

***347 Group, Inc. v. Philip Hawkins Architect, Inc., No. C091273 (3rd Cir. Dec. 7, 2020)***

When a plaintiff obtains judgment against a corporate entity and then institutes an independent action against an alter ego, the alter ego defendant may recover attorney fees under Civil Code 1717, even if the subsequent action did not include contract causes of action.

**FACTS/PROCEDURE**

Plaintiff 347 Group, Inc. sued Defendants Philip Hawkins Architect, Inc. (Architect, Inc.), Philip Hawkins (Hawkins) as an individual, and Design-Build, Inc., seeking damages for breach of contract and breach of the covenant of good faith and fair dealing after Architect, Inc. failed to pay 347 Group for its services. Plaintiff initially only sued Architect, Inc. but later amended its complaint to include Defendants Hawkins and Design Build after Architect, Inc. filed for bankruptcy. Defendants Hawkins and Design Build were not signatories under the contract so Plaintiff brought his suit under an alter ego theory of liability. Plaintiff obtained a default judgment against Defendant Architect, Inc. for breach of contract and dismissed its contract causes of action against Hawkins and Design Build. Plaintiff asserted tort causes of action for fraudulent conveyance and conspiracy against Hawkins and Design Build instead. At trial court, Hawkins and Design Build prevailed against 347 Group and moved for attorney fees under Civil Code section 1717. The trial court denied the motion, finding an attorney fees award improper because Plaintiff dismissed its contract cause of action and the remaining tort causes of action did not allow for attorney fees. Defendant Hawkins appealed the judgment, arguing the action was still “on the contract” because he was sued as an alter ego of Architect, Inc.

**HOLDING/DISCUSSION**

The Court of Appeal for the Third District reversed. Civil Code section 1717 provides: “In any action *on a contract*, where the contract specifically provides that attorney’s fees and costs...shall be awarded...to the prevailing party, then the party...prevailing on the contract, whether...specified in the contract or not, shall be entitled to reasonable attorney’s fees.” (Italics added.) California courts construe “on a contract” liberally to include any action involving a contract if one of the parties could have recovered attorney’s fees had it prevailed. Here, Hawkins argued the present action was “on the contract,” because even though it consisted only of tort claims and he was a nonsignatory defendant, 347 Group could have collected attorney fees from him had it prevailed. The Court agreed with Hawkins. In general, “when a judgment is rendered in a case involving a contract that includes an attorney fees and costs provision, the ‘judgment extinguishes all further contractual rights, including the contractual attorney fees clause.’” However, an alter ego may be added post-judgment because, “in the eyes of the law, the alter ego was a party, albeit by a different name,” to the original suit. Thus, in the post-judgment actions involving alter ego liability, the parties may still recover attorney fees under the contract. Here, even though 347 Group already obtained judgment on the contract against Architect, Inc., 347 subsequently sought to recover against Hawkins as an alter ego of Defendant. If 347 had prevailed, it could have collected attorney fees from Hawkins. Thus, under principles of mutuality, Hawkins was also entitled to attorney fees. Moreover, since Hawkins is considered a party to the original action under an alter ego theory, post-judgment recovery of attorney fees on a contract was permitted.