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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

BIOQUEST VENTURE LEASING  
COMPANY - A, N.V.,

Plaintiff and Appellant,

v.

VIVORX AUTOIMMUNE, INC., et al.,

Defendants and Respondents.

B225195

(Los Angeles County  
Super. Ct. No. SC084416)

APPEAL from a judgment and an order of the Superior Court of Los Angeles County, Richard A. Stone, Jr., Judge. Affirmed.

Duane Morris, Paul J. Killion, Heather U. Guerena, Matthew A. Taylor and James H. Steigerwald for Plaintiff and Appellant.

Glaser Weil Fink Jacobs Howard Avchen & Shapiro, Joel N. Klevens and Alisa M. Morgenthaler; Greines, Martin, Stein & Richland, Kent L. Richland, Alan Diamond and Jeffrey E. Raskin for Defendants and Respondents.

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## INTRODUCTION

Plaintiff Bioquest Venture Leasing Company-A, N.V. (Bioquest) appeals from a judgment in favor of defendants VivoRx Autoimmune, Inc. (VivoRx) and Abraxis Bioscience, Inc. (Abraxis) and a post-judgment order awarding defendants their attorney's fees. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

This appeal follows trial court proceedings on remand as directed in our decision in the previous appeal involving the same parties, *Bioquest Venture Leasing Company-A, N.V. v. VivoRx Autoimmune, Inc., et al.* (Nov. 5, 2009, B201454) [nonpub. opn.] (*Bioquest I*). Our opinion included a lengthy factual and procedural background, which we will not repeat here. We are providing a summary only to give the background for the current appeal.

The underlying lawsuit arose primarily out of the alleged breach by VivoRx of a biotechnology licensing agreement it entered into in 1997 with Bioquest (97 Agreement). At the appropriate stages of the *Bioquest I* trial court proceedings, VivoRx brought a motion to bifurcate or sever, a motion for nonsuit, and a motion for judgment notwithstanding the verdict or a new trial. VivoRx requested the trial court to find that Bioquest's lawsuit was time-barred pursuant to the applicable statutes of limitations, which were governed by California law (not Massachusetts law, as Bioquest claimed). The trial court denied each motion, ruling that the lengthier Massachusetts statute of limitations applied.

In the *Bioquest I* trial court proceedings, "Bioquest's causes of action for breach of contract and unjust enrichment were tried to a jury. The jury returned a special verdict in favor of Bioquest on these causes of action. [¶] . . . [¶] The cause of action for alter ego liability was tried to the court, which found that Abraxis was the alter ego of VivoRx.

Judgment was entered in favor of Bioquest and against VivoRx and Abraxis in the sum of \$2,575,448 plus interest, costs and attorney’s fees.” (*Bioquest I, supra*, at p. 5.)

“Bioquest subsequently moved for an award of \$1,280,114.50 in attorney’s fees. Bioquest presented billing records and declarations from its attorneys. After finding that some of the fees were duplicative or otherwise not allowable, the trial court awarded Bioquest the reduced amount of \$900,000.00.” (*Bioquest I, supra*, at pp. 5-6, fn. omitted.)

VivoRx raised several issues on appeal in *Bioquest I*, including that the trial court erred in ruling that the applicable statute of limitations was governed by Massachusetts law rather than California law. In *Bioquest I*, we held that “[b]ecause the 97 Agreement contains no choice-of-law provision, then under either a governmental interest analysis [citations] or application of Civil Code section 1646,<sup>[1]</sup> California’s statutes of limitations are properly applied to bar enforcement of Bioquest’s claims.” (*Bioquest I, supra*, at p. 12.)

The *Bioquest I* opinion further stated: “Bioquest contends that even if California’s four-year statute of limitations (Code Civ. Proc., § 337)<sup>[2]</sup> were applied, not all of its claims would be barred. According to Bioquest, the 97 Agreement is an installment contract and included installment payments which became due from March 2001 to July 2001. Each such installment payment, Bioquest maintains, became due within four years of the filing of the complaint on February 10, 2005, and therefore, would not be time barred. We disagree. [¶] . . . [¶] . . . Bioquest claims the 97 Agreement is an installment contract, or subject to the same rule for sequential accrual of the limitations period as an installment contract, in that the 97 Agreement required VivoRx to make royalty payments

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<sup>1</sup> “Civil Code section 1646 provides: ‘A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.’ . . .”

<sup>2</sup> Code of Civil Procedure section 337 sets the following limitation for initiating a lawsuit: “Within four years: 1. An action upon any contract . . . founded upon an instrument in writing . . .,” subject to certain exceptions not applicable here.

on a monthly basis.” (*Bioquest I, supra*, at pp. 12-13.) We conclude by stating “that the 97 Agreement is not an installment contract or otherwise severable. [Citations.] Accordingly, there was no sequential accrual of the limitations period as to each payment not paid when it became due and payable. [Citation.] [¶] In sum, the trial court’s determination to apply the Massachusetts statute of limitations and, therefore, the judgment based thereon, cannot stand. Accordingly, the matter must be remanded for application of the appropriate California statutes of limitations for an indivisible contract consistent with this decision.” (*Bioquest I, supra*, at p. 16.)

The disposition in *Bioquest I* stated: “The judgment is reversed and the cause is remanded for further proceedings consistent with this decision. The order is vacated. Defendants shall recover their costs on appeal.” (*Bioquest I, supra*, at p. 16.)

On remand, each side moved for entry of judgment in its favor. VivoRx argued that the Court of Appeal intended that the trial court enter judgment for VivoRx, although we did not give an express direction to do so. Bioquest asserted that the Court of Appeal gave instructions to analyze the case under the California statutes of limitations to determine whether Bioquest’s lawsuit was timely filed. Bioquest asserted the theory that, pursuant to the election available to it because the 97 Agreement was an indivisible contract, Bioquest elected to not terminate the contract upon VivoRx’s partial break but to continue to rely on the contract until July 1, 2001, the date of final performance and, as a result, that the statute of limitations did not begin to run until that date (the new theory). Thus, Bioquest claimed, its February 2005 lawsuit was filed within the time required by the four-year California statute of limitations (Code Civ. Proc., § 337).

On remand, in opposition, VivoRx asserted that Bioquest had never raised such a theory in any of the *Bioquest I* proceedings and, therefore, could not raise the new theory for the first time on remand. In the prior proceedings, VivoRx pointed out, Bioquest had consistently asserted only two theories as to why its action was not time-barred. First, Bioquest had claimed that the six-year Massachusetts statute applied and, therefore, its claims were timely as to all of the payments VivoRx failed to make under the 97 Agreement. Second, Bioquest had claimed that the 97 Agreement was an installment

contract and, therefore, the four-year California statute did not run as to an installment until it became payable, thereby rendering Bioquest's claims timely only for the installments payable within the limitations period.

VivoRx further argued that, in any event, Bioquest was using the wrong accrual principle for a continuing, indivisible contract such as the 97 Agreement. According to VivoRx, the statute would begin running when a party partially breached and repudiated the contract, as VivoRx had done when it stopped making payments in September 1999 and informed Bioquest that no more payments would be made due to VivoRx's inability to pay. Thus, the four-year California statute of limitations had already run by the time Bioquest filed its lawsuit in February 2005.

At the hearing on the motions, the trial court discussed portions of the *Bioquest I* opinion which the trial court construed as, in essence, directing that judgment be entered for defendants.<sup>3</sup> The court then heard argument from the parties. Bioquest confirmed that it had not raised its new accrual theory in the *Bioquest I* proceedings, except for briefly referencing it during oral argument before the Court of Appeal. The trial court determined that Bioquest could not raise the theory for the first time on remand. The court explained that considering the new theory would be unfair to defendants, since they had not had an opportunity to present evidence and argument to establish repudiation in the *Bioquest I* trial court proceedings. The trial court noted that VivoRx had cited to

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<sup>3</sup> The trial court stated: "At page 12, . . . [the Court of Appeal is] saying in essence, that the California statute bars the plaintiff's cause of action . . . based on the statute of limitations. Then they go on to analyze the notion of the, in essence, exception that was articulated by the plaintiff which was the installment contract issue. And then they suggest that it's an indivisible contract therefore noninstallment, therefore it's a complete bar, in essence. . . . ¶] And as a result of that I believe that what their opinion is directing me to do is, in essence, enter judgment for defendant notwithstanding the fact they do not say that. . . ." The referenced statement on page 12 of the opinion is as follows: "Because the 97 Agreement contains no choice-of-law provision, then under either a governmental interest analysis [citations] or application of Civil Code section 1646, California's statutes of limitations are properly applied to bar enforcement of Bioquest's claims." (Fn. omitted.)

“bits” of the transcript in the prior proceedings in an effort to show repudiation, but that the cited information was insufficient for the trial court to make any finding on repudiation.<sup>4</sup> The court made no express factual findings regarding the time at which the California statute of limitations began to run or that the date Bioquest filed the lawsuit was after the limitations period expired.

The trial court adopted its previously stated tentative conclusion: “[U]nder the circumstances, I believe [based upon] the court of appeal and the other reasons the court has stated[,] the judgment should be entered on behalf of the defendants in this case.” The court stated further that it would “enter judgment on behalf of defendants in this particular case based on the violation of the statute of limitations.”

The trial court granted defendants’ subsequent motion for attorney’s fees. The court awarded the sum of \$1,506,000, approximately \$400,000 less than defendants had requested.

## DISCUSSION

Bioquest first contends that, by entering judgment for VivoRx, the trial court did not follow the Court of Appeal’s directions on remand, and the trial court’s failure to do so is reversible error. Bioquest claims it did not waive the theory that it had the election

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<sup>4</sup> The trial court said: “The problem . . . is these issues [in the new theory] were never raised at any time other than . . . purportedly . . . in the Court of Appeal orally [at oral argument] . . . . [¶] . . . [I]t doesn’t make any sense that it could be raised at this point in time. . . . [A]ssuming that [plaintiff] had made the argument in a timely fashion, the defendant then would have been able to deal with that issue in a timely fashion in a trial way. And they wouldn’t have had to stretch . . . for the little bits . . . of [transcript] that they presented to me to suggest that [there] was a repudiation. . . . [¶] And whether it is a repudiation or not, I just don’t know. . . . [¶] The fact [is] that it was never raised . . . . [B]y not raising the issue, it precluded the [defendants] from presenting any and all evidence that they would have been able to tender to counter that position under the notion of repudiation. [¶] . . . And so under those circumstances, it’s unfair to raise it now . . . .”

to have the California statute begin running on the date of final performance and, under the theory, its action was not time-barred. Lastly, Bioquest asserts the trial court erred by awarding unreasonable attorney's fees to VivoRx. We disagree.

**A. Compliance on Remand with the Directions in the Bioquest I Opinion**

According to Bioquest, the judgment must be reversed, in that the trial court did not follow the directions given by the Court of Appeal to conduct proceedings in order to apply the California statute for an indivisible contract. Bioquest maintains that the trial court should have conducted proceedings to determine when the limitations period began to run on Bioquest's claim and to determine whether Bioquest's lawsuit was time-barred. Bioquest asserts that the *Bioquest I* opinion did not authorize the trial court to enter judgment for VivoRx without conducting such proceedings.

As support, Bioquest cites *Hampton v. Superior Court* (1952) 38 Cal.2d 652. The *Hampton* court explained, "When there has been a decision upon appeal, the trial court is reinvested with jurisdiction of the cause, but only such jurisdiction as is defined by the terms of the remittitur. The trial court is empowered to act only in accordance with the direction of the reviewing court; action which does not conform to those directions is void. [Citations.]" (*Id.* at p. 655.) Citing *Hampton*, the court in *Butler v. Superior Court* (2002) 104 Cal.App.4th 979 said, "Any material variance from the directions is unauthorized and void." (*Id.* at p. 982.) When the judgment underlying an appeal is void, the reviewing court's jurisdiction is limited to reversing the judgment. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 701.)

We agree that these principles are well-established. In this case, however, the trial court's proceedings on remand do not materially vary from the directions in the *Bioquest I* opinion. The trial court did not simply enter judgment in favor of VivoRx solely based upon the Court of Appeal opinion. To the trial court, the disposition was ambiguous. "Where the directions to the trial court are ambiguous . . . , they must be interpreted in light of the reasoning and holdings found in the body of the opinion."

(*Lesny Development Co. v. Kendall* (1985) 164 Cal.App.3d 1010, 1021.) That is what the trial court did.<sup>5</sup>

A part of the trial court's process involved analyzing how the California statutes of limitation were to be applied to the facts of the case. The court acknowledged the statement on page 12 of the *Bioquest I* opinion that "California's statutes of limitations are properly applied to bar enforcement of Bioquest's claims." The court observed that the opinion concluded there was no merit to Bioquest's only argument regarding the result of applying the four-year California statute to the 97 Agreement. Although the trial court did not expressly acknowledge it, the practical result of the conclusion was that the only theory that remained viable was the position that VivoRx had taken in the *Bioquest I* trial court proceedings that the California statute barred Bioquest's lawsuit.

In addition, the trial court considered the respective positions the parties presented in their briefs and arguments at the hearing. The parties did more than simply address their interpretation of the *Bioquest I* directions. They also briefed and argued how the California statute applied to the undisputed facts from the *Bioquest I* trial proceedings and whether Bioquest waived its new theory that its lawsuit was not time-barred by the California statute based upon Bioquest's purported right to elect between accrual dates for an indivisible contract.

After briefing and argument, the trial court determined that Bioquest could not raise its new theory on remand, but was limited to the theories presented in the prior trial court proceedings. Bioquest urges that the trial court should have made findings on such matters as when the statute began to run and the factual basis for determining whether VivoRx repudiated the contract. When we review the judgment of a trial court, we presume it is correct, and we will imply findings to support the judgment. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) If the trial court's decision is correct on any theory, we must affirm. (*People v. Smithey* (1999) 20 Cal.4th 936, 972;

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<sup>5</sup> See footnote 3, *ante*.

*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 18-19.) In announcing its decision, the trial court did not say that judgment would be entered in favor of defendants because the Court of Appeal had directed that action. Rather, the trial court said that it had given the reasons justifying entry of judgment for defendants and that the court would enter judgment on the basis of violation of the statute of limitations.<sup>6</sup> The trial court's proceedings on remand were consistent with the directions given by the Court of Appeal; there was no material variance resulting in any void judgment that required reversal.<sup>7</sup> (*Griset v. Fair Political Practices Com.*, *supra*, 25 Cal.4th at p. 701; *Hampton v. Superior Court*, *supra*, 38 Cal.2d at p. 655.)

### **B. *Bioquest's Forfeiture of Its New Theory***

In its opening brief, Bioquest argues the new theory, stating that “[b]ecause this Court has determined that the 1997 Agreement was an indivisible contract and because BioQuest did not elect to terminate the agreement, the statutory period of limitations began to run on July 1, 2001, when VivoRx’s final payment was due . . . . BioQuest had until July 1, 2005 to bring its action. It filed its complaint on February 10, 2005, well within California’s four-year period of limitations. (Code of Civ. Proc., § 337.)” Bioquest contends that the trial court erred in ruling that, by not raising the new theory in the *Bioquest I* proceedings, Bioquest forfeited it.

Generally, the existence of forfeiture is a question of fact, and the trial court’s determination is binding upon the reviewing court if it is supported by substantial

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<sup>6</sup> When argument concluded, the trial court ruled that “the Court of Appeal opinion, in essence, is directing the [trial] court to enter judgment on behalf of defendants. . . . [A]nd I have outlined the reasons why I think it’s appropriate in this particular case. And the court will enter judgment on behalf of defendants in this particular case based on the violation of the statute of limitations.”

<sup>7</sup> It appears that our language in *Bioquest I* was perhaps not as clear as it could have been. We note, however, that no party petitioned for a rehearing or clarifying modification.

evidence. (*Conservatorship of Kevin M.* (1996) 49 Cal.App.4th 79, 92.) The reviewing court must construe reasonable inferences and resolve all ambiguities in the manner most favorable to the determination. (*Burton v. Cruise* (2010) 190 Cal.App.4th 939, 946.)

The principles are well established “that a party to an action may not, for the first time on appeal, change the theory of the cause of action [citations] and that issues not raised in the trial court cannot be raised for the first time on appeal. [Citations.]’ Citations.]” (*Johnson v. Greenelsh* (2009) 47 Cal.4th 598, 603, fn. omitted.) Failure to raise a theory in trial court proceedings ordinarily constitutes forfeiture of the issue on appeal. (*North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28-29.) A party must call the trial court’s attention to any and all issues the party deems relevant, in order to assure that they are properly addressed during the trial court proceedings. (*Ibid.*)

On remand, during argument before the trial court, Bioquest acknowledged that, in the *Bioquest I* trial court proceedings, it did not make any argument that the 97 Agreement was indivisible,<sup>8</sup> any argument regarding having an election to set the time the statute of limitations began running on an indivisible contract, or any argument that all (rather than part of) Bioquest’s claims arising from the indivisible contract would not be barred under California law. At one point, Bioquest’s counsel acknowledged, “We clearly did not raise it.”

Review of the record of the previous trial court proceedings confirms that statement. Bioquest did not raise the argument although given ample opportunity to do so.<sup>9</sup> VivoRx filed three motions during the period from April 2007 through June 2007,

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<sup>8</sup> For example, in *Bioquest I* at the hearing on VivoRx’s motion for judgment notwithstanding verdict, Bioquest argued: “[W]e pled the facts underlying the installment theory. That’s never changed. [¶] . . . [¶] And it is very clearly an installment contract, Your Honor.”

<sup>9</sup> Bioquest argued to the trial court on remand that, in the previous trial court proceedings, Bioquest did not raise the accrual issue regarding a divisible contract because there was no need to do so, since the court ruled that Massachusetts law applied

prior to trial, during trial, and after the verdict was rendered in the trial. In each motion, VivoRx claimed that Bioquest’s action for breach of contract and unjust enrichment was barred for failure to file it within the limitations period specified by statute, specifically, the four-year limit for breach of contract claims set by Code of Civil Procedure section 337 and the two-year limit for unjust enrichment claims set by Code of Civil Procedure section 339. In its opposition, Bioquest first claimed that the California statutes of limitations did not apply, in that the choice of law provision incorporated into the 97 Agreement required application of Massachusetts law, pursuant to which the statute of limitations was six years. Bioquest further asserted that, even if the California four-year statute of limitations applied, the 97 agreement was an installment contract and, therefore, Bioquest’s claims as to part of the payments—specifically, payments due from May 2001 through July 2001, were not barred. Even when VivoRx expressly asserted that the agreement was an entire, indivisible contract and Bioquest’s claim would be completely barred under California law, Bioquest steadfastly continued to claim that the agreement was an installment contract and would be partially barred under California law.

The forfeiture doctrine is grounded in the policies of promoting judicial economy and assuring fairness to opposing litigants. (See, e.g., *People v. Garcia* (2010) 185 Cal.App.4th 1203, 1214; *Reed v. Mutual Service Corp.* (2003) 106 Cal.App.4th 1359, 1372, fn. 11.) The record supports the trial court’s reasoning that, by not offering argument based upon the alternative view that the contract was indivisible, i.e., entire, Bioquest precluded VivoRx and Abraxis “from presenting any and all evidence that they would have been able to tender to counter that position . . . .” As a result, the trial court stated, it would be unfair to allow Bioquest to raise arguments on remand based upon the contract being entire, rather than divisible.

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and that the contract probably was a divisible contract. The trial court discounted the argument on the basis that the accrual issue was addressed *before* the trial court made its ruling on the installment issue.

Bioquest further claims it did not forfeit the right to raise the accrual theory for a divisible contract, in that its counsel raised the applicable accrual theory at oral argument in the previous appeal, even though it did not appear in Bioquest’s appellate briefs. The claim fails, in that, as previously explained, it is axiomatic that a theory of recovery not raised in the trial court cannot be raised for the first time on appeal in a party’s appellate brief *or* during oral argument. (*Johnson v. Greenelsh, supra*, 47 Cal.4th at p. 603.) “It has long been deemed improper to raise new points at oral argument, and such questions will ordinarily not be considered. [Citations.]” (*People v. Superior Court (On Tai Ho)* (1974) 11 Cal.3d 59, 68.) For the foregoing reasons, we conclude that substantial evidence supports the trial court’s finding that Bioquest forfeited the new theory. (*Conservatorship of Kevin M., supra*, 49 Cal.App.4th at p. 92.)

As an alternative argument, Bioquest states that it had a right to raise the theory on remand, in that, our holding in the previous appeal was that the 97 Agreement was not a divisible, or installment, contract and we directed that the trial court conduct further proceedings consistent with our decision. We disagree. The purpose of remand was to allow the trial court to make a new ruling that the California statute of limitations applied and then apply it, but based upon the same record the trial court had before it during its consideration of the three previous motions the court had considered in the *Bioquest I* proceedings.<sup>10</sup> The trial court had no jurisdiction to do otherwise. When a reviewing court remands a case with directions, “[t]he order of the reviewing court . . . in its remittitur . . . defines the scope of the jurisdiction of the court to which the matter is returned.” ““The lower court cannot reopen the case on the facts, allow the filing of

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<sup>10</sup> As the parties and the trial court addressed on remand, we held in *Bioquest I* that the issue of whether Abraxis was the alter ego of VivoRx and could be held liable for recovery purposes was moot. That holding signaled that Bioquest had not advanced any theory under which it still could be entitled to recovery, given our holdings rejecting the only two arguments Bioquest had made in the proceedings, that is, that its action was timely under the six-year statute of limitations under Massachusetts law and that, even if the four-year California statute of limitations applied, it would bar recovery of only a part of the relief sought, in that the 97 Agreement was an installment contract.

amended or supplemental pleadings, nor retry the case, and if it should do so, the judgment rendered thereon would be void.” [Citations.]” (*Griset v. Fair Political Practices Com.*, *supra*, 25 Cal.4th at p. 701.)

As support for its contention, Bioquest cites *Munoz v. City of Union City* (2007) 148 Cal.App.4th 173. Similar to the circumstances here, the appeal before the *Munoz* court was from the result of remand proceedings from a previous appeal. (*Id.* at pp. 177-178.) The issue was whether the plaintiffs had forfeited a damages reallocation argument by not presenting it in the first appeal, in which the appellate court raised a new, related legal issue. (*Id.* at pp. 178-179.) The *Munoz* court concluded the argument had not been forfeited and stated, “We are aware of no authority requiring the respondent on appeal to anticipate a ruling against it and raise arguments concerning the implementation of such a ruling.” (*Id.* at p. 179, fn. omitted.)

The holding in *Munoz* does not apply to the instant case. Here, the forfeiture issue arises from very different facts. The issue here is whether Bioquest forfeited the new theory for purposes of the proceedings on remand because it failed to raise the theory in the trial court in the *Bioquest I* trial court proceedings, where Bioquest had had at least three opportunities to raise it in opposition to VivoRx’s motions claiming that the California statute of limitations completely barred Bioquest’s lawsuit. Neither did Bioquest brief the theory in the prior appeal, the central issue of which was the statute of limitations issue. Unlike the reviewing court in the first appeal in *Munoz*, we did not introduce any new legal issues in *Bioquest I*.

### **C. Attorney’s Fees**

With respect to attorney’s fees, Bioquest contends that the amount of the trial court’s award of attorney’s fees to VivoRx was unreasonable.<sup>11</sup> We disagree.

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<sup>11</sup> Bioquest does not dispute the trial court’s determination that the 97 Agreement incorporated an attorney’s fees and costs provision enforceable pursuant to Civil Code section 1717, and that VivoRx was the prevailing party pursuant to Code of Civil Procedure sections 1031 and 1021.

VivoRx requested \$1,878,924 in attorney's fees. Bioquest did not object to the \$398,004 in fees VivoRx requested for the trial court proceedings. Bioquest's objection was to the \$1,480,920 in fees requested for the appeal and remand. The trial court disallowed approximately \$400,000 of the requested amount and awarded the amount of \$1,506,000.

It is well-established that "[t]he 'experienced trial judge is the best judge of the value of professional services rendered in his court.'" (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) We review the amount awarded by the trial court for attorney's fees under the abuse of discretion standard. (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.) We will not disturb the trial court's determination unless there has been a manifest abuse of discretion (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095), such as "if the amount awarded is so large or so small that it shocks the conscience" (*Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1134).

Civil Code section 1717 requires that the amount awarded for attorney's fees be reasonable. (See *People ex rel. Dept. of Transportation v. Yuki* (1995) 31 Cal.App.4th 1754, 1772-1773.) Ordinarily, the trial court's determination begins "with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate," that is, the hourly rate "prevailing in the community for similar work." (*PLCM Group, Inc. v. Drexler, supra*, 22 Cal.4th at p. 1095.) The number of hours reasonably expended excludes the hours attributable to inefficient or duplicative use of time. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 395.) The trial court may adjust the award amount based upon factors such as the complexity of the issues or facts involved, the skill required to deal with the complexity successfully, the amount of money involved in the litigation, the number of hours worked, billing rates, and types of issues and/or appearances handled. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132; *Niederer v. Ferreira* (1987) 189 Cal.App.3d 1485, 1507.)

The trial court used such factors to evaluate VivoRx's request for attorney's fees. In its written decision, the court stated that it had "considered the following factors: the complexity of the case, the number of parties, the extent of discovery required, the

reasonableness of the time allotted to the various tasks specified in the attorney[s'] billing records, the amount of the fees claimed . . . , the extent to which the party's litigation objectives were achieved, whether the hourly fee claimed is within the range of fees typically charged by other attorneys in the community, and the attorney's expertise and experience." The court stated that "the legal issues related to the choice of laws, the interpretation of the agreements and the aggressive nature of the litigation made this matter very complex." The court also noted that although the fees requested were substantial, "the original judgment exceeded \$2,500,000.00." Even after considering these factors, the trial court reduced the requested amount by approximately \$400,000 to arrive at the \$1,506,000 award.

As the court also noted, the amount awarded to VivoRx was comparable to the amount Bioquest requested in *Bioquest I*. Bioquest had sought \$1,280,114.50 as attorney's fees solely for the trial court proceedings, and the court had awarded fees in the amount of \$900,000. We conclude that the trial court had a reasonable basis for its fee award. (See *People ex rel. Dept. of Transportation v. Yuki*, *supra*, 31 Cal.App.4th at pp. 1772-1773.) The court did not abuse its discretion. (*Connerly v. State Personnel Bd.*, *supra*, 37 Cal.4th at p. 1175.)

### DISPOSITION

The judgment and the order are affirmed. Defendants shall recover their costs on appeal.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.