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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

DONALD F. DICKERSON
ASSOCIATES, INC.,

Plaintiff and Appellant,

v.

SHINYOUNG 3670, LLC,

Defendant and Respondent.

B232074

(Los Angeles County
Super. Ct. No. BC422560)

APPEAL from an order of the Superior Court of Los Angeles County.
John A. Kronstadt, Judge. Reversed and remanded for further proceedings.

Stone, Rosenblatt & Cha; Tamborelli Law Group and John V. Tamborelli for
Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Donald F. Dickerson Associates, Inc. (plaintiff) challenges a trial court order denying its request for attorney fees. Defendant ShinYoung 3670, LLC, did not oppose plaintiff's appeal.

We conclude that plaintiff was entitled to recover attorney fees. Thus, we reverse the trial court's order denying it attorney fees and remand the matter to the trial court for a determination as to the amount of attorney fees to which plaintiff is entitled.

FACTUAL AND PROCEDURAL BACKGROUND

On September 24, 2009, plaintiff filed its complaint for unpaid fees relating to a construction project against defendant. Specifically, plaintiff sought \$133,153.14, plus interest, costs, and attorney fees pursuant to the parties' contract. The contract, a copy of which was attached to the complaint, provides, in relevant part: "In the event of legal or collection expense in connection with this agreement, [defendant] agrees to pay such expenses."

Following a court trial, judgment was entered in favor of plaintiff in the amount of \$133,153.14, plus interest and costs.

Plaintiff then moved for attorney fees. Defendant opposed the motion, arguing in part that the parties' agreement did not provide for the recovery of attorney fees. After entertaining oral argument, the trial court denied plaintiff's motion. The trial court reasoned that the contract provision did not satisfy the requirements of Civil Code section 1717, subdivision (a),¹ as it did not specifically provide for the recovery of attorney fees.² After all, "legal expense[s]" could embody something other than attorney fees associated with a lawsuit.

An amended judgment was entered, and plaintiff's timely appeal ensued.

¹ All further statutory references are to the Civil Code unless otherwise indicated.

² The notice of ruling provides that "the contract provision for Recovery of Collection Expense is not interpreted to mean Attorneys' fees recovery under Civil Code Section 1717."

DISCUSSION

I. *Standard of review*

“On appeal this court reviews a determination of the legal basis for [a denial] of attorney fees de novo as a question of law.” (*Sessions Payroll Management, Inc. v. Noble Construction Co.* (2000) 84 Cal.App.4th 671, 677.)

II. *The trial court erred*

The issue presented is whether the parties’ agreement, which provides for the recovery of “legal or collection expense,” includes the recovery of attorney fees.

“California law generally requires that a party to a lawsuit pay its own attorney fees, regardless of whether it prevailed in the action. [Citations.] An exception to this general rule is recognized where a contract, statute or other law specifically authorizes the prevailing party to recover attorney fees. [Citations.] Where the recovery of attorney fees is authorized by a contract, the agreement will generally be subject to section 1717[, subdivision] (a), which provides in part: ‘In any action on a contract, where the contract specifically provides that attorney’s fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney’s fees in addition to other costs.’ [Italics omitted.]” (*Baldwin Builders v. Coast Plastering Corp.* (2005) 125 Cal.App.4th 1339, 1343–1344.)

“[T]here is no magic formulation for a fees provision.” (*International Billing Services, Inc. v. Emigh* (2000) 84 Cal.App.4th 1175, 1183, disapproved on other grounds in *M. Perez Co., Inc. v. Base Camp Condominiums Assn. No. One* (2003) 111 Cal.App.4th 456, 464–465.) Defendant promised to pay “legal or collection expense” incurred “in connection with th[e] agreement.” We conclude that the reasonable meaning of this language, as the parties would have understood it at the time of contracting, provides for attorney fees. (§§ 1638 [“The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity”], 1644 [“The words of a contract are to be understood in their ordinary and popular sense,

rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed”].)

We cannot imagine what the phrase “legal . . . expense[s]” would include if not attorney fees. At the hearing on plaintiff’s motion, defendant’s counsel suggested that “[l]egal expense” could be limited to litigation costs, but we are not convinced. Litigation costs are recoverable by a prevailing party as a matter of right. (Cal. Code Civ. Proc., § 1032, subd. (b).) Thus, a contractual provision allowing solely for the recovery of costs would be unnecessary, rendering this paragraph ineffectual and superfluous. (§§ 1643, 3541.)

To the extent the trial court determined that the parties’ agreement was not specific enough, we disagree. As noted above, “[t]here is no legislative form language required by section 1717, so long as the agreement authorizes an award of fees incurred to enforce the contract. The language of this agreement did so.” (*International Billing Services, Inc. v. Emigh, supra*, 84 Cal.App.4th at pp. 1183–1184.)

DISPOSITION

The order is reversed. The matter is remanded to the trial court for a determination as to the amount of attorney fees to which plaintiff is entitled. Plaintiff is entitled to costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ