

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 07/02/2025

TIME: 02:06:00 PM

DEPT: C21

JUDICIAL OFFICER PRESIDING: Deborah Servino

CLERK: S. Valencia

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2015-00801555-CU-OR-CJC** CASE INIT.DATE: 07/28/2015

CASE TITLE: **MID-WILSHIRE PROPERTY, L.P. vs. DR. LEEVIL, LLC**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other Real Property

EVENT ID/DOCUMENT ID: 74601465

EVENT TYPE: Under Submission Ruling

APPEARANCES

There are no appearances by any party.

The court, having taken the above-entitled matter under submission on June 27, 2025, and having fully considered the arguments of all parties, both written and oral, and the evidence submitted in this case, now rules as follows:

NOTICE OF RULING:

Defendant Dr. Leevil, LLC's motion for an award of attorney's fees against Plaintiff Mid-Wilshire Property, L.P. is granted.

Applicable Law

Under Code of Civil Procedure section 1032, subdivision (b), a prevailing party is entitled as a matter of right to recover costs. Under Code of Civil Procedure section 1033.5, subdivision (a)(10)(A), attorney's fees authorized by contract are allowable as costs under Code of Civil Procedure section 1032.

Civil Code section 1717, subdivision (a) provides in relevant 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." The statute also provides, "[r]easonable attorney's fees shall be fixed by the court, and shall be an element of the costs of suit." (Civ. Code, § 1717, subd. (a).) The reciprocal right conferred by Civil Code section 1717 applies to an action on the contract regardless of who initiates the action. (Pacific Custom Pools, Inc. v. Turner Const. Co. (2000) 79 Cal.App.4th 1254, 1268.)

As explained in Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc. (2012) 211 Cal.App.4th 230: "California courts construe the term 'on a contract' liberally.' [Citation.] The phrase 'action on a contract' includes not only a traditional action for damages for breach of a contract containing an attorney fees clause [citation], but also any other action that 'involves' a contract under which one of the parties would

be entitled to recover attorney fees if it prevails on the action [citation]. 'In determining whether an action is "on the contract" under section 1717, the proper focus is not on the nature of the remedy but on the basis of the cause of action.' (Kachlon v. Markowitz (2008) 168 Cal.App.4th 316, 347 (Kachlon).)" (Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc., supra, 211 Cal.App.4th at pp. 240-241.

If a contractual attorney's fee provision is phrased broadly enough, it may support an award of attorney's fees to the prevailing party on non-contract claims. Under Code of Civil Procedure section 1021, parties may validly agree that the prevailing party will be awarded attorney's fees incurred in any litigation between themselves, whether such litigation sounds in tort or in contract. (Xuereb v. Marcus & Millichap, Inc. (1992) 3 Cal.App.4th 1338, 1341.) "[P]arties may validly agree that the prevailing party will be awarded attorney fees incurred in any litigation between themselves, whether such litigation sounds in tort or in contract." (Santisas v. Goodin (1998) 17 Cal.4th 599, 608.)

Defendant's Entitlement to Attorney's Fees

Defendant was the prevailing party in this action. (See Code Civ. Proc., § 1032, subd. (a)(4).) As the prevailing party, Defendant may claim reasonable attorney's fees here under Civil Code section 1717, subdivision (a) and Code of Civil Procedure sections 1032 and 1033.5, subdivision (a)(10)(A). Here, the underlying promissory note, business loan agreement, deed of trust, and extension agreement included fee provisions that permit recovery of fees incurred in interpretation and enforcement of those agreements. The promissory note contained the following attorney's fee clause:

ATTORNEYS' FEE; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. Borrowers also will pay any court costs, in addition to all other sums provided by law.

(Richards Decl., Exh. H, at p. 2 [ROA 1339].)

The business loan agreement also had an attorney's fee provision, which stated:

Attorneys' Fees; Expenses. Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

(Richards Decl., Exh. J, at p. 4.) The business loan agreement inured to the benefit of successors and assigns. (Richards Decl., Exh. J at p. 5.)

The deed of trust contained the following attorney's fees clause:

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject

to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services,

(Richards Decl., Exh. K at p. 6.) The terms of the deed of trust inured to the benefit of an assignee. (Richards Decl., at p. 7.)

The extension agreement to the promissory note contained an attorney's fee clause that stated:

In the event any dispute arises which requires the interpretation or enforcement of this agreement, the prevailing party shall be entitled to its costs and reasonable attorneys fees in any litigation or arbitration, including post-judgment motions, proceedings, or enforcement or collection efforts.

(Richards Decl., Exh. I at ¶ 5.12 [emphasis added].) That agreement inured to the benefit of successors and assigns. (Richards Decl., Exh. I at ¶ 5.10.)

The attorney's fees clauses were worded broadly to encompass Plaintiff's claims. The heart of Plaintiff's wrongful foreclosure claim was whether: (1) there was debt owed; (2) Plaintiff had paid all the amounts set forth in the notice of sale; and (3) Defendant had standing to foreclose. (Stmt. of Dec., at pp. 10-16 [ROA 1316]; see FAC, at ¶¶ 38-39, 45 [ROA 21].) Furthermore, interpretation of the promissory note, including the attorneys' fee provision, was expressly part of the court's analysis of the wrongful foreclosure claim. (Stmt. of Dec., at pp. 14-15.)

Plaintiff contends that Defendant cannot recover attorney's fees because the wrongful foreclosure cause of action was a tort and thus not "on the contract" as required by Civil Code section 1717. But the limits of section 1717 only apply when a party must rely on the "mirror" effect of 1717 to recover fees. In other words, the attorney's fee provision specifies fee recovery by one party only, and the other party may recover fees only because Civil Code section 1717 provides for reciprocal fee recovery even under a unilateral fee provision. Here, the attorney's fees provisions either provided for recovery by Defendant as "Lender" (see loan agreement and deed of trust) or expressly provided for fees to either party as prevailing party (promissory note). Even to the extent Defendant must rely on section 1717, the fee provision in the promissory note is quite broad: "In the event any dispute arises which requires the interpretation or enforcement of this agreement," This language is broad enough to encompass the wrongful foreclosure cause of action.

Plaintiff argues that Defendant cannot recover the fees incurred up to and through the first trial, and presumably the appeals, because the judgment in Defendant's favor from the first trial was reversed on appeal. According to Plaintiff, Defendant was not the prevailing party as to the claims litigated in the first trial. Plaintiffs' contention is incorrect. Where an appellate decision does not decide who wins the lawsuit but instead contemplates further proceedings in the trial court, such as in this case, an attorney fee award based on a contractual provision must wait until the lawsuit is completely and finally decided. That is because there is no prevailing party when the appellate decision is made. (Presley of Southern California v. Whelan (1983) 146 Cal.App.3d 959, 961.) As the prevailing party of the lawsuit after the retrial, Defendant is entitled to its attorney's fees, including those from the first trial and the appeals. (See id. at p. 963 ["A party who wins an outright victory should recover all his fees without offset for the fees incurred by the other party."]; Butler-Rupp v. Lourdeaux (2007) 154 Cal.App.4th 918, 926-927 [the prevailing party is entitled to recover the attorney's fees incurred on appeal, even if the appellate court in its remand order states that the parties are to bear their own appellate costs].)

Amount of Attorney's Fees

A party that is seeking attorney's fees as a prevailing party must present evidence of the time spent and

the hourly rate of each attorney. (Copenbarger v. Morris Cerullo World Evangelism, Inc. (2018) 29 Cal.App.5th 1, 14.) This party has the burden of showing that the fees sought were allowable, reasonably necessary to the conduct of the litigation, and reasonable in amount. (Levy v. Toyota Motors Sales, U.S.A., Inc. (1992) 4 Cal.App.4th 807, 816.)

The court's analysis begins with the lodestar figure, based on the "careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." (Serrano v. Priest (1977) 20 Cal.3d 25, 48.) "The reasonable hourly rate is that prevailing in the community for similar work." (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095 [internal citation omitted].) A reasonable hourly rate reflects the skill and experience of the lawyer, including any relevant areas of particular expertise, and the nature of the work performed. (Hensley v. Eckerhart (1983) 461 U.S. 424, 433-434.) The reasonable market value of the attorney's services is the measure of a reasonable hourly rate. This standard applies regardless of whether the attorneys claiming fees charge nothing for their services, charge at below-market or discounted rates, represented the client on a straight contingent fee basis, or are in house counsel. (PLCM Group v. Drexler, supra, 22 Cal.4th at p. 1094.)

To determine reasonable attorney's fees, the court should consider the nature of the litigation, its difficulty, the amount involved, the skill required and employed in handling the matter, the attention given, the success of the attorney's efforts, the intricacies and importance of the litigation, the labor and necessity for skilled legal training and ability in trying the cause, and the time consumed. (Church of Scientology v. Wollersheim (1996) 42 Cal.App.4th 628, 659.) As to the reasonableness of the hours, "trial courts must carefully review attorney documentation of hours expended; 'padding' in the form of inefficient or duplicative efforts is not subject to compensation." (Ketchum v. Moses, supra, 24 Cal.4th at p. 1132.) "[A]ny failure to maintain appropriate time records sufficient to provide a basis for determining how much time was spent on particular claims" properly permits reduction of the award. (Christian Research Institute v. Alnor (2008) 165 Cal.App.4th 1315, 1320, overruled on other grounds in Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal.4th 53, 68, fn. 5.) "In determining a fee's reasonableness, the court may also consider whether the motion itself is reasonable, both in terms of (1) the amount of fees requested and (2) the credibility of the supporting evidence." (Guillory v. Hill (2019) 36 Cal.App.5th 802, 811.) The court may make a downward adjustment if the billing entries are vague, "blockbilled," or unnecessary. (569 East County Boulevard LLC v. Backcountry Against the Dump, Inc. (2016) 6 Cal.App.5th 426, 441.)

Defendant's Recovery of Richards' Attorney's Fees

As a preliminary matter, Plaintiff objects to Defendant recovering fees on account of Richards' work because he is the manager of Defendant. Plaintiff refers to him as the "owner or manager" of Defendant. A limited liability company may be member-managed or manager-managed. A manager does not need to be a member of a limited liability company. (Corp. Code, § 17704.07, subds. (b) & (c).)

The evidence presented at trial, was that Richards was an attorney and had been Defendant's manager since Defendant was formed. He had no ownership interest in Defendant. (See Stmt. of Dec., at p. 5; Richards Decl., at ¶ 4.) The corporate documents and prior declaration submitted by Plaintiff indicate no more than that Richards is Defendant's manager. (See Mahrouyan Decl., Exhs. A - C [ROA 1368].) There is no evidence that Richards is a member or owner of Defendant.

A corporate litigant that is represented by in-house counsel may recover contractual attorney fees. (Soni v. Wellmike Enterprise Co. Ltd. (2014) 224 Cal.App.4th 1447, 1488.)

Specifically, "in-house attorneys, like private counsel but unlike pro se litigants, do not represent their own personal interests and are not seeking remuneration simply for lost opportunity costs that could not be recouped by a nonlawyer. A corporation represented by in-house counsel is in an agency relationship, i.e., it has hired an attorney to provide professional legal services on its behalf. Nor is there any impediment to the effective and successful prosecution of meritorious claims because of possible ethical

conflict or emotional investment in the outcome. The fact that in-house counsel is employed by the corporation does not alter the fact of representation by an independent third party. Instead, the payment of a salary to in-house attorneys is analogous to hiring a private firm on a retainer.” (Ibid.) Accordingly, Defendant may recover Richards’ attorney’s fees as his attorney work on the case would be akin to the work of in-house counsel.

Attorney’s Fees for Work Incurred Through the First Trial

For the fees incurred through the first trial, Defendant is awarded \$476,353.44. This was the amount the court previously determined to be reasonable attorney’s fees. (ROA 921, 923.)

Attorney’s Fees Incurred for Appeals

According to Defendant, it incurred \$84,989 in attorney’s fees in connection with Plaintiff’s appeals from the first judgment and from the fee award, representing 121.5 hours. (Richards Decl., at ¶ 30, Exh. L; Long Decl., at ¶¶ 13-14, Exh. M [ROA 1339].) The hourly rates of \$975 to \$1,050 for Richards (Exh. L, at pp. 33-34) and \$605 to \$685 for Long (Exh. M) were on the higher side, but reasonable and commensurate with the prevailing rates charged by attorneys of similar skills and experiences in the community for the appellate work. Plaintiff argues that the attorney’s fees were excessive and duplicative. It does appear that Long frequently conferred with Richards. While communication with others on the legal team may be necessary at times, the frequency was excessive at times. Long also conferred with an appellate specialist (R. Cooper), despite Long describing himself as having significant appellate practice experience. Accordingly, the court reduced the attorney’s fees billed by Long for over-conferenced and over-billed entries. The court determines that the reasonable amount of attorney’s fees incurred on the appeals is \$74,820 (\$61,882.50 for Long + \$12,937.50 for Richards).

Attorney’s Fees for After Remand

After the case was remanded from the Court of Appeal, three attorneys performed work on the case. (Richards Decl., at ¶¶ 26-29, Exh. L; Long Decl., at ¶¶ 15-16, Exh. N; Mulkerin Decl., at ¶¶ 3, 6, 9-10, Exh. O.) Plaintiff argues that Defendant did not need three attorneys. Defendant explained that it needed three attorneys because Plaintiff had filed a motion to disqualify on January 16, 2024 (ROA 1024) and filed a motion in limine to preclude Richards from presenting any evidence or testimony as a witness (ROA 1167), and Richards was an important defense witness. The court did not rule on the motion to disqualify until May 3, 2024. (5/3/2024 Minute Order). The court declined to rule on the motions in limine until the case reached the jury trial portion. (9/30/2024 Minute Order.) Defendant reasonably explained the need for three attorneys.

The hourly rates after remand were (1) \$1,050 to \$1,225 for Richards (Exh. L at pp. 34- 39); (2) \$685 to \$735 for Long (Exh. N); and (3) \$440 for Mulkerin (Exh. O.) As previously noted, hourly rates for Richards and Long were on the higher side, but given the complexity of the business litigation, the work that they performed, their skills and experience, they was reasonable. Mulkerin’s hourly rate was likewise reasonable. The hourly rates for staff and other attorneys at Burke, Williams & Sorensen, LLP were reasonable for non-clerical tasks.

As for the number of hours, this case had a long and complex history, involving multiple parties and actions filed in other courts (Ventura Superior Court, Los Angeles Superior Court, two different Courts of Appeal, and bankruptcy court). The case was heavily litigated and involved some complicated issues, as reflected in the 17-page Statement of Decision. Counsel’s work in the case assisted the court in addressing the principle controverted issues, particularly counsel’s closing argument that set forth the applicable law and evidence presented at trial. Plaintiff argued that the number of hours was excessive, redundant, and duplicative. The court has reviewed counsels’ billing statements. With that review, the court has reduced the attorney’s fees for duplication, redundancy, clerical tasks, and inefficiencies between the three senior lawyers. The court determines that the reasonable amount of attorneys fees

after remand, including work for the instant motion, is \$511,595.55 (\$148,407.05 for Richards + \$222,453.50 for Long + \$140,735 for Burke, Williams & Sorensen).

Defendant is awarded a total of \$1,062,768.90 in attorney's fees.

The Clerk is ordered to give notice of the ruling.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: MID-WILSHIRE PROPERTY, L.P. vs. DR. LEEVIL, LLC

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:
30-2015-00801555-CU-OR-CJC

I certify that I am not a party to this cause. I certify that that the following document(s), Minute Order dated 07/02/25, was transmitted electronically by an Orange County Superior Court email server on July 2, 2025, at 2:15:15 PM PDT. The business mailing address is Orange County Superior Court, 700 Civic Center Dr. W, Santa Ana, California 92701. Pursuant to Code of Civil Procedure section 1013b, I electronically served the document(s) on the persons identified at the email addresses listed below:

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CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE