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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

BRIDGET EHIEMENONYE, Plaintiff and Appellant, v. ESTABAN ESCOBAR et al., Defendants and Respondents.	B285915 (Los Angeles County Super. Ct. No. BC570399)

APPEAL from a judgment and orders of the Superior Court of Los Angeles County. Michael J. Raphael, Judge. Affirmed.

Law Offices of Anthony N. Ehiemenonye and Anthony N. Ehiemenonye for Plaintiff and Appellant.

Rogers, MacLeith & Stolp and Douglas R. MacLeith for Defendants and Respondents Estaban Escobar, Elizabeth Escobar, and GES Logistics, Inc.

No appearance for Defendant and Respondent ZIM American Integrated Shipping Services Co., LLC.

Plaintiff Bridget Ehiemenonye shipped several vehicles to Nigeria through a company owned by Estaban and Elizabeth Escobar. When Ehiemenonye refused to pay a $515 balance on her account, the Escobars placed a hold on the shipment, which prevented Ehiemenonye from claiming her vehicles in Nigeria. She then filed a lawsuit against the Escobars and two other companies involved in the shipment, GES Logistics, Inc. (GES) and ZIM American Integrated Shipping Services Co., LLC (ZIM), asserting various claims.

The trial court granted ZIM's motion for summary judgment. The case then proceeded to a bench trial against the Escobars and GES, which resulted in a judgment in their favor. The court subsequently denied Ehiemenonye's motions to strike or tax costs and for attorney fees, and awarded attorney fees to the Escobars and GES. Ehiemenonye separately appealed the judgment and post-judgment orders, which we consolidated. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Ehiemenonye's operative second amended complaint (SAC) asserted three causes of action against all the defendants: (1) breach of the implied covenant of good faith and fair dealing; (2) conversion; and (3) violation of the Unfair Competition Law (UCL) (Bus. & Prof. Code, § 17200 et seq.).[1] The claims were premised on allegations that the defendants wrongfully placed a hold on Ehiemenonye's shipment.

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[1] The SAC asserted numerous other causes of action, to which the court sustained demurrers. They are not at issue in these appeals, and we need not discuss them further.

On February 3, 2017, ZIM moved for summary judgment, which the trial court granted. We discuss the motion and ruling in more detail below.

Trial

The case proceeded to a bench trial against the Escobars and GES. The evidence introduced at trial established that the Escobars ran an international shipping company, which, at one time, was registered as Keymost International, Inc. Keymost did business under the fictitious business name "Export Shipping," which was registered in 2000. The registration expired in 2005, and the Escobars did not renew it.

The Escobars rented a warehouse from which they loaded vehicles into cargo containers. The containers would then be transported by truck to a third-party carrier, which shipped them overseas. The Escobars had a federal license to ship goods overseas until 1999, but had no license after that date.

As of April 2013, the Escobars advertised their services through a website. Written at the bottom of the website was the following: "Copyright . . . International Cargo Export Shipping Company, Inc."

In April 2013, Ehiemenonye's brother, agent, and attorney, Anthony Ehiemenonye, requested a quote through the Escobars' website to ship several of her vehicles to Nigeria. Ms. Escobar provided a quote that was valid through May 31, 2013, and she advised Anthony he would need to provide title for the vehicles before they could be shipped.

In May and June 2013, Anthony delivered eight vehicles to the Escobars' warehouse. They could not be shipped immediately, however, because Anthony did not provide the titles.

On July 25, 2013, the Escobars sent Anthony an invoice for storage fees for the vehicles. Anthony refused to pay the accrued storage fees on the basis that he had not previously agreed to them. He did not object to future storage fees and did not remove the vehicles from the warehouse. The Escobars eventually waived the past storage fees.

On August 20, 2013, Anthony informed the Escobars he had all the titles and wanted the vehicles loaded onto shipping containers that week. A few days later, the Escobars delivered to Anthony an invoice reflecting the cost to ship the three containers. Anthony took issue with certain storage fees included in the invoice and informed the Escobars he recently received a less expensive offer to ship the vehicles through another company.

The parties continued to negotiate, and on August 28, 2013, the Escobars sent Anthony a revised invoice reflecting the new terms of the agreement. The stated price for shipping two of the containers was $4,475 each, and the price for shipping the third container was $5,025. On a separate line, the invoice reflected a $300 discount per container, amounting to a total discount of $900.

The top of the invoice displayed the name "Export Shipping Co." Written on the last page of the invoice was the following: "THIS INVOICE IS THE BINDING CONTRACT THAT GOVERNS THE TRANSCTION. It is the customer's responsibility to read each and every one of the invoice clauses." Written at the bottom of each page of the invoice was the following: "HOLD ORDERS will be placed on any shipments with a due balance, and are subject to a $250.00 fee. . . . We reserve the right to correct any calculations errors, or errors in

neglecting to bill for services rendered."

Ms. Escobar testified at trial that Anthony eventually agreed to ship the vehicles with the Escobars at the rates and under the terms provided. On September 3, 2013, Ehiemenonye gave the Escobars a check for $14,050, which was the total balance due under the August 28 invoice. Ehiemenonye testified at trial that she read through and understood the invoice before issuing the check. When asked whether the invoice "was the deal," Ehiemenonye responded, "Yeah, this amount was the deal."

At some point, Anthony canceled shipment of the third container, and the Escobars issued him a refund check for $4,475. They did not charge a cancellation fee, even though the invoice indicated cancellations are subject to a $525 fee.

The Escobars eventually loaded two containers with Ehiemenonye's vehicles to prepare them for shipment. Ms. Escobar testified that, while doing so, one of the vehicles would not start. Anthony told the Escobars the battery had been removed and was in the trunk, and he would bring the keys to retrieve it. Anthony, however, did not show up. In order to ensure the shipment went out that day, and to avoid additional expenses, the Escobars hired a mechanic to get the car running and loaded into the container.

The Escobars shipped the two containers through ZIM. The Escobars did not contract directly with ZIM. Instead, they "co-loaded" the goods with GES, which is a licensed freight-forwarder and had a contract with ZIM. The containers shipped in mid-September 2013.

During a subsequent audit, the Escobars' bookkeeper realized they failed to subtract from the refund given to Anthony the $300 discount applied to the third shipment. As a result,

about a month before the containers arrived in Nigeria, the Escobars sent Anthony a revised invoice, reflecting that the $300 discount had been reversed. The invoice also reflected a new charge of $215 related to fees incurred while loading the second container. The fee consisted of $90 for the mechanic, $35 to arrange the mechanic's visit, and $90 in overtime pay for a warehouse worker. The invoice showed a total balance due of $515, plus a $30 fee in the event Anthony paid by wire.

Anthony refused to pay the amounts reflected in the amended invoice, accused the Escobars of engaging in fraud and extortion, and told them they would "pay dearly in a court of law." As a result, the Escobars, through GES, advised ZIM to put a "hold" on the two containers that had already been shipped, which it did. The hold prevented the containers from being released to Ehiemenonye when they arrived in Nigeria in early December. The Escobars advised Anthony that the Nigerian terminal would charge additional fees if he was unable to remove the hold and claim the containers.

On December 17, 2013, Anthony sent the Escobars an email stating the following: "You have just purchased the cargo withheld by ZIM and it's [*sic*] agent in Nigeria. [¶] See you and your cohorts (GES, ZIM, etc.) in court. We will put an end to the fraudulent schemes/scams. [¶] You have engaged in criminal conduct and you will pay for your crimes. [¶] Only legal action is appropriate at this time."

On January 24, 2014, Ms. Escobar instructed ZIM to remove the hold, even though Ehiemenonye had not paid the balance due. Ms. Escobar testified at trial that she decided to take the loss because she "had enough" of dealing with Anthony.

Ehiemenonye testified that, by the time the containers

were released, she could only pay the additional storage fees for one of them. She paid those fees and recovered the container. The other container was "lost."

Statement of Decision

On August 18, 2017, the trial court issued a statement of decision, finding in favor of the Escobars and GES on all claims.

With respect to the claim for breach of the implied covenant of good faith and fair dealing, the court found that Ehiemenonye "had a balance of $515.00 . . . that she refused to pay, leading her cargo to be held abroad and not released." Therefore, she failed to prove two necessary elements of her claim: (1) that she did all or substantially all the things the contract required, and (2) that all the conditions required for the defendants' performance had occurred or were excused. The court further found Ehiemenonye failed to prove the Escobars acted "unfairly," noting they gave Ehiemenonye notice and an opportunity to pay the amount due before any additional penalties were incurred. The Escobars also provided substantial discounts and reductions in storage fees over the course of the transaction, indicating good-faith dealings. The court further noted Ehiemenonye's proof of damages was "unclear at best."

With respect to the conversion claims, the court concluded Ehiemenonye failed to show the Escobars and GES intentionally and substantially interfered with her property. The court found the defendants were acting "pursuant to a contract to simply obtain payment," and Ehiemenonye could have obtained her vehicles by paying the relatively small balance due.

With respect to the UCL claims, the court found Ehiemenonye had identified two, potentially unlawful acts: (1) the Escobars operated under an unregistered fictitious

business name, "Export Shipping," in violation of Business and Professions Code section 17910; and (2) the Escobars used the name "Export Shipping Co." and "Export Shipping Co., Inc.," even though their business was incorporated under the name "Keymost International, Inc." The court noted that, although it did not condone either act, "there is no testimony tying the particular unlawful acts to any monetary damage or potentially harmful business practices. The Court is not persuaded that the parties' contractual relationship would have proceeded differently if the Escobars had either refreshed its registration of 'Export Shipping' as a fictitious business name or disclosed that 'Export Shipping' was not incorporated but 'Keymost International' was. While the Court might act to enjoin similar practices in a case where the practices demonstrably caused harm, it will not do so here."

On August 18, 2017, the court entered judgment in favor of "all of the defendants remaining under the plaintiff's last amended complaint . . . ."

Post-Judgment Orders

After the court entered judgment, Ehiemenonye moved for attorney fees under Code of Civil Procedure section 1021.5. Ehiemenonye also moved to strike or tax costs. The Escobars and GES separately moved for attorney fees pursuant to an attorney fees clause in the August 28 invoice. The trial court denied Ehiemenonye's motions and granted the Escobars and GES's motion. We discuss these motions and the court's ruling in more detail below.

Appeals

Ehiemenonye separately and timely appealed the judgment and post-judgment orders. We consolidated the appeals at her request.

DISCUSSION

I. The Trial Court Did Not Err in Granting ZIM's Motion for Summary Judgment

Ehiemenonye argues the trial court erred in granting ZIM's motion for summary judgment because (1) ZIM admitted all the allegations in the SAC, (2) the trial court necessarily determined there were disputed issues of material fact when it overruled ZIM's evidentiary objections, and (3) her evidence created triable issues of material fact. None of her arguments has merit.[2]

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[2] An order granting a motion for summary judgment is not directly appealable. Instead, appeal lies from the judgment rendered on the order. (*Levy v. Skywalker Sound* (2003) 108 Cal.App.4th 753, 761.) Here, it does not appear that a separate judgment was rendered after the order granting ZIM's motion for summary judgment. However, the August 18, 2017 judgment, which was entered after trial, states the following: "On all causes of action, and as to all of the defendants remaining under the plaintiff's last amended complaint, each of whom are named above, it is ordered that the plaintiff take nothing from the defendants." Because there was no judgment rendered on the summary judgment order, as of August 18, 2017, ZIM was a "defendant remaining" under the operative SAC. ZIM is also named as a defendant in the caption of the August 18, 2017 judgment. Accordingly, we construe the August 18, 2017 judgment as the operative judgment for purposes of our review of the order granting ZIM's motion for summary judgment. (See *Orange Unified School Dist. v. Rancho Santiago Community College Dist*. (1997) 54 Cal.App.4th 750, 756.)

A. Background

In opposition to the motion for summary judgment, Ehiemenonye argued ZIM should be deemed to have admitted all the allegations in the SAC because it failed to properly verify its answer. Presumably, Ehiemenonye was referring to the fact that the verification was executed in Virginia but did not specifically state it was made under the laws of the State of California. (See Code Civ. Proc., § 2015.5.)

ZIM subsequently filed an amended verification to its answer, indicating it was made under the laws of the State of California. ZIM also filed numerous objections to Ehiemenonye's evidence.

The court overruled ZIM's evidentiary objections and granted its motion for summary judgment. The court rejected Ehiemenonye's argument related to ZIM's answer, explaining that "[e]ven if the . . . later verification was the one that ultimately is proper, the court does not believe a late verification should cause denial of this fully briefed motion." The court then explained that summary judgment was proper because the undisputed evidence showed ZIM was simply following orders from the Escobars and GES, as it was required to do. Therefore, the court concluded, it did not "wrongfully act" to deprive Ehiemenonye of her property.

B. Standard of Review

"On appeal after a motion for summary judgment has been granted, we review the record de novo, considering all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained." (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.) We "liberally construe the evidence in support of the party opposing summary

judgment and resolve doubts concerning the evidence in favor of that party." (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 717.)

Our Supreme Court has made clear that the purpose of the 1992 and 1993 amendments to the summary judgment statute was " 'to liberalize the granting of [summary judgment] motions.' " (*Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 542; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854.) It is no longer called a "disfavored" remedy. "Summary judgment is now seen as 'a particularly suitable means to test the sufficiency' of the plaintiff's or defendant's case." (*Perry*, at p. 542.)

C. Analysis

Ehiemenonye first argues that ZIM's failure to properly verify its answer constituted an admission of the allegations in the SAC, thus precluding summary judgment. She implicitly acknowledges the amended verification addressed the issues with the original verification. Nonetheless, she insists the amended verification was "invalid and void" because it was not directly attached to the answer. In support of this proposition, Ehiemenonye relies on inapposite authority involving discovery responses. (See *Appleton v. Superior Court* (1988) 206 Cal.App.3d 632; *Zorro Inv. Co. v. Great Pacific Securities Corp.* (1977) 69 Cal.App.3d 907, 914.) She has not shown the failure to attach the amended verification to the answer rendered it ineffective.

There is also no merit to Ehiemenonye's perfunctory argument that the amended verification rendered the answer "impermissibly untimely." Assuming, for the sake of argument, that were the case, the proper course of action would have been to

move to strike the answer. (See Code Civ. Proc., § 436; *Goddard v. Pollock* (1974) 37 Cal.App.3d 137, 141 ["an untimely pleading is not a nullity, and it will serve to preclude the taking of default proceedings unless it is stricken"].) There is nothing in the record to indicate Ehiemenonye did so.

Next, Ehiemenonye argues that, because the trial court overruled ZIM's evidentiary objections to her evidence, it necessarily concluded there were triable issues of material fact. In support, she relies on Code of Civil Procedure section 437c, subdivision (q), which states the trial court "need rule only on those objections to evidence that it deems material to its disposition of the motion." Therefore, Ehiemenonye seems to reason, the trial court would not have ruled on ZIM's objections unless they concerned evidence that created triable issues of material fact. Such reasoning is flawed. Code of Civil Procedure section 437c, subdivision (q), does not preclude the trial court from ruling on objections that are not material to the disposition of the motion.

Ehiemenonye additionally advances various arguments as to why there were triable issues of material fact. Much of the evidence on which she relies, however, was not properly before the court when it decided the motion for summary judgment. For example, Ehiemenonye frequently cites evidence introduced at trial, which occurred after the summary judgment motion was decided. She also refers to exhibits attached to her SAC, which do not appear to have been included in her opposition to the motion for summary judgment. As to the evidence that was properly before the court, Ehiemenonye fails to provide any meaningful explanation of how it was relevant to her claims or

precluded the court from granting ZIM's motion for summary judgment. We need not discuss these arguments any further.

II. The Trial Court Did Not Err in Entering Judgment in Favor of the Escobars and GES

Ehiemenonye asserts the judgment in favor of the Escobars and GES must be reversed because the Escobars and GES may not "maintain an action in the superior court." She also contends, for a variety of reasons, the trial court erred in finding she failed to prove her claims at trial. There is no merit to her arguments.

A. Standard of Review

Ehiemenonye urges us to review the trial court's factual findings for substantial evidence. The substantial evidence test, however, "is typically implicated when a defendant contends that the plaintiff succeeded at trial in spite of insufficient evidence." (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) Where, as here, "the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' [Citation.]" (*Ibid.*; accord, *Valero v. Board of Retirement of Tulare County Employees' Assn.* (2012) 205 Cal.App.4th 960, 965–966 (*Valero*).) We independently review the trial court's conclusions of law. (*ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1266.)

B. The Trial Court Did Not Erroneously Allow the Escobars and GES to "Maintain an Action in the Superior Court"

We may quickly dispose of Ehiemenonye's argument that the trial court erred in allowing the Escobars and GES to "maintain an action in the superior court," in violation of Business and Professions Code section 17918.[3] Simply stated, the argument is nonsense. The Escobars and GES did not "maintain an action in the superior court." Rather, they defended themselves against the action Ehiemenonye brought against them.

Hand Rehabilitation Center v. Workers' Comp. Appeals Bd. (1995) 34 Cal.App.4th 1204, is of no help to Ehiemenonye. In that case, the court held a lien claimant's attempt to enforce a lien constituted "maintaining an action" for purposes of Business and Professions Code section 17918. (*Hand Rehabilitation Center*, at p. 1214.) Here, the Escobars and GES were not enforcing a lien.

C. The Trial Court Did Not Err in Finding Ehiemenonye Failed to Establish Her Claims for Conversion and Breach of the Implied Covenant of Good Faith and Fair Dealing

Ehiemenonye contends the trial court erred in finding she failed to establish her claims for conversion and breach of the implied covenant of good faith and fair dealing. She sets forth a

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[3] Business and Professions Code section 17918 precludes a person operating under an unregistered fictitious business name from "maintain[ing] any action upon or on account of any contract made, or transaction had, in the fictitious business name" until the name is registered.

variety of arguments that essentially boil down to this: the court erred in concluding the Escobars had the right to place a hold on her shipment. On this point, we disagree.

It is undisputed that, per the terms of her contract with the Escobars as set forth in the August 28 invoice, Ehiemenonye was required to pay, and did pay, $4,175 to ship the third container. This amount consisted of the regular price of $4,475, minus a $300 discount. When Ehiemenonye canceled shipment of the third container, however, the Escobars failed to account for the $300 discount and issued a refund of $4,475. After recognizing this accounting error, they informed Ehiemenonye she had a balance due of $300, plus other fees incurred while loading one of the containers. Ehiemenonye refused to pay any of this amount, which resulted in an outstanding balance due. Per the express terms of the contract, the Escobars were permitted to place a hold on her shipment until that balance was paid in full.

Because the hold order was made pursuant to the express terms of the parties' contract, it cannot constitute a breach of the implied covenant of good faith and fair dealing. (See *Storek & Storek, Inc. v. Citicorp Real Estate, Inc.* (2002) 100 Cal.App.4th 44, 64 [covenant of good faith and fair dealing does not prohibit a party from doing what it is expressly permitted to do under the contract].) Nor does it constitute wrongful interference with Ehiemenonye's property rights, as is required for a conversion. (See *Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208 [conversion is the wrongful exercise of dominion over property of another].)

Ehiemenonye contends there is no evidence showing she agreed to the terms contained in the August 28 invoice. We disagree. Ms. Escobar testified at trial that after negotiations,

Anthony, acting as Ehiemenonye's agent, agreed to all the terms contained in the invoice. Consistent with this testimony, Ehiemenonye testified that, before she provided payment for the shipment, she read the entire invoice and understood its terms, including the provision stating, "This invoice is a binding contract that governs the transaction." This evidence is sufficient to show the August 28 invoice constituted the parties' contract.

Ehiemenonye's reliance on *C9 Ventures v. SVC-West, L.P.* (2012) 202 Cal.App.4th 1483, is misplaced. *C9 Ventures* stands for the proposition that, where the parties have a preexisting oral lease contract, new terms contained in a subsequently delivered invoice are not binding unless the other party assents to them. Here, Ehiemenonye failed to conclusively prove there was a preexisting oral contract with different terms from those contained in the invoice. Even if she had, Ms. Escobar's trial testimony is sufficient to show Ehiemenonye assented to the new terms contained in the invoice.

We are also not persuaded by Ehiemenonye's arguments that the August 28 invoice was illegal or otherwise unenforceable because the Escobars and GES were operating in violation of various state and federal laws. Ehiemenonye fails to provide any relevant authority showing the purported violations precluded the Escobars from entering into the contract or excused her performance. The closest she comes to providing such authority is Business and Professions Code section 17918, which precludes a person operating under an unregistered fictitious business name from "maintain[ing] any action upon or on account of any contract made, or transaction had, in the fictitious business name" until the name is registered. Section 17918 does not, however, preclude the non-complying person from entering into

binding contracts using the unregistered fictitious business name. (See *Templeton Action Committee v. County of San Luis Obispo* (2014) 228 Cal.App.4th 427, 432 [the "sole penalty" for failure to register a fictitious business name is a bar from maintaining an action until the name is registered]; 9 Witkin, Summary of Cal. Law (11th ed. 2017) Partnership, § 11, pp. 598-599 [partners may enter into contracts and transactions using an unregistered fictitious business name].)

We similarly reject Ehiemenonye's assertion that the August 28 invoice is an illegal contract because the name "Export Shipping Co." is printed at the top, in violation of Business and Professions Code section 17910.5.[4] Even assuming the use of the name were prohibited, Ehiemenonye fails to provide any authority showing it renders the contract illegal or otherwise excuses her performance under it.

D. The Trial Court Did Not Err in Finding Ehiemenonye Failed to Establish Her UCL Claims

Ehiemenonye further asserts the trial court erred in finding she failed to establish her claims for violations of the UCL. We disagree.

To pursue a claim for violation of the UCL, an individual must show she suffered injury in fact and has lost money or property as a result of unfair competition. (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320; Bus. & Prof. Code, § 17204.) In its statement of decision, the trial court rejected Ehiemenonye's UCL claims in part because she failed to show the

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[4] Business and Professions Code section 17910.5 precludes the use of an abbreviation for the word "Company" in a fictitious business name if it implies a non-limited liability company is, in fact, a limited liability company.

allegedly unfair business practices resulted in any "money damage."

On appeal, Ehiemenonye contends the Escobars and GES engaged in unfair competition by violating various federal and state laws. She then asserts the violations of these laws was a " 'substantial factor in bringing about the harm' suffered . . . ." Ehiemenonye fails, however, to cite any evidence in the record to support this latter assertion. Accordingly, she has not met her burden of showing the evidence compels a finding in her favor as a matter of law. (*Valero, supra*, 205 Cal.App.4th at pp. 965–966.)

III. Ehiemenonye Has Not Shown the Trial Court's Post-Judgment Orders Were Improper

Ehiemenonye sets forth numerous arguments as to why the trial court erred in denying her motions to strike or tax costs and for attorney fees, and in granting the Escobars and GES's motion for attorney fees. None of her arguments has merit.

A. Background

After the court entered judgment in favor of the Escobars and GES, Ehiemenonye moved for attorney fees under Code of Civil Procedure section 1021.5. She argued her lawsuit was the catalyst that resulted in a "significant benefit . . . [to] the general public, by having the defendants pay substantial back taxes and penalties to the State of California, in order to reinstate the suspended corporate statuts' [*sic*] of both GES Logistics, Inc [*sic*] and Keymost International Inc." Ehiemenonye separately moved to strike or tax costs.

The trial court denied Ehiemenonye's motions. With respect to her request for attorney fees, the court explained that her action was "based solely on a private dispute over a shipping contract." The court further noted that she failed to proffer any

evidence showing the defendants paid back taxes and did not state the amount of attorney fees she sought.

The Escobars and GES separately moved for $50,858.50 in attorney fees pursuant to Civil Code section 1717, which authorizes fee awards in certain contract cases. In support, they relied on a clause in the August 28 invoice that states, " '[a]ny and all legal fees and other costs that may be necessary to collect the invoice charges shall be for the account of the cargo.' " They represented the phrase " 'account of the cargo' " is "shipping lingo" for payment by the person sending the goods. Therefore, the clause could be interpreted to mean: " '[I]f the shipping company has to sue to get paid, then the customer will pay legal fees.' "

The court granted the Escobars and GES's motion.

B. The Court Did Not Err in Granting Attorney Fees to the Escobars and GES

Ehiemenonye contends the trial court erred in awarding attorney fees to the Escobars and GES because: (1) the attorney fees clause appears in an illegal and unenforceable contract; (2) she did not agree to the invoice's terms; (3) GES is not a party to the contract; and (4) the court previously denied an award of costs to the Escobars and GES. Her arguments are meritless.

In the previous section, we addressed and rejected Ehiemenonye's various arguments as to why the August 28 invoice is illegal or otherwise unenforceable. We also rejected her claims that she did not agree to the invoice's terms. Ehiemenonye simply restates these arguments in connection with her challenge to the court's order awarding attorney fees. We reject the arguments for the reasons already discussed.

Ehiemenonye next insists GES is not entitled to attorney

fees because it was not a party to her contract with the Escobars. "Nonsignatories to contracts are sometimes entitled to attorney fees by virtue of Civil Code section 1717. For example a nonsignatory who prevails in an action on the contract is entitled to attorney fees provided it would have been liable for fees had the other party prevailed." (*Hyduke's Valley Motors v. Lobel Financial Corp*. (2010) 189 Cal.App.4th 430, 435 (*Hyduke's Valley*); see *Hsu v. Abbara* (1995) 9 Cal.4th 863, 870 [§ 1717 allows attorney fees to "parties who defeat contract claims by proving that they were not parties to the alleged contract"].)

Here, Ehiemenonye asserted against GES a claim for breach of the implied covenant of good faith and fair dealing, and specifically alleged GES is a party to her contract with the Escobars. Had Ehiemenonye succeeded on that claim, she would have been entitled to contractual attorney fees.[5] GES, therefore, is entitled to an award of attorney fees, despite not being a party to the contract. (*Hyduke's Valley*, *supra*, 189 Cal.App.4th at p. 435.)

Finally, Ehiemenonye argues the award of attorney fees was improper because the trial court previously denied costs to the defendants. In support, she points to language in the court's statement of decision that it "is changing its statement that defendants may recover costs to the statement 'costs by memorandum,' as in the event that plaintiff wishes to litigate costs, she may do so upon the filing of that memorandum." Ehiemenonye insists this language barred the Escobars and GES

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[5] Ehiemenonye does not contest, in any meaningful way, the trial court's interpretation of the attorney fees clause. Nor does she directly contest that she would have been entitled to attorney fees under the clause had she prevailed on her claims.

from moving for costs. We disagree. It expressly contemplates the Escobars and GES filing a memorandum of costs.

C. Ehiemenonye Has Not Shown the Court Erred in Denying her Motion for Attorney Fees

Ehiemenonye argues she was entitled to attorney fees pursuant to Code of Civil Procedure section 1021.5 because "neither GES nor KEYMOST would have revived their corporate status, without the efforts of Appellant." We disagree.

Code of Civil Procedure section 1021.5 authorizes a court to "award fees only to 'a successful party' and only if the action has 'resulted in the enforcement of an important right affecting the public interest . . . .' [Citation.] Three additional conditions must also exist: '(a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.' [Citation.]" (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 250–251.) Here, Ehiemenonye fails to explain how the revival of GES and Keymost satisfied the requirements of Code of Civil Procedure section 1021.5. Accordingly, she has not met her burden of showing the trial court abused its discretion in denying her motion for attorney fees. (See *Vasquez,* at p. 251 [award of fees under Code of Civ. Proc., § 1021.5 is reviewed for abuse of discretion].)

D. Ehiemenonye Has Not Shown the Court Erred in Denying her Motion to Strike or Tax Costs

Finally, Ehiemenonye contends the trial court erred in denying her motion to strike or tax costs. In support, she simply repeats her arguments that the Escobars cannot "maintain an action," the trial court denied costs to the defendants in its statement of decision, and the Escobars and GES converted her property. We reject the arguments for the reasons discussed above.[6]

DISPOSITION

The judgment and post-judgment orders are affirmed. Respondents are awarded costs on appeal.

BIGELOW, P. J.

We concur:

GRIMES, J. STRATTON, J.

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[6] To the extent Ehiemenonye raises other issues on appeal, we deem them forfeited by her failure to support them with cogent analysis and citation to relevant legal authority. (See *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785 ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived."]; *Loranger v. Jones* (2010) 184 Cal.App.4th 847, 858, fn. 9; *People v. DeSantis* (1992) 2 Cal.4th 1198, 1240, fn. 18.)