examine any witnesses or argue any motions. Landlord contended \$11,440 in fees incurred for pretrial discovery concerning the office lease should be disallowed, because Tenant did not prevail on the office lease. Landlord argued additional reductions should be made in the amount attributed to the declaratory relief causes of action, because of the differences between the two leases. Landlord objected to Tenant's attorneys' block billing and vague entries. Landlord asserted that \$31,118 to prepare a motion for attorney fees and the memorandum of costs was excessive. Landlord suggested Tenant was entitled to fees totaling \$74,421, based on Los Angeles Superior Court fee schedules.

Tenant filed a reply seeking an additional \$36,624 for attorney fees incurred from May 16 through June 30, 2011, in connection with the motion for attorney fees and costs and Landlord's notice of appeal. Therefore, the total amount sought was \$869,069.

A hearing was held on the motion for attorney fees and costs on July 8, 2011. Landlord noted Tenant's attorney fees from the start of the action through June 30, 2009, totaled \$163,000. Then, the trial was continued in order for Tenant to file the second amended complaint adding causes of action for reformation, negligent misrepresentation, and termination of the basement amendment, all of which Tenant voluntarily dismissed or lost at trial. Landlord argued Tenant's attorney fees were unreasonable. For example, Landlord pointed out that the bills submitted in connection with the motion for attorney fees reflected more than \$31,000 had been charged for work in connection with the

motions for attorney fees and costs through May 16, 2011, and the attorney declaration submitted in connection with Tenant's reply stated an additional \$36,000 had been incurred through June 30, 2011.

In response, Tenant's attorney refused to apportion any amount to any particular activity, including the amount incurred to present the motion for attorney fees. Tenant accused Landlord of choosing particular billing entries and arguing they were attributable to certain activities.

Judge Schneider agreed with Landlord that \$67,000 in connection with the motion for attorney fees and costs bordered on outrageous. Judge Schneider reviewed the billing entries and stated to Tenant's attorney, "Well, Mr. Karic, this shocks me, and I think that there are so many of these tables that it's impossible for me to go line item by line item. But [Landlord's attorney] did the work." The court noted that 84 hours had been attributed to the issue of attorney fees and costs. Tenant's attorney asserted that \$60,000 in fees for a motion requesting attorney fees and a motion in support of costs was reasonable. Judge Schneider told Tenant's attorney that his firm's fees shocked the conscience. Charging \$500 of billable attorney time to an issue worth \$90 was shocking. Tenant's attorney insisted that he had to oppose Landlord's arguments.

Landlord noted that for all the time expended on the motion for attorney fees, Tenant's attorneys had not made any effort to apportion fees between claims that had been won and claims that had been lost, or claims that were intertwined and claims that were not intertwined. Landlord argued other examples of fees that Landlord considered unnecessary or attributed to unsuccessful claims. However, the trial court stated that it could not microscopically inspect each billing entry and considered certain activities to be judgment calls. Landlord insisted Tenant had not met its burden to apportion fees and demonstrate the amount requested was reasonable. Judge Schneider told the parties that in his ruling, he would state whether any adjustment had been made to the amount requested, but he would not explain the reasons for the amount of the adjustment.

The trial court entered its order on the motion for attorney fees and the motion to strike or tax costs on July 20, 2011. The court found that although not all of Tenant's

theories had been successful, Tenant achieved substantial relief. The court found it was not possible to know in advance which theories would prevail. The court stated, “There is no basis for apportionment in this case. [Tenant] has been declared the prevailing party in this action. The attorneys’ time cannot be separated into compensable and theoretically noncompensable units. Defendants have pursued their defenses and cross-complaint vigorously and most ably. [sic] It is clear that apportionment for unsuccessful claims is not required in this case where the determination of the prevailing party is left to the court’s discretion. The issues raised in this trial and the causes of action that were pled by the [Tenant] were intertwined to a very high degree.” The court expressly rejected Landlord’s argument that the second attorney at trial was unnecessary and concluded the summary adjudication had been helpful. However, the court found some of the hours expended were unreasonable. Therefore, the court found reasonable attorney fees were \$693,057 and awarded that amount to Tenant. Landlord filed a notice of appeal from the attorney fees award.

DISCUSSION

Fair Market Rental Value

Landlord contends the fair market rental value of the basement premises stated in the judgment must be corrected, because the amount is less than Tenant paid during the original term and the basement amendment states the rent during the option period shall not be less than the rent payable during the original term. No correction is necessary, however, because the trial court did not make any findings as to the rental amount due under the agreement. It is clear from the agreement that when the fair market rental value is less than the amount of rent that had previously been paid, the fair market rental value is not the amount of rent due.

Noticed Motion

Landlord contends Tenant was required to file a noticed motion for a determination of the prevailing party, failed to file a noticed motion, and therefore, forfeited the right to attorney fees. We disagree.

Civil Code section 1717, subdivision (b) provides in pertinent part: “(1) The court, upon notice and motion by a party, shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2), 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. [¶] (2) Where an action has been voluntarily dismissed . . . there shall be no prevailing party for purposes of this section.”

The trial court is given wide discretion to determine which party is the prevailing party within the meaning of Civil Code section 1717, and we will not disturb the trial court’s determination absent a clear abuse of discretion. (*Sears v. Baccaglio* (1998) 60 Cal.App.4th 1136, 1158.) “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason.” (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.)

In this case, the parties’ pleadings invited the trial court to decide the prevailing party issue. Contractual attorney fees were requested in the complaint and the cross-complaint. Both parties’ trial briefs requested an award of attorney fees as prevailing party. Both parties addressed the prevailing party issue in closing argument. Having implicitly invited the trial court to determine the prevailing party issue without a noticed motion, Landlord cannot now assert this as a basis for reversal. (See *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 403; *Harris v. Sandro* (2002) 96 Cal.App.4th 1310, 1314.)

Moreover, Landlord has not shown that a violation of due process or a miscarriage of justice occurred. Procedural due process includes the right to “notice of the time and place of hearing and an opportunity to be heard. . . .” [Citation.]” (*People v. Lawrence*

(1956) 140 Cal.App.2d 133, 136.) Due process does not guarantee a perfect outcome, and not every procedural variation or irregularity amounts to a violation of due process. A judgment will not be overturned on appeal unless there has been a “miscarriage of justice.” (Cal Const., art. VI, § 13.)

Landlord had multiple opportunities to be heard on the prevailing party issue and has not shown the trial court would have made any different ruling after a noticed motion. In addition to a brief argument in closing at trial, Landlord filed a motion for clarification of the court’s decision and objections to the proposed final judgment. Both pleadings made the arguments that Landlord raises on appeal. A hearing was held at which Landlord was able to thoroughly present its position.

Judge Schneider expressed familiarity with the results of the earlier stages of the proceedings in the judgment and in postjudgment hearings. Although Judge Schneider did not necessarily agree that the issue raised in the summary adjudication proceedings was appropriate for summary adjudication, he considered the ruling helpful in framing the issues for the lawsuit and not unnecessary. The trial court was aware that Tenant added and dismissed causes of action throughout the proceedings. The court believed Tenant was entitled to pursue alternative forms of relief, even though not ultimately successful on those causes of action, including breach of contract, breach of the covenant of good faith and fair dealing, reformation, and negligent misrepresentation. The court viewed the cause of action to establish the fair market rental value of the theater agreement as the most important and difficult issue between the parties. Based on this view, the court was not persuaded by Landlord’s arguments that Tenant lost on reformation and noncontract causes of action, voluntarily dismissed other causes of action, and did not prevail on the office lease. Fundamentally, the court considered the cause of action for a declaration of the fair market value of the theater lease to be the parties’ primary dispute and viewed the other causes of action as inextricably intertwined with that determination. Landlord has not shown the court would have made a different prevailing party finding after a noticed motion.

Reasonableness of Fee Award

Landlord disputes the reasonableness of the fee award in several ways. Landlord contends the trial court should have made a prevailing party determination as to each lease agreement, the Tenant forfeited the right to fees by failing to apportion any fees for unsuccessful claims, the court erred by awarding attorney fees for work performed on noncontract claims, and the amount of the attorney fee award shocks the conscience and constitutes an abuse of discretion. We find no abuse of the trial court's discretion.

“The reasonableness of attorney fees is within the discretion of the trial court, to be determined from a consideration of such factors as the nature of the litigation, the complexity of the issues, the experience and expertise of counsel and the amount of time involved. [Citation.] The court may also consider whether the amount requested is based upon unnecessary or duplicative work.” (*Wilkerson v. Sullivan* (2002) 99 Cal.App.4th 443, 448.) “The ‘experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.’” (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.)

“If an action asserts both contract and tort or other noncontract claims, [Civil Code] section 1717 applies only to attorney fees incurred to litigate the contract claims.” (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 615.) However, apportionment is within the trial court's discretion, and no apportionment is required when contract and tort claims are “‘inextricably intertwined’” [citation], making it ‘impracticable, if not impossible, to separate the multitude of conjoined activities into compensable or noncompensable time units’” [citation]. (*Abdallah v. United Savings Bank* (1996) 43 Cal.App.4th 1101, 1111.) “Attorney's fees need not be apportioned when incurred for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed.” (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129-130.)

We review an order apportioning and awarding attorney fees for an abuse of discretion. (*Track Mortgage Group, Inc. v. Crusader Ins. Co.* (2002) 98 Cal.App.4th

857, 868; *Abdallah v. United Savings Bank*, *supra*, 43 Cal.App.4th at p. 1111.) “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason.” (*Shamblin v. Brattain*, *supra*, 44 Cal.3d at p. 478.)

In this case, the trial court exercised its discretion not to apportion fees among the various causes of action after finding that the claims involved common issues and were inextricably intertwined. The court acted within its discretion on this issue. Common issues were clearly involved in determining the fair market rental values under the two lease agreements. Even if the court had found that no party prevailed as to the office lease as Landlord suggests, it would not have altered the amount of attorney fees awarded. The court expressly viewed the leases separately but allowed Tenant to recover attorney fees for the work performed in connection with the office lease, because the issues were inextricably intertwined with the issues concerning the theater lease. The court also acted within its discretion by declining to apportion fees between contract and noncontract causes of action. The causes of action to establish the fair market rental values required the court to determine the correct measure of the basement area, an issue which overlapped with the causes of action for reformation and negligent termination. The court did not abuse its discretion by viewing all of Tenant’s causes of action as an interrelated litigation strategy to achieve its objectives.

Having concluded the trial court acted properly as a matter of law when it did not require Tenant to formally apportion its hours between claims for which attorney fees were compensable and other hours, we additionally find the court acted properly when making the attorney fees award. The amount awarded is a matter within the sound discretion of the trial court. The trial court is the best judge of the value of professional services rendered in its court, and while its judgment is subject to our review, we will not disturb that determination unless we are convinced that it is clearly wrong. The only proper basis of reversal of the amount of an attorney fees award is if the amount awarded is so large or small that it shocks the conscience and suggests that passion and prejudice influenced the determination. (*Reveles v. Toyota by the Bay* (1997) 57 Cal.App.4th 1139, 1153.) In this case, the trial judge who presided over the determination of various

theories of recovery at trial ruled on the motion for attorney fees. The court told Tenant the attorney fees billed in connection with the motions for attorney fees and costs shocked the conscience. The court reduced the amount of the fees award from the original request. Thus, it is clear the court reviewed the request carefully and exercised its discretion rationally. In these circumstances, we cannot conclude the award of attorney fees was so large as to shock the conscience or suggest that passion and prejudice had any part in it. Therefore, we find no abuse of discretion in the attorney fees awarded.

DISPOSITION

The judgment and postjudgment order awarding attorney fees is affirmed. Respondent Universal Church is awarded its costs on appeal.

KRIEGLER, J.

I concur:

TURNER, P. J.

MOSK, J., Concurring and Dissenting

I dissent with respect to the attorney fees award. This case involved two separate leases, with different attorney fees clauses. “When an action involves multiple, independent contracts, each of which provides for attorney’s fees, the prevailing party must be determined as to each contract, regardless of who prevails in the overall action. The fact that a party obtained a higher net recovery in the action is not relevant regarding the determination of which party prevailed on any particular action on a contract.” (12 Miller & Starr, Cal. Real Estate (3d ed. 2011) § 34:69, pp. 34-246 to 34-247, fns. omitted; see 7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 198, p. 751; *Arntz Contracting Co. v. St. Paul Fire & Marine Ins. Co.* (1996) 47 Cal.App.4th 464, 491.)

The Universal Church, the tenant, (Universal) acknowledges that this action concerned two separate contracts, and that in one of them, the office lease, it was not the prevailing party. (It says there was likely no prevailing party.) As there were two separate leases, each involving separate appraisals and evaluations, I do not see how they could be “viewed as inextricably intertwined”—even if that concept could apply in view of the law that appears to mandate separate determinations of prevailing parties when two separate contracts are involved. As it appears that Universal was not the prevailing party as to the office lease, Universal would only be able to recover attorney fees allocated to the theater lease.

The theater lease has a restricted attorney fees clause by limiting recovery to fees incurred in “an action to enforce the terms [of the theater lease] or disclose rights [t]hereunder.” Universal’s tort claim for negligent misrepresentation is not covered. Its claim for reformation also should not be viewed as covered because it does not seek to enforce or declare rights under the lease.

Wong v. Davidian (1988) 206 Cal.App.3d 264, 270-271 held that an action to reform a contract is an action under Civil Code section 1717 when “the attorney’s fees clause in the contract between the parties is broad enough to encompass the award made by the trial court.” (*Id.* at p. 271.) The court suggested that seeking to reform a contract falls within the terms of Evidence Code section 1717’s language, “which are incurred to enforce the provisions” of the contract. Arguably that same reasoning would apply to the contracted language “to enforce” the terms of the contract. But I believe when the parties provided for attorney fees for enforcing or declaring rights in a contract, they did not include reforming the contract. (See *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129.) Had they meant to, they would have provided for attorney fees for all claims “arising out of or related to the contract.” Accordingly, Universal should not recover attorney fees allocated to the tort and reformation claims.

Moreover, Universal should not recover fees for its unsuccessful claims for breach of the theater lease because that claim had nothing to do with its favorable fair market valuation under the theater lease. Moreover, it is arguable that Universal’s fees for a declaratory relief claim as to the applicability of *Wu v. Interstate Consolidated Industries* (1991) 226 Cal.App.3d 1511 that was never contested were unreasonable.

The fees incurred in connection with all claims unrelated to evaluation of the fair market value of the lease do not involve issues common to that evaluation and thus are not “inextricably intertwined” with the successful evaluation claim. (See *Reynolds Metals Co. v. Alperson*, *supra*, 25 Cal.3d at p. 129; *Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 577.) Universal does not indicate why it would be impossible to separate from the attorney fees for the success of the claim concerning the theater lease fair market value claim, the attorney fees attributable to the claims concerning the office lease, negligent misrepresentation, reformation, breach of lease and declaration as to the applicability of *Wu v. Interstate Consolidated Industries*, *supra*, 226 Cal.App.3d 1511.

Accordingly, I would reverse and remand the matter to the trial court to make the appropriate apportionment of fees in accordance with this opinion. I otherwise concur in the majority opinion.

MOSK, J.