

NOT TO BE PUBLISHED

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THIRD APPELLATE DISTRICT

(Sutter)

----

ROBBY CHIMA et al.,

Plaintiffs, Cross-defendants and  
Appellants,

v.

REBECCA LYNN CHIMA, Individually and as  
Trustee, etc., et al.,

Defendants, Cross-complainants and  
Respondents.

C075602

(Super. Ct. No. CVCS082478)

Plaintiffs and cross-defendants Robby Chima, Bobby Chima, and Lisa Mukai, Trustee of the Chima Children’s Trust, appeal from a postjudgment order denying them costs and attorney fees. Plaintiffs contend that they are entitled costs as a matter of right under Code of Civil Procedure section 1032 because they prevailed against defendants and cross-complainants on their cross-complaint, and are entitled to attorney fees as a

matter of right under a contract and Civil Code section 1717 because they prevailed on all causes of action on the contract.

We shall conclude that plaintiffs are not entitled to costs as a matter of right under Code of Civil Procedure section 1032, but that they are entitled to reasonable attorney fees. Accordingly, we shall reverse that portion of the order denying plaintiffs' motion for attorney fees and affirm the order in all other respects. We shall remand the matter to the trial court with directions to award reasonable attorney fees to plaintiffs.

#### FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>

This case was tried to the court, and the facts are taken from the trial court's statement of decision.

Plaintiffs Robby and Bobby Chima are beneficiaries of the Chima Children's Trust, which was established by their father Geneal Chima in 1995.<sup>2</sup>

In 1997, Geneal married defendant Rebecca Lynn Chima, who served as trustee for the Chima Children's Trust from 1998 to February 2009.<sup>3</sup>

Following their marriage, Geneal and Rebecca engaged in a series of farming and real estate development ventures, using a series and variety of business entities to conduct their business. One such entity was Winning Hit, LLC (Winning Hit). Winning Hit was formed in 1998. The Winning Hit operating agreement dated February 9, 1998, lists Rebecca as the manager; Rebecca, individually; and Rebecca, as trustee for the Chima Children's Trust, as members. It also provides that Rebecca, individually, has a 51

---

<sup>1</sup> Defendants and cross-complainants' request for judicial notice, filed on September 15, 2016, is denied as irrelevant to our resolution of the issues raised on appeal.

<sup>2</sup> We refer to the Chima family members by their first names for clarity and intend no disrespect.

<sup>3</sup> Plaintiff Lisa Mukai was appointed successor trustee of the Chima Children's Trust in August 2012.

percent interest in Winning Hit, and Rebecca, as trustee of the Chima Children's Trust, has a 49 percent interest.

In 1999, Rebecca's parents, defendants Ralie and Stella Singh, conveyed 143 acres of real property on Lincoln Road in Yuba City to Rebecca and her brother making them one-half owners of an undivided interest in the property. In 2001, Rebecca was sued by her brother. The litigation resulted in a settlement agreement, which as relevant here, left Rebecca with 66 acres of the property on Lincoln Road, which she conveyed to Winning Hit. As of November 5, 2001, Winning Hit had title in fee simple to the 66 acres, which was free and clear of any debt at this time.

As owner of a 49 percent interest in Winning Hit, the Chima Children's Trust owned 49 percent of an entity that was pursuing investment opportunities, including development of the 66 acres.

Sometime between 2001 and September 2006, Geneal and Rebecca used the 66 acres as collateral for their other development and commercial interests, and by September 2006, the property secured two debts totaling \$550,000.

On September 8, 2006, Geneal and Rebecca separated, and on September 18, 2006, Rebecca executed a deed of trust transferring the 66 acres to herself, and in 2008, executed a second deed of trust transferring the 66 acres to her parents.

Plaintiffs sued Rebecca and her parents. The operative third amended verified complaint contains causes of action for breach of fiduciary duty, shareholder's derivative action, accounting, quiet title, cancellation of instrument, and fraudulent transfer. Defendants filed a cross-complaint against plaintiffs. The operative second unified amended cross-complaint contains causes of action for quiet title, declaratory relief, and rescission. The trial court granted defendants' motion to bifurcate and ordered that the equitable causes of action in the operative complaint and cross-complaint would be tried to the court first.

The basic issue at the trial, which lasted 16 days, was “in whose name should title to the 66 acres be quieted.” Plaintiffs argued that title should be quieted in the name of Winning Hit, and requested a determination that the Chima Children’s Trust owned a 49 percent interest in Winning Hit. Defendants claimed that title should be quieted in the name of Rebecca’s parents. In order to resolve this issue, the trial court had to determine, among other things, which of the various Winning Hit operating agreements submitted by the parties was the correct, valid, and enforceable agreement.<sup>4</sup>

The trial court found that the February 9, 1998, operating agreement was the controlling “version,” Rebecca owned 51 percent of Winning Hit and the Chima Children’s Trust owned 49 percent, Rebecca breached her fiduciary duty as the manager of Winning Hit by deeding the 66 acres from Winning Hit to herself on September 18, 2006, Rebecca was not entitled to rescission of any transaction, and title to the 66 acres would be quieted in Winning Hit. Although the trial court credited Rebecca’s claim that Geneal committed domestic violence against her, it rejected her claim that she was acting under duress from Geneal when she executed the controlling operating agreement or transferred the 66 acres to Winning Hit. The court also found she was not acting under duress with regard to the Chima Children’s Trust and was estopped from claiming that the Chima Children’s Trust was not a member of Winning Hit because it did not contribute the agreed upon consideration. With respect to Rebecca’s parents, the trial court found they “had notice of the pending legal action when they took title to the 66 acres in 2008” and were “entitled to reimbursement from Winning Hit, LLC, for the financial contributions they have made for payment on the debt secured by the property and taxes they have paid.” The court further found “that without the financial support of

---

<sup>4</sup> At trial, Rebecca submitted multiple versions of the operating agreement, which she created.

[Rebecca's parents], Winning Hit, LLC, would not have had the assets, income, or ability to pay the loan debt or taxes on the 66 acres from September 8, 2006 forward.”

Judgment was entered in favor of plaintiffs and cross-defendants and against defendants and cross-complaints on the operative complaint and cross-complaint. Among other things, the judgment (1) declared that the February 9, 1998, operating agreement is the operative, effective, valid, enforceable, and controlling agreement and that the Chima Children's Trust is a 49 percent member of Winning Hit, with a 49 percent interest in the same, (2) quieted title in the 66 acres in Winning Hit, and (3) cancelled the grant deeds purporting to transfer the 66 acres from Winning Hit to Rebecca, and from Rebecca to her parents. It also stated that plaintiffs were entitled to costs and attorneys fees in amounts to be determined following the submission of a cost bill and properly noticed motion.<sup>5</sup>

Thereafter, plaintiffs filed a memorandum of costs totaling \$52,973.76, and defendants moved to tax costs. Plaintiffs also filed a motion for an award of attorney fees totaling \$861,688.60, which defendants also opposed. Following a hearing, the trial court denied plaintiffs costs and attorney fees “given the exorbitant time and resources expended on this case by all parties, the convoluted relationship between the parties, the various cross complaints and the ultimate outcome which granted declaratory relief and title to property of dubious current value, and in which no party received anything of clear value.”

Plaintiffs appeal from the order denying them costs and attorney fees.<sup>6</sup>

---

<sup>5</sup> Prior to entry of judgment, the trial court granted plaintiffs' motion for judgment on the pleadings as to the one remaining cause of action in the cross-complaint as well as their request to dismiss the remaining causes of action in the operative complaint. Thus, there were no issues left to be tried.

<sup>6</sup> As a preliminary matter, we reject defendants' claim that plaintiffs' failure to include a reporter's transcript of the trial proceedings is “fatal to the appeal.” California Rules of

## DISCUSSION

### I

#### Plaintiffs Are Not Entitled to Costs as a Matter of Right Under Section 1032 of the Code of Civil Procedure

Plaintiffs contend that they are entitled to costs as a matter of right under subdivision (a)(4) of section 1032 of the Code of Civil Procedure because they successfully defeated defendants' cross-complaint. We are not persuaded.

Subdivision (b) of section 1032 of the Code of Civil Procedure states that except as otherwise provided by statute, "a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." As defined in subdivision (a)(4) of section 1032, "'Prevailing party' includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034." As used in section 1032 of Code of Civil Procedure, "'[c]omplaint' includes a cross-complaint," "'[d]efendant' includes a cross-

---

Court, rule 8.130(a)(3) states: "If the appellant serves and files a notice designating a reporter's transcript, the respondent may, within 10 days after such service, serve and file a notice in superior court designating any additional proceedings the respondent wants included in the transcript." On April 25, 2014, plaintiffs served and filed a notice designating the reporter's transcript for the "motion hearing" on December 23, 2013. In doing so, plaintiffs noted that the designated proceeding did not include all of the testimony because the appeal "concerns the denial of a motion for attorney's fees and memorandum of costs. This designation is only intended to address the appeal of the denial of such motion." At that point, it was incumbent upon defendants to designate any additional proceedings they wanted included in the transcript. (Cal. Rules of Court, rule 8.130(a)(3).) Thus, defendants have only themselves to blame for the lack of a trial transcript.

defendant or a person against whom a complaint is filed,” and “[p]laintiff” includes cross-complainant or a party who files a complaint in intervention.” (Code Civ. Proc., § 1032, subd. (a)(1), (2), (3).) Whether plaintiffs are entitled to costs as a matter of right under section 1032 involves the interpretation of a statute, which we review de novo. (*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332.)

Plaintiffs contend they are entitled to costs as a matter of right because they prevailed on defendants’ cross-complaint, i.e., because they are cross-defendants against whom cross-complainants recovered nothing by way of their cross-complaint. Plaintiffs are correct that their success in defeating defendants’ cross-complaint places them within the category of parties who are entitled to costs as a matter of right under subdivision (a)(4) of section 1032 of the Code of Civil Procedure. As a party who recovered “other than monetary” on their complaint, however, plaintiffs also fall within the category of parties for whom the award of costs is discretionary. (Code Civ. Proc., § 1032, subd. (a)(4).) The parties have not cited and we have not found a case dealing with the type of mixed situation presented here. In the absence of such authority or persuasive argument to the contrary, we find that this case constitutes a “situation[] other than as specified” in subdivision (a)(4) of section 1032 of the Code of Civil Procedure, thus vesting the trial court with discretion to allow or not allow costs. (*Ibid.*)

As the “prevailing party” on their complaint, for which they recovered “other than monetary relief,” plaintiffs are not entitled to costs as a matter of right. That they also defeated defendants’ cross-complaint, which fundamentally was defensive in nature, does not alter the fundamental nature of the case or the relief granted. The case as a whole presented “a situation[] other than as specified,” vesting the trial court with the discretion to “allow costs or not . . . .” (Code Civ. Proc., § 1032, subd. (a)(4).)

Plaintiffs’ claim that they are entitled to costs as a matter of right under section 1032 of the Code of Civil Procedure fails.

## II

### Plaintiffs Are Entitled to Reasonable Attorney Fees Under the Operating Agreement and Section 1717 of the Civil Code

Plaintiffs also contend that they are entitled to attorney fees as prevailing parties under an attorney fee provision in the operating agreement and section 1717 of the Civil Code. According to plaintiffs, the “simple, unqualified judgment” in their favor on all claims arising from the operating agreement entitled them to an award of attorney fees as the prevailing party on the contract. We agree.

Subdivision (a) of Civil Code section 1717 provides: “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.” (Italics added.) Subdivision (b)(1) of Civil Code section 1717, which sets for the procedure for determining the party prevailing on the contract, provides in pertinent part: “The court, upon notice and motion by a party, shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2), the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section.”

“‘California courts construe the term “on a contract” liberally.’ [Citation.] The phrase ‘action on a contract’ includes not only a traditional action for damages for breach of a contract containing an attorney fees clause [citation], but also any other action that ‘involves’ a contract under which one of the parties would be entitled to recover attorney fees if it prevails in the action [citation]. ‘In determining whether an action is ‘on the contract’ under section 1717, the proper focus is not on the nature of the remedy, but on

the basis of the cause of action.’ [Citation.]” (*Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.* (2012) 211 Cal.App.4th 230, 240-241.) Employing this approach, courts have held the phrase “action on a contract” as used in Civil Code section 1717 includes an action seeking declaratory and injunctive relief and quiet title based on violations of the terms of a promissory note and deed of trust. (*Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 347-348.) In sum, “[a]n action (or cause of action) is ‘on a contract’ for purposes of [Civil Code] section 1717 if (1) the action (or cause of action) ‘involves’ an agreement, in the sense that the action (or cause of action) arises out of, is based upon, or relates to an agreement by seeking to define or interpret its terms or to determine or enforce a party’s rights or duties under the agreement, and (2) the agreement contains an attorney fees clause.” (*Barnhart*, at pp. 241-242.)

Here, the controlling operating agreement provides: “**ATTORNEYS’ FEES.** In the event of any litigation . . . or other dispute arising as a result of or by reason of this Agreement, the prevailing party in any such litigation . . . or other dispute shall be entitled to, in addition to any other damages assessed, its reasonable attorneys’ fees, and all other costs and expenses incurred in connection with settling or resolving such dispute.”

The operating agreement was central to the causes of action tried to the court, all of which were resolved in plaintiffs’ favor. As the trial court acknowledged in its statement of decision, the basic issue at trial was “in whose name should title to the 66 acres be quieted.” Plaintiffs’ interest in the 66 acres arose from the operating agreement, which provides that the Chima Children’s Trust has a 49 percent interest in Winning Hit. Each of the causes of action tried to the court concerned ownership of the 66 acres, and thus, either arose from, were based upon, or related to the operating agreement. Each sought to determine the parties’ rights under the operating agreement to the 66 acres and to enforce such rights. The quiet title cause of action in the complaint, which sought to have title to the property quieted in Winning Hit, and the cancellation cause of action,

which sought to have the grant deeds transferring the property from Winning Hit to Rebecca and from Rebecca to her parents cancelled, were predicated on the operating agreement. Similarly, the rescission cause of action in the cross-complaint sought to rescind the February 9, 1998, agreement. The quiet title cause of action in the cross-complaint, which sought to quiet title in the property in Rebecca's parents, and the declaratory relief cause of action, which sought a declaration that the valid, operative deed was the deed showing title in the names of Rebecca's parents, turned on the validity and enforceability of the operating agreement.

As defendants acknowledge, plaintiffs "were without question the prevailing parties" on *all* claims tried to the court. The trial court declared that the operating agreement dated February 9, 1998, is the operative, effective, valid, enforceable, and controlling agreement, quieted title in the 66 acres in Winning Hit, and cancelled the grant deeds purporting to transfer the 66 acres from Winning Hit to Rebecca, and from Rebecca to her parents. The trial resulted in a "simple, unqualified judgment" in favor of plaintiffs, thus, entitling them to reasonable attorney fees as a matter of right. (*Hsu v. Abbara* (1990) 9 Cal.4th 863, 876.) There were no competing successes or respective victories to balance.

Under these circumstances, plaintiffs are the prevailing parties on the contract as a matter of law and therefore are entitled to their reasonable attorney fees under the operating agreement and Civil Code section 1717.

Defendants' suggestion that plaintiffs did not achieve their main litigation objective is specious. As defendants acknowledge, plaintiffs obtained a judgment quieting title to the 66 acres in Winning Hit. Contrary to defendant's assertion, the trial court's finding that the property had a "dubious current value" did not justify denying plaintiffs their attorney fees. While the amount involved in a case is a factor to be considered in fixing the amount of award, the fact that the economic value of what is gained is relatively small when compared to the litigation costs may not be used to deny a

