

***Westwood Homes, Inc. v. AGCPII Villa Salerno Member*, 2021 Cal. App. LEXIS 516**

California Civil Code section 1717's rule of reciprocity extends to prevailing alleged alter egos in post-judgment claims and entitles them to recovery of attorney fees as though they were parties to the original case.

FACTS/PROCEDURE

Pursuant to an arbitration provision in a declaration of CC&Rs for a planned residential community in Placer County, real estate developer Westwood Montserrat, Ltd. arbitrated claims against AGK Sierra de Montserrat, L.P., Sierra de Montserrat Owners Association (Sierra), and Robert and Jennielyn Kincade (Kincades). For purposes of an attorney fees provision in the CC&Rs, the arbitrator found Sierra and Kincades to be prevailing parties and ordered Westwood Montserrat to pay their attorney fees and costs. The trial court confirmed the arbitration award and entered judgments for Sierra and Kincades. Kincades assigned the judgment in their favor to AGCPII Villa Salerno Member, LLC (AGCPII).

After Westwood Montserrat unsuccessfully challenged the judgments, Sierra and AGCPII filed motions to amend their judgments to add third parties Westwood Homes and Lucille Westwood Limited Partnership as alter ego judgment debtors pursuant to Code of Civil Procedure section 187.3. The trial court denied the motions. Westwood Homes and Lucille Westwood Limited Partnership then moved to recover attorney fees incurred in defeating the motions to amend the judgments, as prevailing parties under Civil Code section 1717 (section 1717). The trial court denied the motion and Westwood Homes appealed.

HOLDING/DISCUSSION

The Court of Appeal for the Third District reversed in part. Generally, a party prevailing on a contract claim is entitled to fees under section 1717 “whenever that party would have been liable under the contract for attorney fees had the other party prevailed.” (*Hjelm v. Prometheus Real Estate Group, Inc.* (2016) 3 Cal.App.5th 1155, 1168.) The reciprocity principle also applies to nonsignatory litigants, such as prevailing alter egos. (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124.) Similarly, **for a prevailing alleged alter ego claim made after judgment, it is as though the alleged alter ego was a party to the original lawsuit, albeit by a different name, and prevailed.** (*MSY Trading Inc. v. Saleen Automotive, Inc.* (2020) 51 Cal.App.5th 395.)

Here, if Sierra and Kincades asserted counterclaims alleging alter ego liability in the original action, and lost, Westwood Homes and Lucille Westwood LP would be entitled to attorney fees. Therefore, it follows that Westwood Homes and Lucille Westwood Limited Partnership may be viewed as prevailing parties under section 1717 and entitled to attorney fees under the CC&Rs. Thus, the trial court erred in denying their motion for attorney fees. Accordingly, the Court reversed that portion of the trial court's order and remanded for a determination of reasonable fees.