

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

ALICE LANE,

Cross-Complainant and Respondent,

v.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee, etc.,

Cross-defendant and Appellant.

A131087 & A132432

(San Francisco City & County
Super. Ct. No. CGC-05-446170)

INTRODUCTION

In 2003, First City Funding (U.S. Bank's predecessor in interest)¹ made a \$1 million mortgage loan to the estate of conservatee Elizabeth Jamerson. The promissory note and deed of trust were purportedly secured by a San Francisco property at 2148 Pine Street owned by the estate. Alice Lane, then conservator of her mother's person and estate, signed the loan documents. It was later discovered that as the result of a mistake, the note was not secured by the intended property, and when the property was sold, the probate court authorized the new coconservators to use the proceeds to buy a property in Oklahoma as part of an Internal Revenue Code section 1031 exchange. U.S. Bank attempted to prevent the sale in the probate action and, when those efforts failed, filed suit against Alice Lane, among others, to recover the proceeds of the sale on

¹ First City Funding (First City) assigned the deed of trust and underlying mortgage loan to U.S. Bank the same month the loan was funded.

alternative theories of representative and personal liability for the loan. Alice Lane prevailed at trial and was awarded \$233,333.75 in attorney fees. U.S. Bank appeals the court's order awarding those fees on the grounds that neither the contractual language of the promissory note nor Civil Code section 1717 permits the award of fees for noncontract claims. Because we find the contractual language in the deed of trust and promissory note is broad enough to encompass noncontract claims, and all of the claims against Alice Lane were "on the contract" within the meaning of Civil Code section 1717, we will affirm the court's order.

FACTUAL AND PROCEDURAL BACKGROUND

The Probate Action²

In 2004, James Lane and Leonard Woolfolk were appointed as coconservators of their grandmother's estate, replacing Alice Lane. At the time, the estate was in serious financial trouble, and the coconservators decided that to remedy the situation they would need to sell some of the estate's properties in an Internal Revenue Code section 1031 exchange (IRS 1031 exchange).

In 2005, the coconservators petitioned for court approval of the sale of certain properties, including 2148 Pine Street, and the purchase of a property in Oklahoma as part of the IRS 1031 exchange. First City objected on behalf of its successors and assigns as an "equitable lien holder of a mortgage on the property located at 2148 Pine Street." It then came to light that the mortgage loan was not, in fact, secured by the property at 2148 Pine Street because the property had been misdescribed in the deed of trust and the lien had been recorded against a different property. As a result, the mortgage had not been repaid when the property at 2148 Pine Street was sold. The probate court approved the purchase and exchange over First City's objections and U.S. Bank, as successor to First City, appealed from four of the probate court's orders.

² Background information about the probate action is drawn in large part from the Court of Appeal's unpublished opinion in the consolidated appeals, *Conservatorship of the Estate of Elizabeth Jamerson* (Oct. 25, 2006, A111983 & A112770) [nonpub. opn.].

On October 25, 2006, Division Three of this court dismissed the consolidated appeals as moot, because the sale and exchange had been completed and the funds exhausted.³ However, the Court of Appeal also ruled that the probate court did not decide the validity of the bank's equitable lien claim or impliedly reject the bank's constructive trust claim; thus, there was "no adverse ruling which might impact the bank's ability to litigate its right to a constructive trust in the proceeds of the sale of 2148 Pine Street and in the Oklahoma property purchased with those proceeds."

The Civil Action

In the meantime, on October 28, 2005, U.S. Bank had also filed the civil action against defendants James Lane and Leonard Woolfolk, coconservators of the Jamerson estate; Alice Lane; Investment Property Exchange Services, and 20 Does. The complaint alleged four causes of action against all defendants for (1) declaratory relief; (2) unjust enrichment; (3) imposition of a constructive trust; (4) equitable subrogation; and (5) one cause of action against Alice Lane only for breach of contract, alleging in the alternative that if Alice Lane did not obligate the estate to pay the mortgage loan in her capacity as the former conservator, then she was liable for payment on the note in her individual capacity. In October 2005, Livingston and Mix offered to settle the lawsuit on behalf of Alice Lane. For dismissal of Alice Lane from the lawsuit, the coconservators would acknowledge the 2004 promissory note and deed of trust and immediately pay up to \$300,000 to U.S. Bank, make all future payments, and give the bank a first position security interest in another conservatorship property that was unencumbered and independently valued at \$1.6 million. This offer was rejected.⁴

In April 2007, defendants James Lane, Leonard Woolfolk and Alice Lane filed an answer to the complaint and cross-complained for damages, restitution and rescission against U.S. Bank, Lafayette Jamerson (who is Elizabeth Jamerson's son and Alice

³ U.S. Bank requested dismissal of the appeal in A111941, *U.S. Bank National Assn. v. Lane*, and that request was granted on December 20, 2005.

⁴ According to the trial court, "[t]he early settlement offers by Alice Lane's counsel were more favorable than the results obtained by U.S. Bank at trial."

Lane's brother), and others, alleging conspiracy to commit mortgage fraud, elder abuse, and unfair business practices by virtue of subprime, predatory and racially targeted lending and fraudulent loan applications by Lafayette Jamerson.

Lafayette Jamerson and U.S. Bank filed separate demurrers. Replies and oppositions were filed. Plaintiff U.S. Bank's, and cross-defendant Lafayette Jamerson's demurrers to the cross-complaint were sustained in part with leave to amend, and overruled in part.

A first amended cross-complaint was filed in August 2007 to which cross-defendants First City (and others), U.S. Bank, and Lafayette Jamerson filed separate answers during September 2007. Lafayette Jamerson also filed a cross-complaint against coconservators Lane and Woolfolk, Elizabeth Jamerson, Alice Lane, and 20 Does. Separate demurrers to the cross-complaint were filed by the coconservators and Alice Lane. In December of 2007, the cross-complaint was dismissed without prejudice and the demurrers were taken off calendar.

U.S. Bank amended its complaint in January 2008, naming James Lane and Woolfolk as cotrustees of the Jamerson Living Trust. From March through May 2008, successful motions to compel discovery from various plaintiffs (not U.S. Bank) were filed and argued by defendants, including Alice Lane.

On May 9, 2008, U.S. Bank filed its first amended complaint against James Lane and Leonard Woolfolk, as coconservators of the Jamerson Estate and cotrustees of the Jamerson Revocable Living Trust, Alice Lane, and various Does. The amended complaint alleged two separate causes of action for breach of contract, one against Lane and Woolfolk, and one against Alice Lane; and causes of action for provisional relief, unjust enrichment, imposition of constructive trust and equitable subrogation. In June 2008, additional discovery disputes were heard, and defendants, including Alice Lane, filed answers to the first amended complaint, and a new cross-complaint. More discovery disputes followed in July 2008 and in August 2008, U.S. Bank answered the cross-complaint.

A motion for summary adjudication filed by U.S. Bank in October 2008 was withdrawn by them in November, then refiled in December 2008. Meanwhile, mediation attempts failed to resolve the lawsuit, and efforts to obtain discovery from Chicago Title Company made by the coconservators/cotrustees, and U.S. Bank, continued. Alice Lane did not participate in these efforts.

In February 2009, the coconservators/cotrustees filed an opposition to U.S. Bank's motion for summary judgment. Alice Lane joined in the opposition to U.S. Bank's motion, and the motion was denied, in March 2009. Coconservators/cotrustees' motion to compel discovery from Chicago Title Company was granted. That same month, jury fees were deposited by defendants, including Alice Lane.

In October 2009, Alice Lane separately opposed Lafayette Jamerson's motion to sever and abate prosecution of the cross-complaint, and also filed a request for judicial notice in support of coconservators' opposition to Lafayette Jamerson's motion. Jamerson's motion was denied without prejudice to renewal in front of the trial judge.

Following failure to settle at the mandatory settlement conference in October 2009, in January 2010 trial finally commenced with numerous in limine motions, at least one of which specifically concerned Alice Lane and was opposed by her. She also joined in other responses made by the coconservators/cotrustees. She submitted a trial brief on the collateral source rule in which the coconservators/cotrustees joined. On March 9, 2010, prior to the defense case, Alice Lane renewed a motion for nonsuit, which U.S. Bank opposed. The jury returned its verdict on April 9, 2010. On June 7, 2010, the court ordered that judgment on the verdict be entered in defendant Alice Lane's favor against plaintiff U.S. Bank.

In all, U.S. Bank served over 350 pleadings on Livingston and Mix as counsel for Alice Lane.

Motion For Attorney Fees

Alice Lane filed her motion for \$485,728.75 in attorney fees on October 1, 2010. It was stipulated that she should recover \$170,000 in attorney fees for the services of trial counsel Ryan L. Werner, and the court so ordered. On October 26, 2010, the court

heard argument on that portion of the attorney fees claimed that were attributable to Dennis Livingston and the firm of Livingston and Mix. At the conclusion of the hearing, the court requested counsel Livingston submit a supplemental declaration with respect to which of his and his firm's 2005 and 2006 billings related to fees incurred by Alice Lane, and which fees were incurred primarily for the benefit of the Jamerson Estate. Attorney Livingston filed his supplemental declaration and response on November 5, 2010, "reducing the request for fees by over 200 hours."

The Court's Order

On November 23, 2010, the court granted in part and denied in part defendant Alice Lane's motion for attorney fees, awarding her \$233,333.75 for the services of attorney Livingston and the firm of Livingston and Mix, as follows: (1) "[f]ees incurred in the instant *U.S. Bank v. Lane* case from October 27, 2005 to December 31, 2006 in the amount of \$23,068.75"; (2) "[f]ees incurred in the instant *U.S. Bank v. Lane* case appeal (A111941) in the amount of \$10,621.25"; (3) "[f]ees incurred in the instant *U.S. Bank v. Lane* case from January 1, 2007 to August 16, 2010 in the amount of \$174,643.75"; (4) "[f]ees incurred in this motion in the amount of \$25,200.00." The court specifically rejected "Alice Lane's request for an award of attorneys' fees incurred by Livingston Mix in connection with the Probate Court, TRO, and Appeal Proceedings," as well as "Alice Lane's request for enhancements, and for any other attorneys' fees."

U.S. Bank timely appealed from the court's order of November 23, 2010, and from the "Amended Judgment In Favor Of Defendant Alice Lane" of April 25, 2011, dismissing as moot Alice Lane's cross-claims for declaratory relief and rescission, entering judgment in favor of defendant Alice Lane and against plaintiff U.S. Bank, designating her the prevailing party and awarding her costs and attorney fees as described above. The two appeals were consolidated by stipulation of the parties and order of this court on August 26, 2011.

DISCUSSION

U.S. Bank concedes that, "[a]s the prevailing party in [its] breach of contract action against her, Alice Lane is entitled to 'reasonable' attorney's fees under the

reciprocity provisions of [Civil Code] Section 1717.”⁵ The Bank does not contend the attorney fees awarded here were excessive, or unnecessary, or that the trial court’s lodestar analysis was flawed. Instead, relying solely on the attorney fee provision in the promissory note, the Bank argues the trial court abused its discretion by awarding attorney fees to Livingston and his firm for legal services that did not specifically relate to the contract cause of action alleged against Alice Lane on the promissory note. Thus, the Bank takes issue with: (1) the award of \$10,621.25 for work opposing the Bank’s appeal in *U.S. Bank National Assn. v. Lane*, A111941; (2) the award of \$174,643.75 for work on the cross-complaint against Lafayette Jamerson, cross-claims brought by Lafayette Jamerson against Alice Lane and the Jamerson estate, claims brought by the Jamerson Estate against “the First City Funding defendants,” and (3) “fees incurred by Livingston in assisting the Jamerson Estate with its unsuccessful defense of liability under the Note.”

Alice Lane could not recover any attorney fees under the deed of trust or promissory note because the contractual language allowing recovery of attorney fees by its terms is unilateral. In other words, only the Bank can recover attorney fees under the note and deed of trust, as written. If Alice Lane can recover attorney fees at all, it is under the reciprocity provisions of Civil Code section 1717, as applied to the contractual language of the deed of trust and promissory note regarding attorney fees. Thus, the Bank’s argument on appeal requires us to resolve two questions: First, is the contractual language of the attorney fees provision in the deed of trust and/or promissory note broad enough to allow the Bank to recover its attorney fees from Alice Lane if it had prevailed in the lawsuit against her? Second, if it is, can Alice Lane recover attorney fees incurred

⁵ Civil Code section 1717 provides in relevant part: “(a) 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. [¶] . . . [¶] Reasonable attorney’s fees shall be fixed by the court, and shall be an element of the costs of suit.” (Italics added.)

to defend against all of the causes of action in the Bank’s complaints? For the reasons we discuss below, we reject the Bank’s premise that the court’s discretion was limited to awarding attorney fees only for work done in defense of U.S. Bank’s breach of contract cause of action, and we find no abuse of discretion in the relatively modest fee award for five years’ worth of litigation at issue here.

We review the trial court’s determination of a reasonable attorney fee award for abuse of discretion. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096 (*PLCM*); *EnPalm, LLC v. Teitler* (2008) 162 Cal.App.4th 770, 774 (*EnPalm*)). “We will reverse a fee award only if there has been a manifest abuse of discretion.” (*EnPalm, supra*, at p. 774, citing *PLCM, supra*, at p. 1095.) We now turn to the issues.

The Contractual Attorney Fees Provisions In The Deed Of Trust And The Promissory Note Are Broad Enough To Encompass Both Contract And Noncontract Claims.

“Except as provided for by statute, compensation for attorney fees is left to the agreement of the parties. (Code Civ. Proc., § 1021.)” (*EnPalm, supra*, 162 Cal.App.4th at p. 774.) As noted, the Bank concedes that Alice Lane is entitled under the contractual provisions of the promissory note, and Civil Code section 1717, to attorney fees incurred to defend against its cause of action for breach of contract.⁶ The Bank contends,

⁶ The Bank argues for the first time in its reply brief that the attorney fees provision in the deed of trust does not apply to Alice Lane because: (1) its cause of action against Alice Lane was based solely on the promissory note; (2) the mechanism for collecting the fees was not an *award* resulting in a judgment, but a *reimbursement* by the trustor to the lender for fees incurred by the lender to protect its interest in the encumbered property, and since none of the defendants had any interest in the property at the time of trial, the attorney fee provision in the deed of trust could not be used to force them to pay the Bank’s fees; and (3) “even if the provision in the deed of trust could be construed as a broadly worded attorneys’ fees clause that authorized an award of attorneys’ fees on noncontract claims, it could not have entitled [*Alice Lane*] to an award of attorneys’ fees because it did not provide for an award of attorneys’ fees to [*Alice Lane*].”

The Bank did not make these points in its opening brief. Nor did it cite *Clar v. Cacciola* (1987) 193 Cal.App.3d 1032, *Wilhite v. Callihan* (1982) 135 Cal.App.3d 295, 301–302; *Saucedo v. Mercury Sav. and Loan Assn.* (1980) 111 Cal.App.3d 309, *Moallem v. Coldwell-Banker Com. Group, Inc.* (1994) 25 Cal.App.4th 1827 (*Moallem*), or *Topanga and Victory Partners v. Toghia* (2002) 103 Cal.App.4th 775 in its opening brief.

however, that the contractual language concerning attorney fees is not broad enough to embrace noncontract, as well as, contract claims. We disagree.

“Whether attorney fees incurred in defending tort or other noncontract claims are recoverable . . . depends upon the terms of the contractual attorney fee provision.” (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 602 (*Santisas*)). If a contractual attorney fees clause is worded broadly enough, it may support an award of attorney fees to the prevailing party in an action alleging both contract and noncontract claims. (*Exxess Electronixx v. Heger Realty Corp.* (1998) 64 Cal.App.4th 698, 708 (*Exxess Electronixx*), citing *Santisas, supra*, at p. 608.)

Inasmuch as the parties did not present extrinsic evidence to interpret the contractual language of the attorney fees provisions of the deed of trust and promissory note, we determine de novo whether the applicable statutes and the deed of trust and promissory note support Alice Lane’s claim for attorney fees. (*Exxess Electronixx, supra*, 64 Cal.App.4th at p. 705; *Thompson v. Miller* (2003) 112 Cal.App.4th 327, 334–335 (*Thompson*)). In this case, the deed of trust and the promissory note sued on by U.S. Bank each contains a mandatory attorney fees provision. Under the deed of trust, “Lender may charge Borrower fees for services performed *in connection with* Borrower’s default, *for the purpose of protecting Lender’s interest in the Property and rights under this Security Instrument*, including, but not limited to, attorney’s fees.” (Italics added.) Under the promissory note, “The Note Holder has the right to be paid back . . . for all its costs and expenses *in enforcing the Note to the extent of applicable law*. Those expenses include, for example attorney’s fees.” (Italics added.) The trial court determined that the language used by the promissory note and deed of trust was broad enough to encompass

As a result, Alice Lane did not have an opportunity to respond to these arguments. “[The Bank] has not demonstrated good cause for raising these points for the first time in reply. (See *Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 894–895, fn. 10 [“ ‘points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before’ ” ’]. [Citations.]” (*Kovacevic v. Avalon at Eagles’ Crossing Homeowners Assn.* (2010) 189 Cal.App.4th 677, 680, fn. 2.) We therefore decline to consider them.

both contract and noncontract causes of action and, reviewing the language de novo, we agree.

In *Santisas, supra*, 17 Cal.4th 599, the contract under review “included a provision for recovery of attorney fees in any litigation arising out of the execution of the agreement or the sale of the property.” (*Id.* at p. 607.) In *Thompson, supra*, 112 Cal.App.4th 327, the contractual attorney fees provision at issue allowed for recovery of attorney fees in “any dispute under [the Share Purchase Agreements]. . . .” (*Id.* at p. 335, internal quotations omitted.) In *Xuereb v. Marcus & Millichap, Inc.* (1992) 3 Cal.App.4th 1338 (*Xuereb*), the agreement allowed for the recovery of attorney fees in any “lawsuit or other legal proceeding” to which “this Agreement gives rise.” (*Id.* at p. 1342.) In all three cases, the courts of appeal determined that the attorney fees provisions were broad enough to encompass noncontract claims.

By contrast, in *Exxess Electronixx, supra*, 64 Cal.App.4th 698, the contract (a lease) provided for an award of attorney fees “ ‘[i]f any Party or Broker *brings an action or proceeding* to enforce the terms hereof or declare rights hereunder.’ (Italics added.)” (*Id.* at p. 712.) Reading the contractual language narrowly, the Court of Appeal reasoned that “[u]nder any reasonable interpretation of the attorneys’ fee provision, we cannot equate raising a ‘defense’ with bringing an ‘action’ or ‘proceeding.’ [Fn. omitted.] By asserting a defense to the cross-complaint, Heger Realty did not bring an action or proceeding to enforce the lease or to declare rights under it.” (*Ibid.*) The Court of Appeal in *Exxess Electronixx* acknowledged, however, that “courts have interpreted broader provisions to permit an award of attorneys’ fees on a tort claim.” The court cited *Santisas, supra*, 17 Cal.4th at p. 607 [provision authorizing fees “ ‘ “[i]n the event legal action is instituted by the Broker(s), or any party to this agreement, or arising out of the execution of this agreement or the sale [of the property], or to collect commissions” ’ ”]; *Allstate Ins. Co. v. Loo* (1996) 46 Cal.App.4th 1794, 1799 [provision authorizing fees “ ‘ “[i]n any legal action brought by either party to enforce the terms hereof or relating to the demised premises” ’ ”]; *Moallem, supra*, 25 Cal.App.4th at p. 1831 [provision authorizing fees in “ ‘any “legal action . . . relating to” the contract’ ”]; *Xuereb, supra*, 3

Cal.App.4th at p. 1342 [provision authorizing fees “ ‘in any “lawsuit or other legal proceeding” to which “this Agreement gives rise” ’ ”]; and *Share v. Casiano Bel-Air Homeowners Assn.* (1989) 215 Cal.App.3d 515, 521 [provision authorizing fees “ ‘ “[i]n the event any party to this Agreement brings suit to enforce any provision of this Agreement, or is required to defend any action the defense of which is any provision of this Agreement” ’ ”]. (*Exxess Electronixx, supra*, at pp. 712–713.)

The contractual language before us is “broad” rather than “narrow.” The promissory note goes further than the typical language providing for recoupment of fees and costs incurred in “enforcing the Note.” The addition of the phrase “to the extent of applicable law” suggests that the parties contemplated resort to all legal avenues of relief, including equitable ones such as those plead by the Bank. The language of the deed of trust is even broader, allowing for recovery of fees incurred “in connection with Borrower’s default” to “protect[t] the Lender’s interest in the property” and its “rights under this Security Instrument.” In our view, this language does not limit the types of remedies available to the Lender. Accordingly, the trial court did not misinterpret the contractual language or misapply the law, and no abuse of discretion appears.

Under Civil Code Section 1717 Alice Lane Can Recover Attorney Fees Incurred To Defend Against All Of The Causes Of Action In The Bank’s Complaints.

The Bank argues that even if the contractual language authorizes an award of attorney fees for noncontract claims, the reciprocal provisions of Civil Code section 1717 permit recovery only for claims that are “on the contract.” It has been said, “Civil Code section 1717 has a limited application. It covers *only* contract actions, where the theory of the case is breach of contract, and where the contract sued upon itself specifically provides for an award of attorney fees incurred to enforce *that* contract.” (*Xuereb, supra*, 3 Cal.App.4th at p. 1342, original italics.) However, not all courts have interpreted Civil Code section 1717 so narrowly. For example, in *Kangarlou v. Progressive Title Co., Inc.* (2005) 128 Cal.App.4th 1174, 1179 (*Kangarlou*), a tort action for breach of fiduciary duties arising out of an escrow agreement was held to be “on the contract.” And, in *Shadoan v. World Savings & Loan Assn.* (1990) 219 Cal.App.3d 97 (*Shadoan*), the court

awarded attorney fees to World Savings & Loan, the prevailing party under section 1717, in an action by borrowers claiming that the prepayment penalty clause in a loan agreement was unconscionable and an unfair business practice. Similarly, in *Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 348, equitable claims of declaratory and injunctive relief and to quiet title arising out of a deed of trust provisions were held to be “on the contract.” (See also *City & County of San Francisco v. Union Pacific R.R. Co.* (1996) 50 Cal.App.4th 987 [declaratory relief action “on the contract”]; *Harbour Landing-Dolfann, Ltd. v. Anderson* (1996) 48 Cal.App.4th 260 [same]; *Texas Commerce Bank v. Garamendi* (1994) 28 Cal.App.4th 1234 [same]; *Milman v. Shukhat* (1994) 22 Cal.App.4th 538, 545 [same].) In our view, a more refined statement of the rule codified in Civil Code section 1717 is this: “[w]here a cause of action based on the contract providing for attorney’s fees is joined with other causes of action beyond the contract, the prevailing party may recover attorney’s fees under section 1717 only as they relate to the contract action. [Citations.] [A] litigant may not increase his recovery of attorney’s fees by joining a cause of action in which attorney’s fees are not recoverable to one in which an award is proper. . . . [¶] Conversely, plaintiff’s joinder of causes of action should not dilute its right to attorney’s fees. Attorney’s fees need not be apportioned when incurred *for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed.*” (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129–130 (*Reynolds*), italics added.) In *Reynolds*, the court awarded attorney fees to the prevailing party for litigation of an issue that was common to the defense of a note, which included an attorney fees provision, and a consignment agreement, which did not.

“ ‘Whether an action is based on contract or tort depends upon the nature of the right sued upon, not the form of the pleading or relief demanded. . . . [¶] In the final analysis we look to the pleading to determine the nature of plaintiff’s claim.’ [Citation.]” (*Kangarlou, supra*, 128 Cal.App.4th at pp. 1178–1179.) Looking to the pleadings here, we concluded that Alice Lane was entitled to recover attorney fees to defend herself

against all of the causes of action contained in U.S. Bank's October 28, 2005 complaint, and its May 9, 2008 amended complaint.

The Bank's complaint for declaratory judgment, injunctive relief and damages named Alice Lane as a defendant and described her as "the daughter of and Conservator of the Person of Elizabeth Jamerson, and formerly . . . the Conservator of the Estate [who] executed the promissory note *and deed of trust evidencing the mortgage loan* that was to be secured by the Secured Property that First City originated and that Plaintiff [U.S. Bank] thereafter acquired and now owns." (Italics added.) The complaint alleged that "[a]t all relevant times herein, defendant Alice Lane and, thereafter, defendants James Lane and Woolfolk have been the duly appointed and authorized Conservators for the Estate and that, "[i]n performing the acts complained of herein, defendants . . . and each of them, acted as the agent, joint venturer, and/or alter ego of each of the other Defendants. In performing the acts complained of herein, each of the Defendants was acting within the course and scope of the aforementioned agency, joint venture or other relationship, and with the advance knowledge, acquiescence or subsequent ratification of each and every remaining defendant. The intended purpose and effect of the acts complained of herein is, and has been, to deprive Plaintiff of its rights to certain monies, and other valuable assets for the benefit of the Estate." The complaint further alleged that "[o]n or about April 4, 2003, defendant Alice Lane, the former conservator of the Estate executed a Deed of Trust (the 'Deed of Trust') in her capacity as Conservator to secure a loan made that date by First City in the amount of \$1 million."

The Bank alleged in a first cause of action for declaratory relief, that "[a]lthough the defendant Alice Lane and the Defendant Co-Conservators had notice of Plaintiff's interest in the proceeds from any sale of Secured Property and have acknowledged the debt, they have failed to service said loan obligation or make payments on said mortgage, which is presently in default" In the second cause of action for unjust enrichment, the Bank alleged that "[t]he Estate, through defendant Alice Lane, then the conservator thereof, represented that the Estate would repay the mortgage loan . . ." and that "[t]he Estate and all defendants will be unjustly enriched unless the Estate pays Plaintiff"

In a third cause of action for imposition of constructive trust, the Bank alleged that “[b]y selling the Secured Property without repaying the Plaintiff’s loan . . . the Co-conservators breached their fiduciary duties to Plaintiff [and] by reason of their wrongful acts[,] the Defendants, and each of them, hold the proceeds of the sale of the Secured Property in trust for Plaintiff.” In a fourth cause of action for equitable subrogation, the Bank alleged that by filing the Complaint, the Bank served “notice to Defendants” of its demand for payment, and that “[d]espite demand therefore, Defendants have failed and refused . . . to pay all or any part of the sum demanded” Finally, in a fifth cause of action naming Alice Lane only, the Bank alleged, “[i]n the alternative,” that “defendant Alice Lane made, executed and delivered the Note to First City without any indication on the face thereof of the representative capacity in which she was acting [and], [i]n the event, the Co-Conservators succeed in avoiding liability on the Note to Plaintiff on such ground, defendant Alice Lane is liable on the Note in her individual capacity. . . . Plaintiff is entitled to damages against Alice Lane.”

It was not until the amended complaint was filed on May 9, 2008 that a first cause of action for breach of contract was limited to the coconservators and cotrustees only. However, the remaining second, third, and fourth causes of action for provisional relief, unjust enrichment, and imposition of a constructive trust continued to name all of the defendants, often in language identical to that used in the original complaint. The Bank sued Alice Lane in her representative capacity as conservator, as well as her individual capacity, and there were interdependent issues common to her defense against liability in both capacities. Under these circumstances, the trial court did not err in concluding that all of the causes of action alleged against all of the defendants in both complaints arose out of the original deed of trust and promissory note signed by Alice Lane and were thus “on the contract” within the meaning of Civil Code section 1717. Under section 1717, she was entitled to recoup attorney fees for legal representation that involved issues common to her liability in both capacities, so long as the contractual attorney fees provisions covered the Bank’s equitable claims, which they did. By pleading causes of

action dependent on and intertwined with its attempt to enforce the terms of a contract, the Bank forced defendant to defend all issues directed against her.

After consideration of “the pleadings submitted by the parties, the documents and pleadings on file and the oral argument of counsel,” the trial court concluded Alice Lane was entitled to recover: (1) \$23,068.75 in attorney fees from October 27, 2005—the day before U.S. Bank filed its civil suit against Alice Lane—to December 31, 2006; (2) \$174,643.75 in attorney fees from January 1, 2007 to August 16, 2010—the conclusion of post trial motions, save for Alice Lane’s motion for attorney fees; (3) \$25,200 in fees incurred in connection with the attorney fees motion; and (4) \$10,621.25 in fees incurred in defending against the Bank’s appeal in A111941.⁷

“It is settled that it is irrelevant if the fees were incurred offensively or defensively. [Citations.]” (*Shadoan, supra*, 219 Cal.App.3d at p. 107.) Following argument on the attorney fees motion, the trial court ordered Alice Lane’s attorney to submit a supplemental declaration about his and his firm’s 2005 and 2006 hours. Following receipt of the supplemental declaration, the court entertained further submissions from both sides. Ultimately, the court awarded Livingston’s firm approximately \$82,000 less than he originally requested, awarded no fees for work done in connection with the probate court, temporary restraining order, or appeal actions that preceded the lawsuit, and denied Alice Lane’s request of enhancements of the “‘lodestar’ figure.” The trial court was in an advantageous position from the beginning of the pleadings to the end of the jury trial to analyze the Bank’s contentions against Ms. Lane, her defense, and the work of her attorney. The Bank has not demonstrated the court

⁷ In November 2005, after filing its complaint in the civil suit, U.S. Bank filed a “Petition for Immediate Stay, Writ of Supersedeas and/or Other Appropriate Relief” in the Court of Appeal. In it, the Bank requested “an immediate order prohibiting Respondents (including Alice Lane) from taking the proceeds from the sale of property located at 2148 Pine Street in San Francisco (the ‘Secured Property’)—totaling \$809,175.75—and using these proceeds to acquire real property located in Oklahoma.” Livingston and Mix filed an Opposition to the Petition on Alice Lane’s behalf.

misapplied the applicable law or that its determination of fees was arbitrary, irrational or unreasonable.

CONCLUSION

The trial court properly awarded prevailing party Alice Lane \$233,333.75 in attorney fees incurred by Livingston and Mix, for five years of civil litigation instigated by U.S. Bank.

DISPOSITION

The trial court's postjudgment order awarding attorney fees is affirmed.

Marchiano, P.J.

We concur:

Margulies, J.

Dondero, J.