

When the Loser Cannot Win ... Court of Appeal Rules That Party To A Contract Dispute, Which Lost On the Only Cause of Action Adjudicated at Trial In A Breach Of Contract Lawsuit, Cannot Be the Prevailing Party for Purposes Of Attorney's Fees Even If The Losing Party Achieved Most Of Its Litigation Objectives

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As is so often the case, contract cases with prevailing party attorney's fees clauses often become more about attorney's fees than the underlying facts of the contract dispute. This is so because, under California law, and Civil Code § 1717, prevailing party attorney's fees are to be awarded to the party to a breach of the contract case which achieves the more favorable result. See, Hsu v. Abbara (1995) 9 Cal.4<sup>th</sup> 863. But what if the parties' contract clause, insofar as prevailing party attorney's fees, attempts to shift or define what a prevailing party is, perhaps contrary to Civil Code § 1717? And what if the defendant, which lost the case, prevailed on most of the plaintiff's claims?

Those questions were answered in part in the Court of Appeal decision in Waterwood Enterprises, LLC v. City of Long Beach (2020) Westlaw 7417012 ("Waterwood case"). The Waterwood case concerned a breach of contract claim between a property owner and the City of Long Beach ("City"). In that matter, The City sold a parcel to Waterwood Enterprises, LLC ("Waterwood") in 2005, and then leased back the parcel for a ten year period beginning or about October 14, 2005. The City used the property as a police evidence storage facility. The lease terminated on October 31, 2015. At the time the lease terminated, disputes arose between Waterwood and the City as to the condition of the property and what repairs the City would be required to pay for.

Waterwood filed suit for breach of contract demanding reimbursement for numerous repairs. The City filed a general denial asserting various affirmative defenses, but did not allege or acknowledge in the defenses any debt owed to the Plaintiff, or that it had tendered any amount to the Plaintiff. The matter was subject to a ten day trial. Prior to the trial, there had been a number of settlement offers made by the City. The trial resulted largely in favor of the City. The jury awarded damages of only \$45,050.00, with interest amounting to \$1,187.06. The Court further ordered that the City would be required to pay Waterwood costs of \$19,905.04. However, based upon the language of the parties' contract, insofar as prevailing parties were concerned, and settlement offers that had been made, the Court ruled that Waterwood should pay the City attorney's fees in the amount of \$172,375.00. This resulted in a net award to the City of \$105,432.90.

Waterwood appealed.

A key issue in the appeal had to do with the lease provision itself. The lease included a prevailing party clause which provided:

"If any legal action should be commenced in any court regarding any dispute arising between the parties hereto ... concerning any provision of this Lease or the rights and duties of party or person in relation thereto, then the prevailing party therein shall be entitled to collect its reasonable expenses, attorney fees, and court costs, including the same on appeal. As used herein, the term 'prevailing party' means the party who, in light of the claims, causes of action, defenses asserted, is afforded greater relief."

On appeal, Waterwood claimed that there was no basis to award attorney's fees to the City. The City, as it did before the Trial Court, noted that it had staunchly disputed the Plaintiff's claims that the City should tear off and replace the entire roof, and install two entirely new HVAC units. The City had also denied an obligation to tear up the entire asphalt parking lot, and nearby concrete pads, and install new asphalt and concrete. The City argued that it achieved its main litigation objective, "to pay Plaintiff for some, but not all, of the claimed repairs."

In its appeal, Waterwood argued that the Trial Court abused its discretion in awarding attorney's fees to the City on the only Cause of Action, for Breach of Contract, which the City had lost. The Court of Appeal agreed and reversed. The Court of Appeal ruled that the Trial Court used an incorrect legal standard, and improperly considered settlement offers. The Court of Appeal also ruled that there had not been a proper tender of any amounts due to Waterwood, and therefore the City had no basis to assert that it was the prevailing party based on a tender of the amount due.

The Waterwood case is important in that it demonstrates that, if there is a single cause of action in a breach of contract case, and one party prevails via a money award, the party that wins is the prevailing party. The Waterwood case demonstrates that, in order to avoid paying attorney's fees in a breach of contract dispute, the losing party either needs to serve a Statutory Offer to Compromise (for which "post offer" fees can be recouped) or tender the amount due.

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