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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

WESTCO PETROLEUM
DISTRIBUTORS, INC.,

Plaintiff and Appellant,

v.

HUNTINGTON BEACH INDUSTRIAL
et al.,

Defendants and Respondents.

B264846 c/w B269393

(Los Angeles County
Super. Ct. No. KC064653)

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert A. Dukes, Judge. Affirmed.

Law Offices of Avedis Nalbandian and Avedis Nalbandian; Robert M. Unger for Plaintiff and Appellant.

Rogers, MacLeith & Stolp and Thomas J. Stolp for Defendants and Respondents Huntington Beach Industrial, Huntington Beach Petroleum, LLC, and Paul Wakim.

Law Offices of Thomas J. Weiss, Thomas J. Weiss and Shawn Zaman for Defendants and Respondents West Covina Gas & Market, Inc., Shahram Bakhtiari, and Mehraban Forughi.

No appearance for Defendants A & A Dynamic and Syed Haider.

Plaintiff and appellant Westco Petroleum Distributors, Inc. (Westco) appeals from a judgment and an amended judgment in favor of defendants and respondents Huntington Beach Industrial (HBI), Huntington Beach Petroleum, LLC, and Paul Wakim (Wakim); West Covina Gas & Market, Inc. (West Covina), Mehraban Forughi, and Shahram Bakhtiari;¹ and defendants A & A Dynamic (A&A) and Syed Haider (Haider);² in Westco's action for breach of contract and other claims. Westco also appeals from a postjudgment order granting West Covina \$61,565 in attorney fees.

We affirm the judgment, the amended judgment, and the attorney fees award.

BACKGROUND

The parties

Westco was a distributor and reseller of ConocoPhillips petroleum products, including Phillips 76 gasoline. Westco was authorized by ConocoPhillips to grant franchise rights to retail gas station operators to use and display the "76" trademark in exchange for the operator's promise to purchase and sell 76 gasoline and other ConocoPhillips products at the franchised gas station during the term of the franchise.

Wakim is the sole shareholder of HBI, the owner and operator, in October 2009, of a retail gas station in West Covina, California (the gas station).

¹ West Covina, Forughi, and Bakhtiari are referred to collectively as the West Covina defendants. HBI, Wakim, the A&A defendants, and the West Covina defendants are referred to collectively as defendants.

² A&A and Haider are referred to collectively as the A&A defendants. The A&A defendants did not appear as respondents in this appeal.

Haider is the president of A&A. Haider and A&A purchased the gas station from Wakim and HBI in 2010.

Forughi and Bakhtiari are principals of West Covina. The West Covina defendants purchased the gas station from A&A and Haider in 2012.

HBI and Wakim contract with Westco

In October 2009, HBI and Wakim entered into a branded reseller distribution agreement (the BRA) with Westco, pursuant to which HBI and Wakim agreed to operate the gas station as a “76” branded gas station and to purchase 76 gasoline from Westco for a 10-year term. Wakim did not have an attorney review the BRA before he signed it, nor did he read the contract or discuss its minimum gasoline purchase requirements or liquidated damages provision with any Westco representative.

The BRA

Paragraph 24 of the BRA required Westco’s prior written consent to any assignment or transfer of the agreement.³

³ The assignment provision stated in relevant part: “(a) DEALER may not sell, assign, or transfer this Agreement or any rights hereunder, in whole or in part, without obtaining WESTCO’s specific prior written consent first, which consent may be withheld within WESTCO’s sole and absolute discretion. This Agreement may not be assigned by operation of law. Any attempt by DEALER to sell, assign or transfer this Agreement, or any rights hereunder, without WESTCO’s prior written consent shall be void from the beginning and of no force and effect. . . . [¶] . . . [¶] (d) Subject to such limitations or prohibitions imposed by the PMPA or by State statute where the PMPA does not preempt, this Agreement is personal to DEALER, and DEALER will not, without the prior written consent of WESTCO (which consent may be withheld in WESTCO’s absolute discretion): (1) assign, mortgage, encumber, or otherwise transfer this Agreement or the interest hereby created; . . . (3) permit any other person, firm or

Paragraph 27 of the BRA provided for liquidated damages payable to Westco in the event of the dealer's breach. Paragraph 38 provided for recovery of attorney fees by either party to the agreement who prevailed in an action or proceeding to enforce any covenant, condition or obligation of the agreement, for a declaration of rights under the agreement, or to protect its interests or rights thereunder. Paragraph 38 also entitled Westco to recover its attorney fees "in connection with the collection of any indebtedness owed, enforcement of indemnity protections or any liability of DEALER to WESTCO."

Exhibit C to the BRA required Westco to provide the dealer with 30 days notice before stopping delivery of any ConocoPhillips branded product, except in the event of the dealer's material breach of the agreement, in which case only a five-day written notice was required.

Sale by HBI to A&A

In March 2010, HBI and Wakim sold the gas station to A&A and Haider. In connection with the sale, the A&A defendants executed an assignment agreement pursuant to which they assumed the obligations of HBI and Wakim under the BRA. Westco consented in writing to the assignment. When Haider executed the assignment agreement, he had neither received nor reviewed a copy of the BRA.

Sale by A&A to West Covina

In June 2012, the A&A defendants entered into an agreement to sell the gas station to the West Covina defendants. The parties' escrow instructions stated that the sale was contingent upon assignment of the BRA. While the purchase transaction was pending, Haider asked Westco to send him the necessary documents to obtain Westco's consent to the sale.

corporation to occupy the Station or any part thereof; except as may otherwise be required by law."

Westco provided a package of documents that Haider in turn gave to West Covina. The documents included a credit application but did not include a copy of the BRA or an assignment of the BRA. On July 14, 2012, West Covina submitted the completed application package to Westco. Westco did not respond to the application.

Haider telephoned Westco several times thereafter in an attempt to determine the status of West Covina's application. A Westco representative named Isa told Haider that Westco was "working on it." Isa gave no indication that Westco was inclined to reject the application or that it would not approve West Covina as the new franchisee.

When nearly a month had elapsed, and Westco still had not responded to West Covina's application, A&A and West Covina amended their escrow instructions to remove assignment of the BRA as a contingency to the close of escrow. West Covina agreed to assume responsibility for obtaining an assignment of the existing BRA or establishing a new franchise agreement with Westco. The purchase and sale transaction closed on August 9, 2012, and West Covina began operating the gas station that same day.

West Covina's operation of the gas station

On August 11, 2012, Westco delivered a shipment of 76 gasoline to the gas station in accordance with a previous standing order by A&A. Because the BRA had not been assigned to West Covina, and A&A was still the contracting party under the BRA, West Covina paid A&A for that delivery with the understanding that A&A would in turn remit the payment to Westco. West Covina intended to continue paying Westco for future gasoline deliveries through A&A in this manner until West Covina established its own franchise agreement with Westco. A&A did not remit West Covina's payment for the August 11, 2012

delivery to Westco, however, because of a dispute between A&A and Westco over a \$30,000 deposit that A&A believed should be refunded to it. A&A made several requests to Westco for return of the deposit, but Westco did not respond.

West Covina received a second gasoline delivery on August 15, 2012. It did not pay A&A for that delivery because it learned that A&A had failed to remit payment for the August 11, 2012 delivery to Westco.⁴ When no further gasoline deliveries arrived, and West Covina began running out of product to sell, it called Westco's dispatch office and learned that Westco had placed a "hold" on further gasoline deliveries to the station.

On August 20, 2012, A&A and West Covina met with Westco at Westco's offices. Haider, Forughi, Isa, and Westco's CEO, Antone Nino, attended the meeting. At the meeting, Forughi asked why Westco had not responded to West Covina's application. Isa replied that A&A had presented Westco with so many potential buyers that Westco had not taken West Covina's application seriously. Forughi told Westco that West Covina urgently needed additional gasoline deliveries. Nino responded that no further deliveries would be made unless West Covina signed a 64-page contract that he presented to Forughi at the meeting. Forughi asked for additional time to review the contract, and offered to pay in advance by cashier's check for any gasoline deliveries made before the parties finalized the contract. Nino refused Forughi's request and said that unless West Covina signed the contract "then and there" Westco would not only sue, but would also ensure that West Covina went out of business.

Between August 20 and August 22, 2012, West Covina made multiple attempts to obtain a 76 gasoline delivery from

⁴ West Covina eventually paid Westco for the August 15, 2012 delivery after Westco commenced the instant lawsuit.

Westco in exchange for payment by cashier's check or a wire transfer of funds. Westco refused to make any further deliveries.

Seven days later, when West Covina ran out of gasoline, it covered the gas station's 76 sign and purchased gasoline from an independent salesperson. West Covina and Westco never entered into a franchise agreement.

PROCEDURAL HISTORY

Westco commenced this action in September 2012. In the operative first amended complaint, Westco asserted causes of action for (1) breach of contract against the A&A defendants, (2) breach of personal guaranty against Wakim, (3) judicial foreclosure of security against the A&A defendants, (4) goods sold and delivered against the A&A defendants and the West Covina defendants, (5) breach of security agreement against the A&A defendants, (6) breach of assignment against Wakim and HBI, (7) unjust enrichment and intentional misrepresentation against the West Covina defendants, (8) conversion against the West Covina defendants, and (9) intentional interference with contract against Wakim, HBI, and the West Covina defendants.⁵ Westco sought \$63,232.15 for unpaid 76 fuel products, \$250,000 in liquidated damages, and \$65,000 in imaging costs.

The matter proceeded to a bench trial at which the parties submitted documentary evidence and defendants Wakim, Haider, Forughi, and Bakhtiari testified. Hamid Keshavarz, a consultant to West Covina, also testified.

At the conclusion of the trial, the trial court stated its oral ruling on the record. The court ruled in favor of Westco and against the A&A defendants on Westco's first cause of action for breach of contract. The court awarded Westco damages of \$33,553.08 for the August 11, 2012 gasoline delivery, but offset

⁵ Various of the defendants filed cross-complaints that are not at issue in this appeal.

against that amount the \$30,000 deposit A&A had paid under the terms of BRA, for a net award of \$3,553.08.

As to the second cause of action against Wakim for breach of the personal guarantee, the trial court found in favor of Westco and against Wakim in the amount of \$3,553.08.

With respect to the third cause of action for judicial foreclosure against the A&A defendants, the court found a lack of proof of any remaining unpaid inventory purchased from Westco.

The court found in favor of Westco and against A&A in the amount of \$3,553.08 on the fourth cause of action for goods sold and delivered, but ruled that this amount was subsumed within the award against A&A for the breach of contract claim.

For the fifth cause of action against the A&A defendants for breach of the security agreement, the trial court found in favor of the A&A defendants because of an absence of proof that the agreement had ever been assigned or transferred. The court found in favor of Wakim and HBI on Westco's sixth cause of action for breach of the assignment.

The trial court found in favor of the West Covina defendants on all of the causes of action Westco asserted against them -- the fourth cause of action for goods sold and delivered, the seventh causes of action for unjust enrichment, the eighth cause of action for conversion, and the ninth cause of action for intentional interference with contract.

The trial court concluded that the liquidated damages provision in the BRA was void and unenforceable and that Westco had failed to prove that it was owed any imaging costs.

The trial court found that the defendants' alleged failure to continue with the BRA for its term was a result of Westco's conduct by unreasonably failing to respond to A&A's request to assign the BRA to West Covina. Westco's inaction, the trial court determined, forced the parties to remove the assignment

contingency from their escrow instructions so that escrow could close in a timely manner.

The trial court also found that Westco had unreasonably demanded that West Covina sign a 64-page contract without giving it the requested time to review the contract or to present it to an attorney for review, and unreasonably threatened West Covina in an attempt to coerce it into signing the contract. The court further found that Westco's unreasonable demand to coerce West Covina into signing the contract without the proper review constituted a material breach of the BRA that excused further performance by all of the affected parties.

The trial court found that Westco breached exhibit C of the BRA, which required Westco to provide 30 days notice before stopping delivery of any branded ConocoPhillips product except in the event of the dealer's material breach. The court found that A&A's nonpayment for the August 11, 2012 delivery was not a material breach but that Westco's breach was material. The trial court found that none of the parties to the BRA were prevailing parties on the contract, but that the West Covina defendants were prevailing parties as to the claims asserted against them.

The parties did not request a statement of decision, and judgment was subsequently entered in accordance with the trial court's oral ruling.

The West Covina defendants moved for a postjudgment award of attorney fees. The trial court granted the motion, finding that the West Covina defendants were the prevailing parties on Westco's seventh, eighth, and ninth causes of action on the contract and were therefore entitled to \$61,565 in attorney fees under Civil Code section 1717.

Westco appealed from the judgment and the order granting attorney fees.

On October 8, 2015, the West Covina defendants filed a motion to amend the judgment to add Westco Petroleum, Inc. as a judgment debtor under Code of Civil Procedure section 187. The trial court granted the motion, finding that Westco Petroleum, Inc. controlled the litigation and was the alter ego of Westco, that Westco was undercapitalized, and that an inequitable result would occur if the judgment were not amended.

An amended judgment adding Westco Petroleum Inc. as a defendant was filed on November 17, 2015, and Westco appealed from the amended judgment. We ordered the two appeals to be consolidated.

CONTENTIONS ON APPEAL

Westco challenges the following findings by the trial court: (1) Westco unreasonably failed to respond to requests for its consent to the sale of the gas station and the franchised business by A&A to West Covina; (2) Westco's attempts to coerce West Covina into signing a contract without sufficient time to review it was a material breach that resulted in a cancellation or termination of the BRA and excused further performance by all affected parties; (3) Westco materially breached the BRA by failing to give notice before stopping gasoline deliveries; and (4) the liquidated damages provision was void and unenforceable.⁶ Westco also challenges the award of attorney fees to the West Covina defendants under Civil Code section 1717.

⁶ The balance of Westco's challenges to findings that Wakim, HBI, and the A&A defendants were not liable for any material breach or repudiation of their obligations under the BRA may be subsumed within its challenge to the trial court's finding that Westco's material breaches of the BRA excused performance by the other parties.

DISCUSSION

I. Breach of contract claims

A. *Standard of review*

The determinations of whether a breach of contract occurred and whether the breach is so material as to constitute cause for the injured party to terminate the contract are questions of fact that are reviewed under the substantial evidence standard.⁷ (*Ash v. North American Title Co.* (2014) 223 Cal.App.4th 1258, 1268; *Brown v. Grimes* (2011) 192 Cal.App.4th 265, 277.) Substantial evidence is evidence that “‘must be of ponderable legal significance . . . [and] must be reasonable . . . , credible, and of solid value’ [Citation.] The ultimate determination is whether a *reasonable* trier of fact could have found for the respondent based on the *whole* record. [Citation.]” (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633. original italics.) Under the substantial evidence standard, we view the evidence in the light most favorable to the prevailing party and draw all reasonable inferences and resolve all conflicts in its favor. (*Ash*, at p. 1268.)

B. *Westco’s failure to respond to West Covina’s application*

Substantial evidence supports the trial court’s finding that Westco unreasonably failed to respond to A&A’s assignment request. The record shows that A&A notified Westco of the pending sale of the gas station to West Covina and asked Westco to send the documents necessary to assign the BRA to West Covina. Westco provided a package of documents that included a credit application, and West Covina submitted the completed

⁷ We reject Westco’s argument that de novo review applies to the trial court’s factual findings because they involved issues of contract interpretation and statutory construction.

documents to Westco on July 14, 2012. Westco never responded to West Covina's application.

After West Covina submitted the application package, A&A contacted Westco several times to inquire whether the application had been approved. Westco's representative told A&A that Westco was "working on it," and gave no indication that the application would not be approved. Westco's failure to act on the application caused A&A and West Covina to remove assignment of the BRA as a contingency to the close of the gas station sale, which occurred on August 9, 2012. Westco's representative later conceded that Westco had disregarded West Covina's application because it did not take the application seriously.

Westco argues that Business and Professions Code section 21148 allowed it 45 days in which to respond to A&A's request to assign the BRA, that only 23 days had elapsed between submission of West Covina's application and the closing date of the gas station sale, and that a 23-day delay was not unreasonable as a matter of law.

Business and Professions Code section 21148 governs petroleum franchises and imposes limitations on a franchisor's ability to withhold its consent to the sale, transfer or assignment of a petroleum franchise by a franchisee to another person. (Bus. & Prof. Code, § 21148; *California Service Station etc. Assn. v. Union Oil Co.* (1991) 232 Cal.App.3d 44, 53-54.) Subdivision (a) of that statute provides in relevant part: "Notwithstanding the terms of any franchise, a franchisor may not withhold its consent to the sale, transfer, or assignment of the franchise by the franchisee to another person unless the franchisor demonstrates in writing to the franchisee within 45 days of receiving the application, or required paperwork, from the potential buyer any of the following." (Bus. & Prof. Code, § 21148, subd. (a).) The

statute then enumerates five conditions under which the franchisor may withhold its consent, including lack of sufficient business expertise, training or financial resources by the prospective franchisee, or the prospective franchisee's inability to communicate with the franchisor and appropriate governmental authorities. (*Ibid.*)

Westco did not raise this statutory argument in the trial court below and therefore forfeited the right to do so for the first time in this appeal. (*Araiza v. Younkin* (2010) 188 Cal.App.4th 1120, 1127; see also *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 826.) Even if the argument were not forfeited, Westco has failed to demonstrate any error. The evidence showed that Westco never responded to West Covina's application and disregarded it altogether. There was no evidence that Westco made any effort to investigate West Covina's qualifications or financial resources.

C. Westco's attempt to coerce West Covina into signing a contract

The evidence showed that after Westco stopped gasoline deliveries to the station, West Covina met with Westco on August 20, 2012, and told Westco that it was in urgent need of gasoline. Westco refused to make further gasoline deliveries to the station unless West Covina signed a 64-page contract at the August 20 meeting. Westco refused West Covina's request for additional time to review the agreement and its offer to pay in advance for any gasoline deliveries made before the agreement was signed. Westco also threatened to sue West Covina and to put it out of business unless it signed the agreement then and there. Substantial evidence supports the trial court's finding that Westco unreasonably demanded that West Covina sign a franchise agreement under duress and without the opportunity to review the agreement.

A contract may be avoided on grounds of coercion or on the basis of an improper threat. (*Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian* (1990) 218 Cal.App.3d 1058, 1077.) “The Restatement of Contracts defines such threats very broadly under the heading of economic compulsion. Impermissible threats include bad faith threatened use of civil process; threats which are a breach of the duty of good faith and fair dealing under a contract with the recipient; threats which would harm the recipient without significantly benefitting the party making the threat; or threats where ‘what is threatened is otherwise a use of power for illegitimate ends.’ [Citation.]” (*Ibid.*)

“[I]n contract law, a material breach excuses further performance by the innocent party. [Citations.] [Citations.]” (*Plotnik v. Meihaus* (2012) 208 Cal.App.4th 1590, 1602.) Substantial evidence supports the finding that Westco materially breached the BRA, thereby excusing further performance by the affected parties. (*Brown v. Grimes, supra*, 192 Cal.App.4th at p. 277 [“whether a breach of an obligation is a material breach, so as to excuse performance by the other party, is a question of fact”].) The trial court did not err by concluding that Westco’s conduct was a material breach of the BRA that excused further performance by the affected parties.

D. Breach of exhibit C to the BRA

Exhibit C to the BRA provides in relevant part: “WESTCO agrees to provide DEALER thirty (30) days notice before stopping delivery of Branded ConocoPhillips Product, except in the event of DEALER’s material breach (such as failure to pay, etc.) of this Agreement, in which case only a 5 day written notice will be given by WESTCO to DEALER.”

Westco provided no notice to A&A or West Covina before stopping gasoline deliveries to the station after August 15, 2012.

Substantial evidence supports the trial court's finding that Westco breached the foregoing provision.

II. Liquidated damages

A. Applicable law and standard of review

Subject to exceptions that are not applicable here, Civil Code section 1671 provides that “a provision in a contract liquidating the damages for the breach of the contract is valid unless the party seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the contract was made.” (Civ. Code, § 1671, subd. (b).)

In determining whether a liquidated damages provision was reasonable or unreasonable at the time the contract was made, the Law Revision Commission comments to Civil Code section 1671 provide the following guidance: “All the circumstances existing at the time of the making of the contract are considered, including the relationship that the damages provided in the contract bear to the range of harm that reasonably could be anticipated at the time of the making of the contract. Other relevant considerations in the determination of whether the amount of liquidated damages is so high or low as to be unreasonable, include, but are not limited to, such matters as the relative equality of the bargaining power of the parties, whether the parties were represented by lawyers at the time the contract was made, the anticipation of the parties that proof of actual damages would be costly or inconvenient, the difficulty of proving causation and foreseeability, and whether the liquidated damages provision is included in a form contract.” (Cal. Law Revision com., 9 West's Ann. Civil Code (2011 ed.) foll. § 1671, p. 139.)

Where, as in the instant case, the facts were disputed, we review the trial court's determination regarding enforceability of

the liquidated damages provision under the substantial evidence standard. (*El Centro Mall, LLC v. Payless ShoeSource, Inc.* (2009) 174 Cal.App.4th 58, 62 (*El Centro*).

B. Substantial evidence supports the trial court's determination that the liquidated damages provision was an unenforceable penalty

The trial court found, and the evidence showed, that the liquidated damages provision was void and unenforceable as a contract of adhesion because it was prepared by Westco as part of a form contract, none of the defendants were represented by counsel, and no bargaining had taken place between the parties. Westco made no showing that proof of actual damages would have been impossible or overly costly. Substantial evidence accordingly supports the trial court's determination that the liquidated damages provision was unenforceable. (*El Centro, supra*, 174 Cal.App.4th at p. 62.)

III. Attorney fees

An award of contractual attorney fees is governed by Civil Code section 1717. Subdivision (a) of that statute provides in pertinent part: "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." (Civ. Code, § 1717, subd. (a).)

The BRA contains the following attorney fees provision:

"(a) If either party to this Agreement retains counsel and/or institutes a mediation, arbitration proceeding, or lawsuit for violation of or to enforce any of the covenants, obligations and/or conditions of this Agreement, or if either party initiates a mediation,

arbitration proceeding, or lawsuit against the other for a declaration of rights under this Agreement, or if either party intervenes in a lawsuit in which the other is a party, to enforce or protect its interests or rights hereunder, the prevailing party shall be entitled to reimbursement of all of its costs, expenses and actual attorney fees incurred in connection therewith from the losing party.

“(b) DEALER agrees to pay all attorney fees, costs of suit and reasonable expenses incurred by WESTCO in connection with the collection of any indebtedness owed, enforcement of indemnity protections or any liability of DEALER to WESTCO.”

Civil Code section 1717, subdivision (b) requires the court, upon notice and motion by a party, to “determine who is the party prevailing on the contract” for purposes of an attorney fees award. The statute provides that “the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract” and that “[t]he court may also determine that there is no party prevailing on the contract.” (Civ. Code, § 1717, subd. (b).) A party who obtains an unqualified victory on a contract claim is entitled as a matter of law to be considered the prevailing party for purposes of Civil Code section 1717. (*DisputeSuite.com, LLC v. Scoreinc.com* (2017) 2 Cal.5th 968, 973 (*DisputeSuite.com*).) A prevailing defendant who successfully defends against an action on a contract by showing that the contract is inapplicable, invalid, or unenforceable, is also entitled to recover its attorney fees as the prevailing party on the contract. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 611.)

Westco contends the West Covina defendants were not entitled to an attorney fees award because they were not parties to the contract, no contract claims were asserted against them, and even if some of the causes of action were deemed to be claims

on the contract, the fee award should have been apportioned between the contract and non-contract claims.

That the West Covina defendants were not signatories to the BRA does not preclude them from recovering their attorney fees as prevailing parties. Civil Code section 1717 was enacted “to prevent oppressive use of one-sided attorney’s fees provisions. [Citation.] [¶] Its purposes require [Civil Code] section 1717 be interpreted to further provide a reciprocal remedy for a nonsignatory defendant, sued on a contract as if he were a party to it, when a plaintiff would clearly be entitled to attorney’s fees should he prevail in enforcing the contractual obligation against the defendant.” (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 128 (*Reynolds Metals*).

Westco’s claim that it asserted only non-contract causes of action against the West Covina defendants is contradicted by the allegations of its first amended complaint. In its fourth cause of action against the West Covina defendants for goods sold and delivered, Westco alleged that “[t]he contract on which this action is based provides that in the event legal action is taken to enforce collection, the prevailing party is entitled to recover reasonable attorney’s fees and costs.” In its seventh cause of action for unjust enrichment and intentional misrepresentation, Westco sought to recover \$250,000 in liquidated damages and attorney fees under those provisions of the BRA. The West Covina defendants successfully defended against these claims and were accordingly entitled to recover their attorney fees under Civil Code section 1717. (*DisputeSuite.com, supra*, 2 Cal.4th at p. 973; *Reynolds Metals, supra*, 25 Cal.3d at p. 128.)

Westco’s argument is also unavailing because the attorney fees provision in the BRA covers non-contract claims. Paragraph 38(b) of the BRA provides for recovery of attorney fees incurred “in connection with the collection of any indebtedness owed,

enforcement of indemnity protections or any liability of DEALER to WESTCO.” That language is sufficiently broad to encompass the claims Westco asserted against the West Covina defendants.

Westco did not request apportionment of attorney fees in the trial court below and accordingly forfeited the right to do so for the first time in this appeal. (*Mepco Services, Inc. v. Saddleback Valley Unified School Dist.* (2010) 189 Cal.App.4th 1027, 1049, fn. 29 [failure to present apportionment argument in trial court resulted in forfeiture of claim on appeal].) Apportionment would have been unnecessary, in any event, as the attorney fees provision covered both contract and non-contract claims.

DISPOSITION

The judgment and the amended judgment⁸ are affirmed, as is the award of attorney fees. Defendants are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
GOODMAN

⁸ In this appeal, Westco did not challenge the addition of Westco Petroleum, Inc. as a judgment debtor to the amended judgment.

* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.