

Waterwood Enterprises, LLC v. City of Long Beach (2020) 58 Cal.App.5th 955

Under Civil Code section 1717, subdivision (b)(2) and section 1811.1, defendants who allege in their answer that they tendered the amount owed to plaintiff prior to the commencement of litigation may be deemed the prevailing party.

FACTS/PROCEDURE

In 2005, Defendant City of Long Beach (“the City”) sold a property to Plaintiff Waterwood Enterprises, LLC (“Waterwood”) and then leased it back for a 10-year term from October 14, 2005 to October 31, 2015. At the end of the lease term, Waterwood alleged there were extensive damages to the property, including severe leaking from the roof, an inoperable air conditioning and HVAC system, deterioration of the asphalt and concrete surrounding the premises, and a damaged wall on the southeast corner of one of the buildings that looked as if it had been hit by a truck. These damages were allegedly not the result of reasonable wear and tear but from improper maintenance and neglect. In 2016, Waterwood filed a complaint against the City for breach of contract. The City answered and denied that Waterwood incurred damages in the sums alleged or at all. At trial, the City continued to deny it was responsible for most of the damages and admitted only that it should have conducted certain repairs to the roof and surrounding asphalt and concrete. At trial, the jury found for Waterwood and awarded \$45,050 in contractual damages.

In a posttrial motion, Waterwood sought attorney fees and costs. In response, the City brought its own motion for attorney fees, arguing that it was the prevailing party. The City contended that it had acknowledged from the beginning that it should have paid for some repairs but not all. Thus, under the jury’s award, the City “achieved its main litigation objective ‘to pay Plaintiff for some, but not all, of the claimed repairs.’” The trial court ultimately awarded Waterwood \$19,905.04 in costs but awarded the City \$172,375 in attorney fees on the basis that “the City’s settlement offer was closer to the jury’s award than was... Waterwood’s § 998 offer.” Waterwood subsequently appealed the attorney fees award to the City.

HOLDING/DISCUSSION

The Court of Appeal for the Second District reversed the City’s award of attorney fees and affirmed in all other respects. Under Civil Code section 1717, a prevailing party is “the party who recovered a greater relief in the action on the contract.” Under subdivision (b)(2) of section 1717 and Civil Code section 1811.1, a defendant who alleges in its answer that it already tendered the full amount of plaintiff’s damages will be the prevailing party on the contract. Previous courts have held that section 1811.1 only provides relief to defendants who pay the plaintiff the amount owed prior to litigation. This is because “[t]he clear import of section 1811.1 is to encourage prelitigation tenders.” Although the City argued that “from the very beginning [it] admitted breach, as it had not completed all the repairs,” the Court held the City was not entitled to the benefit of section 1811.1 because “an ‘admitted breach’ is not the same as a tender.” Here, there was only one contract claim, and Waterwood was the only party that obtained relief. The City failed to tender any admitted cost of repair at any time before or during the trial. Therefore, there is no circumstance under which the City could be found the prevailing party under section 1717 and recover attorney fees.