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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

STRENGTH FARM, LLC, Plaintiff and Respondent, v. THE HERON FAMILY TRUST et al., Defendants and Appellants.	B285264 (Los Angeles County Super. Ct. No. BC613890)

APPEAL from a judgment of the Superior Court of Los Angeles County. Rafael Ongkeko, Judge. Affirmed.

Cohen Williams Williams, Marc S. Williams and Anya J. Goldstein for Defendants and Appellants.

The Kernan Law Firm, S. Michael Kernan and R. Paul Katrinak for Plaintiff and Respondent.

This appeal involves a dispute over the payment of a tenant improvement allowance in connection with the rental of a commercial space by Strength Farm, LLC (Strength Farm). A jury awarded Strength Farm $84,595 for breach of contract and the trial court awarded attorney fees of $371,135 to Strength Farm as the prevailing party. We affirm the judgment.

FACTS

Adam Noble and Thomas Hyland run Strength Farm, which operates a CrossFit gym. In 2015, they looked for a new location for their gym. They found one on Motor Avenue and signed a lease with the Heron Family Trust and Claire Heron, who is a trustee to the Heron Family Trust.[1]

The Lease

Noble and Hyland, by Strength Farm, agreed to build out the space and be reimbursed by the Herons under a "Tenant Improvement Allowance," which provided:

> "Lessor shall grant Lessee a Tenant Improvement Allowance of Thirty-Five Dollars ($35.00) per useable square foot of space in the Premises. Lessor shall not be responsible for any additional Tenant Improvements beyond this Allowance.
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> "The Tenant Improvement Allowance shall consist of all expenses related to the completion of the tenant improvements including materials, contractor fees, architect, space planning, and construction drawings, cabling and municipal and permit fees; and the Lessor's

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[1] We will refer to appellants collectively as "the Herons" and, when discussing a specific member of the Heron family, use their first name so as to avoid confusion. We intend no disrespect.

> Tenant Improvement Allowance may not cover all the Lessee's required improvement expenses.
> "The Tenant Improvement Allowance shall be dispersed upon substantial completion of the work to be performed by Lessee's contractor and shall be supported by paid invoices and lien releases from Lessee's contractors and sub-contractors related to the Tenant's improvements. Lessor shall disperse payment as follows: Fifty (50%) percent upon completion of work by Lessee's contractor; the second installment equal to Twenty (20%) percent within 30 days thereafter and the balance equal to thirty (30%) percent upon receipt of Certificate of Occupancy."

The tenant improvement allowance was worth up to $74,795. Another provision of the lease specified Strength Farm would receive a $9,800 credit for installation of an HVAC system. Strength Farm received a certificate of occupancy in April 2016, by which time the HVAC units had been installed. The Herons, however, paid none of the amounts specified in the tenant improvement allowance clause or the HVAC credit provision. At the time of trial, they still had not paid any money to Strength Farm.

The Trial Proceedings

In March 2016, Strength Farm filed suit against the Herons, alleging six causes of action for fraud, negligent misrepresentation, breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and declaratory relief. A two week trial began on May 8, 2017. Noble, Hyland, their contractors, and experts testified as did

Claire and her sons, Creigh and Courtney, who helped her manage the family's residential and commercial properties.

Noble and Hyland testified they would have preferred to have the landlord build out the space, but were assured they would recover the outlay through the tenant improvement allowance. Because "all of the money [they] had went into the security deposit," they arranged for a loan to be paid back by the tenant improvement allowance. Noble expressed to Claire the importance of the tenant improvement allowance in a number of meetings before the lease was signed. They testified they were led to believe that substantial completion under the contract meant 50 percent completion.

Noble and Hyland described the events leading to their lawsuit against the Herons as follows: Construction on the improvements began in June 2015. In September, Strength Farm provided the Herons with an invoice from their contractor. Claire informed them the invoice needed to be more detailed; a more detailed one was provided. In October, Noble and Hyland approached the Herons for payment for substantial completion of the tenant improvements. The contractor provided a detailed invoice and the cancelled check showing payment from Strength Farm to the Herons. Claire informed them the improvements were not substantially complete. She explained that substantial completion involved installing the electrical meter. A new general contractor, Don Ferrigno, began working on the space in November 2015 because Nobel and Hyland did not believe the previous contractor was working fast enough. The electrical meter was turned on in January 2016.

On January 28, 2016, Noble and Hyland met with Claire to attempt to secure the payment from the tenant improvement allowance. They provided the Herons with the invoices from Ferrigno and the subcontractors, detailing the work that was done as well as an unconditional release from Ferrigno. Noble and Hyland also showed the Herons the cancelled checks from Ferrigno to his subcontractors. After the meeting, Claire told them to follow Courtney into the office so he could write them a check. When they arrived in the office, he gave them a "stack of paperwork and a spreadsheet" to fill out.

Although there was no dispute that the Herons had received an invoice and lien release from Ferrigno, the Herons still made no payments from the tenant improvement allowance. Instead, Strength Farm received a three-day notice to pay rent or quit in March. Noble and Hyland paid the rent by borrowing from Hyland's father. The next month, they received another three-day notice to pay rent or quit, which accelerated the rent so that three months of rent was required to be paid in advance. Noble testified Strength Farm received the certificate of occupancy on April 27, 2016, but had not received any payment under the tenant improvement allowance at the time of trial in May 2017. Although the HVAC was installed by April 2016, there was no payment for the HVAC credit at the time of trial.

Ferrigno testified as to the work that was done on the space and described the process of paying his subcontractors. He further testified he agreed to fill out a lien release at Courtney's direction in January. Strength Farm also presented expert testimony from a forensic accountant, who testified Strength Farm spent $127,669 on the tenant improvements, which was supported by invoices and proof of payment, including cancelled

checks, credit card charges, and PayPal payments. The accounting expert further extrapolated lost profits totaling $72,865, and calculated the rent and security deposit paid by Strength Farm to be $134,241.

Claire testified she made concessions to Strength Farm because she wanted a gym in the building for the benefit of the other tenants. She denied knowing they were on a limited budget or that they had provided any documentation in January to demonstrate payment to their contractors. She believed substantial completion under the lease meant that they were on the verge of getting the certificate of occupancy. In fact, it was her practice to pay the tenant improvement allowance after the work was done; she conformed to this practice for each of her other tenants.

Claire testified it was essential to receive the proper documentation even if a certificate of occupancy had been issued to ensure that no liens would be filed on the property. Two mechanics liens (not involving Strength Farm) had previously been filed against the property, and she wanted to ensure she had the strongest case possible to resolve any future liens.

Courtney testified he received documentation from Hyland and a general release from Ferrigno in preparation for the January meeting. Creigh testified the documents were insufficient. He explained that Ferrigno's ledger, showing the work done by the laborers and subcontractors, included no time sheets from the laborers. In addition, he testified that the independent contractors should have provided time sheets with their rates of pay to ensure they were not charging excessive amounts. Creigh believed that the contractor's fees charged to Strength Farm were "a little on the excessive side." He also

explained he was waiting for an invoice or contract to disperse the HVAC credit.

The jury returned a special verdict in favor of Strength Farm on the breach of contract cause of action and awarded $84,595 in damages, representing the maximum tenant improvement allowance plus the HVAC credit specified in the lease. The jury also awarded damages for unjust enrichment and fraud, but Strength Farm elected to proceed by way of its contract claim.

After trial, Strength Farm moved for its attorney fees under the lease agreement. The trial court granted the motion and awarded Strength Farm $371,135 in attorney fees. The Herons thereafter filed unsuccessful motions for judgment notwithstanding the verdict (JNOV) and new trial. The Herons timely filed a notice of appeal.

DISCUSSION

The Herons contend the verdict is not supported by substantial evidence and as a result, their motions for JNOV and new trial should have been granted. The Herons also challenge the trial court's award of attorney fees to Strength Farm. We find the arguments lack merit and affirm.

I. Substantial Evidence Supports the Jury's Verdict

The Herons make a two-fold attack on the sufficiency of the evidence. First, they contend the terms of the lease agreement required Strength Farm to submit paid invoices and corresponding lien releases before they were required to pay the tenant improvement allowance. According to the Herons, this did not occur because Strength Farm submitted evidence of paid invoices with lien releases for less than $20,000 of its claimed tenant improvements. Second, they claim the jury's verdict that

Strength Farm substantially complied with the terms of the lease is not supported by substantial evidence. On these bases, the Herons argue, the trial court should have granted their motions for JNOV or new trial. We disagree.

A. Standard of Review

We review the record to ascertain whether substantial evidence supports the jury's verdict and the trial court's decision to deny a motion for JNOV. (*Stubblefield Construction Co. v. City of San Bernardino* (1995) 32 Cal.App.4th 687, 703; see also *OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp*. (2007) 157 Cal.App.4th 835, 845.) "A motion for judgment notwithstanding the verdict may be granted only if it appears from the evidence, viewed in the light most favorable to the party securing the verdict, that there is no substantial evidence in support. [Citation.]" (*Sweatman v. Department of Veterans Affairs* (2001) 25 Cal.4th 62, 68.) Thus, we resolve "all conflicts in the evidence and all legitimate and reasonable inferences that may arise therefrom in favor of the jury's findings and the verdict. [Citations.]" (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1137–1138.) We do not weigh the evidence or judge the credibility of the witnesses. (*Tognazzini v. San Luis Coastal Unified School Dist.* (2001) 86 Cal.App.4th 1053, 1058.) If sufficient evidence supports the verdict, we must uphold the trial court's denial of the JNOV motion. (*See Shapiro v. Prudential Property & Casualty Co*. (1997) 52 Cal.App.4th 722, 730.)

Orders denying a new trial are generally reviewed under the deferential abuse of discretion standard. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 859.) Code of Civil Procedure section 657 vests a trial court with discretion to grant a new trial

when the evidence is insufficient to justify a verdict. Under section 657, the trial court must not grant a new trial based on insufficiency of the evidence unless, "after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the . . . jury clearly should have reached a different verdict or decision." (Code Civ. Proc., § 657.)

B. Analysis

The jury found Strength Farm substantially performed its obligations under the lease agreement. The Herons first contend that is not enough; they claim only strict adherence to the requirements of the lease agreement will do. The Herons are incorrect.

"The doctrine of substantial performance has been recognized in California since at least 1921." (*Tolstoy Constr. Co. v. Minter* (1978) 78 Cal.App.3d 665, 671–672 (*Tolstoy*); *Thomas Haverty Co. v. Jones* (1921) 185 Cal. 285, 288–289 (*Haverty*).) Substantial performance allows a plaintiff to recover on a breach of contract claim despite a failure to provide specific performance of the contract terms. (*Tolstoy, supra,* 78 Cal.App.3d at pp. 671–672.)

A defendant "substantially performs" when the variance from the contract specifications is minimal, the variance does not impair the object of the contract, and the contract retains its intended purpose. The omission in performance must be so slight that it will not impair the value of the object of the contract, and the defendant must have acted in good faith to do all that was required. (*Haverty, supra,* 185 Cal. at p. 290; 2 Matthew Bender Practice Guide: Cal. Contract Litigation (2018) § 22.37.) The plaintiff's recovery may be reduced by the amount necessary to

compensate the defendant either for the lack of strict compliance or for the reduced value of the partial, but substantial performance. (*Posner v. Grunwald-Marx, Inc.* (1961) 56 Cal.2d 169, 186–187 (*Posner*).) The doctrine of substantial performance on a contract remains the law of California today. (1 Witkin, Summary of Cal. Law (11th ed. 2017) Contracts, §§ 843–844, pp. 894–895.) What constitutes substantial performance is always a question of fact. (*Posner, supra,* 56 Cal.2d at p. 187.)

The jury in this matter was instructed on the law on substantial performance by CACI No. 312.[2] The jury was further instructed that if Strength Farm did not prove that it substantially complied with its obligation to submit paid invoices and lien releases from its contractors and subcontractors related to its improvements, then Claire was not required to reimburse the tenant improvement allowance. In its special verdict, the jury found Strength Farm did "all, or substantially all, of the significant things that the contract required it to do." The jury was not required to find strict adherence to the terms of the lease; substantial performance was a proper basis for liability.

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[2] The jury was instructed as follows: "Claire Heron contends that Strength Farm, LLC, did not perform all of the things that it was required to do under the contract, and therefore Claire Heron did not have to perform her obligations under the contract. To overcome this contention, Strength Farm, LLC, must prove both of the following: [¶] 1. That Strength Farm, LLC, made a good faith effort to comply with the contract; and [¶] 2. That Claire Heron received essentially what the contract called for because Strength Farm, LLC's failures, if any, were so trivial or unimportant that they could have been easily fixed or paid for."

The Herons alternatively argue there was insufficient evidence to support the jury's finding that Strength Farm substantially complied with the terms of the contract because Strength Farm did not present paid invoices and lien releases. We disagree.

The record provides substantial evidence of Strength Farm's substantial performance. At trial, Strength Farm presented evidence that it paid approximately $128,000 for the build-out. This was supported by invoices and proof of payment in the form of cancelled checks, Paypal payments, and credit card charges. The evidence showed that Strength Farm provided an invoice from their first contractor to the Herons in September. Claire indicated that the invoice needed to be more detailed and also that she required a lien release. In October, the contractor provided a more detailed invoice and a cancelled check from Strength Farm showing its payment to him. Claire then said that substantial completion required installation of the electrical meter. When that was done in January 2016, Noble and Hyland met with the Herons to discuss the tenant improvement allowance. At the meeting, they provided invoices from their second contractor as well as an unconditional release from him. They also provided cancelled checks showing their general contractor paid his subcontractors for the tenant improvements. They provided a number of invoices from subcontractors as well. The jury found these proofs of payment, the invoices, and the lien release constituted substantial performance of the lease terms. This was sufficient to support the jury's verdict.

Nevertheless, the Herons assert Strength Farm's "glaring" failure to provide lien releases from its subcontractors prohibited a finding of substantial compliance. The Herons calculate Strength Farm's performance at 16 percent, because it provided invoices with corresponding lien releases equaling only $20,000, which is 16 percent of its claimed $128,000 in improvement costs. We are not convinced. Strict adherence to the lien release requirement was not required, because it had become an idle act by operation of law. In California, a mechanic's lien is unenforceable if it is not filed within 90 days of completion of the work. (Civil Code, §§ 8412, 8414.) By the time of trial, over a year had passed since the certificate of occupancy was issued and the work was completed.

The Herons concede the time had long passed for a valid lien to be filed, but nonetheless persist in pressing the claim. "The law neither does nor requires idle acts." (Civil Code, § 3532; *Enfield v. Huffman Motor Co.* (1953) 117 Cal.App.2d 800, 807 ["The law does not require a useless act such as a tender where it obviously would be unavailing."].) We decline to reverse the jury's verdict by requiring Strength Farm to have completed an idle act.

Because substantial evidence supports the jury's verdict, the trial court did not err in denying the JNOV motion. The trial court also did not abuse its discretion to deny the new trial motion since the entire record does not indicate the jury should have reached a different verdict.[3]

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[3] The Herons make a cursory argument that they are entitled to an offset or deduction for Strength Farm's failure to comply. However, the Herons have not presented an estimation as to the deduction amount or evidence to support it. As a result,

II. The Trial Court Did Not Abuse Its Discretion to Award Strength Farm Its Attorney Fees

The Herons also contend the trial court abused its discretion by finding Strength Farm was the prevailing party and in awarding an excessive amount of attorney fees. According to the Herons, they were the prevailing party since they won on a majority of Strength Farm's causes of action and defeated Strength Farm's claims for out-of-pocket costs, lost profits, rent abatement, unjust enrichment, and punitive damages. At a minimum, the Herons contend the trial court should have apportioned Strength Farm's fees between the contract and the noncontract claims or reduced the requested fees. We find no abuse of discretion.

A. Proceedings Below

The lease contains an attorney fees provision which entitles the prevailing party to reasonable attorney fees. Under the lease, if any party brings an action involving the premises "whether founded in tort, contract or equity or to declare rights hereunder," the prevailing party is the one who substantially obtains relief "by compromise, settlement, judgment, or the abandonments by the other Party or Broker of its claim or defense." Strength Farm moved for attorney fees under this provision after trial, seeking $434,528 in fees.

The trial court found Strength Farm to be the prevailing party because the "main thrust" of its action was the breach of contract allegation. The Herons argued Strength Farm could not be the prevailing party because it did not prevail on its tort claims and did not recover the full amount of damages it sought.

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we find the argument forfeited. (*In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 337.)

The court disagreed that the Herons entirely defeated the tort claims, noting that "after the verdict was read and before the jury was discharged, these [tort] claims were abandoned after Plaintiff elected the contractual remedy. In fact, the jury's special verdict form indicates that the jury found that the Plaintiff suffered damages on its unjust enrichment and fraud claims." The court refused to apportion attorney fees between the contract claims and the tort claims, finding the facts concerning these claims were so interrelated that it was impossible to separate them.

The court took under submission the issue of the reasonableness of Strength Farms' attorney fees, noting, "the case was fairly simple" at the time of the first case management conference, but that "the defense drove a lot of paperwork in this case—very thorough presentation."

The court ultimately awarded Strength Farm $371,135 in attorney fees, disallowing 36 hours of unsupported law clerk time and reducing two associate attorneys' rates from $350 to $250 per hour. The court also used a negative multiplier of .9 to account for Strength Farm's lack of success on the noncontract claims. The trial court noted that Strength Farm's attorneys billed 793 hours in litigating the matter, which "seemed high," but then noted that "[t]hese hours were unfortunately required in light of the unyielding position taken by the defense from the very outset of the dispute. A CCP 998 offer issued just 30 days before trial that exceeded the [tenant improvement allowance and HVAC credit] contract amount by just $405, but which ignored Plaintiff's costs and attorney's fees could not have been made or taken seriously." The judgment was then interlineated to include the costs and fees awarded.

B. Standard of Review and Applicable Law

Civil Code section 1717, subdivision (a), provides generally that, in any action "on a contract" with an attorney fees provision, the party "prevailing on the contract" shall be entitled to reasonable attorney fees in addition to other costs. Civil Code section 1717, subdivision (b)(1), clarifies that "the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract."

A trial court is given wide discretion in determining which party prevailed on the contract, and its determination will not be reversed on appeal absent a clear abuse of discretion. (*Sears v. Baccaglio* (1998) 60 Cal.App.4th 1136, 1158.) A trial court abuses its discretion when it issues a ruling that is "arbitrary, capricious or patently absurd," and results in a miscarriage of justice. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 180.)

Where a contract cause of action is joined with other causes of action beyond the contract, the prevailing party may recover attorney fees under Civil Code section 1717 only as they relate to the contract action. (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129–130 (*Alperson*).) However, attorney 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. (*Ibid.*) The issue of apportionment remains within the discretion of the court. (*Hjelm v. Prometheus Real Estate Group, Inc.* (2016) 3 Cal.App.5th 1155, 1177.)

"[I]n determining litigation success, courts should respect substance rather than form, and to this extent should be guided by 'equitable considerations.' For example, a party who is denied direct relief on a claim may nonetheless be found to be a

prevailing party if it is clear that the party has otherwise achieved its main litigation objective." (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 877, italics omitted.)

It is also within the sound discretion of the trial court to determine what constitutes a reasonable fee. (Civ. Code, § 1717, subd. (a); *Schoolcraft v. Ross* (1978) 81 Cal.App.3d 75, 82.) To make that determination, the court should consider " ' . . ."the nature of the litigation, its difficulty, the amount involved, the skill required and the skill employed in handling the litigation, the attention given, the success of the attorney's efforts, his learning, his age, and his experience in the particular type of work demanded [citation]; the intricacies and importance of the litigation, the labor and the necessity for skilled legal training and ability in trying the cause, and the time consumed." ' " (*Clayton Development Co. v. Falvey* (1988) 206 Cal.App.3d 438, 447.)

C. Analysis

On this record, we conclude the trial court was well within its discretion to find Strength Farm to be the prevailing party. Strength Farm was "the party who recovered a greater relief in the action on the contract." (Civ. Code, § 1717, subd. (b)(1).) Indeed, the jury found the Herons breached their lease agreement with Strength Farm and awarded it the maximum amount to be paid under the lease for the tenant improvement allowance and the HVAC credit. The jury also found Strength Farm suffered damages on its unjust enrichment and its fraud claims.[4] After the jury trial, the Herons stipulated to Strength

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[4] Due to an error in the special verdict form, the jury found Strength Farm suffered $9,039 in fraud damages despite first finding that Claire intended to fulfill her promises to Strength

Farm's declaratory relief cause of action. Thus, the trial court's determination was not "arbitrary, capricious or patently absurd."

We reject the Herons' contention that Strength Farm's lack of success on its tort claims renders it the losing party. Civil Code section 1717 applies to the party prevailing *on the contract*. The Supreme Court has made clear that attorney fees may be awarded under Civil Code section 1717 only as they relate to the contract action. (*Alperson*, *supra,* 25 Cal.3d at pp. 129–130.) Without any success on the contract action, there may be no attorney fees award under Civil Code section 1717. (*Ibid.*) As discussed above, it is clear that Strength Farm was the party prevailing on the contract.

Notwithstanding Civil Code section 1717, however, the lease agreement here provides for attorney fees for "an action or proceeding involving the Premises, whether founded in tort, contract or equity, or to declare rights hereunder." Even taking into account the broader reach of this attorney fees provision, we agree with the trial court's finding that the main thrust of Strength Farm's complaint was its breach of contract claim rather than its tort or declaratory relief claims. The noncontract causes of action all stem from the Herons' refusal to pay the tenant improvement allowance and the HVAC credit.

In any event, the law does not require a prevailing party to prevail on all of its claims. As the court in *De La Cuesta v. Benham* (2011) 193 Cal.App.4th 1287 (*De La Cuesta*), reasoned, "if anything less than complete victory means that a client loses what would otherwise have been 'prevailing party' status under section 1717, the attorney is crunched into a dilemma. Risk a

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Farm under the lease. Strength Farm elected to proceed with its contract claims and waive its tort claims.

malpractice suit by *not* asserting maximal claims, or risk a malpractice suit by forfeiting 'prevailing party' status under section 1717 *by* asserting maximal claims." (*De La Cuesta, supra*, at p. 1296, fn. 5.) By parity of reasoning, we find unavailing the Herons' argument that Strength Farm did not prevail because it did not recover the entirety of the damages it sought under the contract. (*Sukut-Coulson, Inc. v. Allied Canon Co.* (1978) 85 Cal.App.3d 648, 656 [the fact that a plaintiff's recovery in an action under a contract is less than the amount prayed for in the complaint does not make the defendant the prevailing party within the meaning of Civil Code section 1717].) We therefore reject this argument.

We also conclude the trial court properly exercised its discretion to determine the amount of the fee award. Although the attorney fees award may appear high in light of the damages awarded by the jury, it was not unreasonable. (See *Bruckman v. Parliament Escrow Corp.* (1987) 190 Cal.App.3d 1051, 1061–1062 [affirming a $16,022.25 attorney fees award on a judgment for $8,297.01].) The record shows the trial court carefully considered the fees charged by Strength Farm's attorneys and disallowed fees that were unsupported by time records or rates that it found were too excessive. The court also applied a negative multiplier to account for Strength Farm's lack of success on its noncontract claims. In reaching its conclusion, the trial court found it was the Herons' "unyielding position" which necessitated much of the litigation and the attorney fees. We agree.

The record amply demonstrates that the Herons did not pay any of the tenant improvement allowance despite receiving at least one lien release and proof that Strength Farm paid $128,000 in tenant improvements. Indeed, the Herons admit

$4,546 of tenant improvements were supported by paid invoices and a lien release at the time of the January 2016 meeting. On appeal, the Herons' own calculation shows a total of $19,999.23 of the tenant improvements were supported by lien releases and paid invoices. Yet, they paid nothing. As to the remaining lien releases, the Herons concede that any liens filed 90 days after work was completed were invalid. Had the Herons been more reasonable in making payments for even some tenant improvements or the HVAC credit, the issues could have been narrowed and litigation costs would have been less onerous.

Instead, Strength Farm was forced to prove its case on issues that were not disputed. There was no real dispute, for example, that the HVAC credit of $9,800 should have been paid by or shortly after April 2016. The lease agreement simply stated the Herons "shall provide a credit for [HVAC] installation equal to $9,800" with no requirements other than that it be installed. Claire admitted the HVAC units were installed, because it was a requirement for the certificate of occupancy. Yet, Creigh testified the HVAC credit was withheld because he wanted specific paperwork so that the Herons could know exactly how much it cost and what that contractor charged for that particular item, none of which were required under the lease. Indeed, the Herons tendered, after trial, the HVAC credit to Strength Farm and they do not contest the jury's verdict as to the HVAC credit on appeal. The Herons' stance on the HVAC credit issue is but one example explaining why a large attorney fees award was reasonable.

DISPOSITION

The judgment is affirmed. Strength Farm to recover its costs on appeal, including its reasonable appellate attorney fees incurred on appeal. (*MST Farms v. C.G. 1464* (1988) 204 Cal.App.3d 304, 308 [appellate attorney fees statutorily recoverable as an element of costs under Civil Code section 1717]; *Imperial Bank v. Pim Electric, Inc.* (1995) 33 Cal.App.4th 540, 557, italics omitted ["Statutory authorization for the recovery of attorney fees incurred in trial court proceedings necessarily includes attorney fees incurred on appeal unless the statute specifically provides otherwise."]; see Code Civ. Proc., § 1033.5, subd. (a)(10) [attorney fees under contract or statute allowable as costs].)

BIGELOW, P.J.

We Concur:

RUBIN, J.

GRIMES, J.