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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

STUMP'S MARKET, INC.,

Plaintiff, Cross-defendant and  
Respondent,

v.

PLAZA DE SANTA FE LIMITED, LLC,

Defendant, Cross-complainant and  
Appellant.

D059537

(Super. Ct. No. 37-2009-00052809-  
CU-CO-NC)

APPEAL from orders of the Superior Court of San Diego County, Robert P.

Dahlquist, Judge. Affirmed.

Plaza de Santa Fe Limited, LLC (Plaza) appeals an award of attorney fees and costs to Stump's Market, Inc. (Stump's Market) as a prevailing party in an action brought under a lease. We affirm.

## FACTUAL AND PROCEDURAL HISTORY

Plaza is the owner and operator of a shopping center located in Rancho Santa Fe, California. Plaza leased certain commercial property to Stump's Market. Stump's Market operates a grocery store on the leased premises.<sup>1</sup>

A dispute regarding the parties' respective rights and obligations under the lease arose. Stump's Market filed suit against Plaza. In the original complaint, Stump's Market sought declaratory relief to establish: (1) the amount of rent payable under the lease for the option period that began December 1, 2009; and (2) Plaza had granted Stump's Market an additional option for December 1, 2024 to November 30, 2029.

Stump's Market amended its complaint to include Plaza's owner, Roger Woolley, as a defendant. The amended complaint asserted nine new causes of action against both Plaza and Woolley, including claims of trespass, nuisance, interference with use and enjoyment of premises, and forcible entry.

Plaza filed a cross-complaint against Stump's Market alleging Stump's Market was in default under the lease, and included claims for ejectment and breach of contract. Plaza amended its cross-complaint to add Stump's Market's owner, James Stump, as a cross-defendant. Plaza also added additional causes of action in the first amended cross-complaint, including financial elder abuse.

Stump and Stump's Market demurred to the elder abuse claim in the first amended cross-complaint, and the court sustained the demurrer. The parties then engaged in

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<sup>1</sup> A more complete discussion of the factual and procedural background of the underlying dispute between the parties is found in our opinion in *Stump's Market, Inc. v. Plaza de Santa Fe Limited, LLC* (Jan. 11, 2013, D058769) \_\_\_ Cal.App.4th \_\_\_.

discovery and proceeded to trial. At the beginning of trial, Stump's Market dismissed (without prejudice) its claims for interference with use and enjoyment of the leased premises, forcible entry, nuisance, trespass, and retaliatory eviction. Stump's Market also dismissed, without prejudice, Woolley as a defendant.

The matter proceeded to jury trial on the parties' respective contract claims. After the jury rendered its verdict, the court conducted a short bench trial on the remaining equitable claims. The court and jury found predominately in favor of Stump's Market, finding, among other things, Stump's Market had been damaged in the amount of \$116,859 and the lease would end on November 30, 2029, if Stump's Market exercised all options. The court also ordered specific performance of the lease, including the options.

The court found Stump's Market to be the prevailing party under the lease. The lease contained a clause that stated in pertinent part: "In the event of litigation arising from default in performance of any of the provisions of this lease by either Lessor or Lessee, the prevailing party in such litigation shall be entitled to receive from the other party reasonable attorney fees and costs of action incurred in connection with said litigation." Based on this clause in the lease, the court found that Stump's Market, as the prevailing party, was entitled to recover both its costs and attorney fees from Plaza.

After the trial court entered judgment, Stump's Market filed its memorandum of costs that sought costs in the amount of \$136,065.93. Plaza filed a motion to tax costs, which the court granted in part. The court awarded Stump's Market costs of \$107,964.37.

Stump's Market also filed a motion seeking attorney fees and additional costs totaling \$1,219,177.80. Plaza opposed the motion, arguing, among other things, fees relating to tort claims were not recoverable under the lease.

The court did not award Stump's Market any additional costs, but found Stump's Market was entitled to an attorney fees award in the amount of \$1,130,042.75. The court carefully considered the matter after hearing oral argument and issued an eight page, thoroughly reasoned order. In declining to apportion the fees between tort and contract claims, the court noted:

"All of the claims presented in this case, including the five causes of action voluntarily dismissed by Stump's Market to streamline the trial, arose from a common core of facts pertaining to Plaza's efforts to oust Stump's Market from the leased premises. Prior to the filing of the lawsuit, Plaza contended that Stump's Market had breached the lease and, therefore, according to Plaza, Plaza was legally entitled to re-take possession of the premises. All of the claims asserted in this case involved this core issue--whether there had been a breach of the lease entitling Plaza to re-take possession of the premises. . . . [¶] . . . [¶] In short, the issues raised by the claims as to which attorney fees are recoverable are so interrelated with the issues raised by the claims as to which attorney fees are not recoverable that it would be impossible to try to separate them. The services provided by Stump's Market's attorneys throughout the litigation were pertinent to core issues common to both categories of claims. [¶] Under these circumstances, the law does not require an allocation of the attorney fees. See, e.g., *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129 [(*Reynolds*)] . . . ."

Plaza timely appealed both the order awarding costs and the order awarding attorney fees.

## DISCUSSION

Plaza advances three arguments on appeal. First, it asserts the orders awarding attorney fees and costs must be remanded for reconsideration if the underlying judgment is reversed in its other appeal challenging the judgment. Second, Plaza contends that the holding of *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780 (*Cassim*) required the trial court to allocate fees and costs between the tort claims and contract claims. Third, Plaza argues the court abused its discretion by not allocating certain fees and costs to the tort claims because the tort and contract claims were not so factually interrelated as to preclude apportionment. We reject these contentions.

Plaza's first argument is contingent on its success in its appeal of the judgment in favor of Stump's Market. Although we modified the judgment to strike references to the trial court retaining jurisdiction after judgment, we otherwise affirmed the judgment. (See *Stump's Market, Inc. v. Plaza de Santa Fe Limited, LLC* (Jan. 11, 2013, D058769) \_\_\_ Cal.App.4th \_\_\_.) Because Stump's Market remains the prevailing party, there is no need to remand the orders awarding fees and costs as Plaza urges.

Plaza next argues that *Cassim, supra*, 33 Cal.4th 780 overruled *Reynolds, supra*, 25 Cal.3d 124, and required the trial court to allocate the attorney fees and costs awarded Stump's Market between tort and contract causes of action. We disagree.

The court in *Cassim, supra*, 33 Cal.4th 780 did not address an award of attorney fees and costs to a prevailing party in a breach of contract action. Instead, our high court considered the proper method of allocating attorney fees as damages in an insurance bad faith action where a plaintiff pursues both a breach of contract and other claims in the

same action and recovers on multiple claims. The court addressed the special setting of *Brandt*<sup>2</sup> fees where the insurance policy rights being vindicated--and concerning which fees as damages were available--were inherently narrower than the entire scope of the litigation entailing both tort and contract claims. Thus, to effectuate the limited purpose of *Brandt* fees, the court held that apportionment or allocation was required to ensure the plaintiff only received fees for a particular portion of the overall case as damages.

(*Cassim, supra*, 33 Cal.4th at pp. 807-813.)

Plaza acknowledges that the court in *Cassim, supra*, 33 Cal.4th 780 did not expressly acknowledge it overruled *Reynolds, supra*, 25 Cal.3d 124, but asserts the mention of *Reynolds* in Justice Baxter's concurring and dissenting opinion logically implies the court was overruling *Reynolds*. We find this argument untenable. With his reference to *Reynolds*, Justice Baxter was contrasting the majority's approach to apportioning attorney fees and costs as damages in an insurance bad faith action with how the court dealt with an award of attorney fees and costs to a prevailing party under a contract. (*Cassim, supra*, 33 Cal.4th at p. 819 (conc. & dis. opn. of Baxter, J).) Justice Baxter certainly was not implying that the majority was overruling *Reynolds, supra*, 25 Cal.3d 124. Indeed, the majority opinion does not even mention *Reynolds* nor would we

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<sup>2</sup> See *Brandt v. Superior Court* (1985) 37 Cal.3d 813, 817 ["When an insurer's tortious conduct reasonably compels the insured to retain an attorney to obtain the benefits due under a policy, it follows that the insurer should be liable in a tort action for that expense. The attorney's fees are an economic loss—damages—proximately caused by the tort. [Citation.] These fees must be distinguished from recovery of attorney's fees *qua* attorney's fees, such as those attributable to the bringing of the bad faith action itself. What we consider here is attorney's fees that are recoverable as damages resulting from a tort in the same way that medical fees would be part of the damages in a personal injury action."].)

expect it to because *Reynolds* did not involve attorney fees and costs as damages for an insurance bad faith action.

*Cassim, supra*, 33 Cal.4th 780 does not apply to the trial court's award of attorney fees and costs to Stump's Market as the prevailing party in an action under the lease. *Reynolds, supra*, 25 Cal.3d 124, however, does. When a cause of action based on contract that provides for attorney fees is joined with other noncontract claims, fees should be apportioned between the two claims. (*Id.* at pp. 129-130.) However, "[a]ttorney'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." (*Ibid.*; see also *Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 687 ["Apportionment is not required when the claims for relief are so intertwined that it would be impracticable, if not impossible, to separate the attorney's time into compensable and noncompensable units."]; *Drouin v. Fleetwood Enterprises* (1985) 163 Cal.App.3d 486, 493 ["Attorneys fees need not be apportioned between distinct causes of action where plaintiff's various claims involve a common core of facts or are based on related legal theories."].)

Here, the trial court did not apportion the fees and costs between contract and noncontract claims because it found all the claims "arose from a common core of facts pertaining to Plaza's efforts to oust Stump's Market from the leased premises." Plaza contends the trial court's failure to apportion was in error. We disagree.

The allocation of fees between contract and noncontract causes of action is a matter within the trial court's discretion. (*Amtower v. Photon Dynamics, Inc.* (2008) 158

Cal.App.4th 1582, 1604.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479; accord, *Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp.* (1997) 16 Cal.4th 694, 722.)

This entire matter hinged on the parties' dispute under the lease. Although various torts were alleged in the first amended complaint and first amended cross-complaint, these torts simply were recasting of the competing contract claims. Plaza, however, asserts that certain tort claims involved separate factual and legal issues than the lease claims.

For example, Plaza argues that Woolley's elder abuse claim "raised distinct factual and legal issues not relevant to the dispute over the Lease." We are not persuaded. Woolley's elder abuse claim involved allegations that Stump and Stump's Market underpaid rent since 1995: "James Stump and Stump's Market, Inc. retained and withheld the monthly base rent amount of \$3,632 since 1995 due under the Lease to [Plaza and Woolley] for wrongful use or with the intent to defraud Roger Woolley." Further, we agree with Stump's Market that the elder abuse claim was Plaza's effort to "repackage its breach of lease claim as an elder abuse claim" to have a potentially larger unpaid rent damage claim. Clearly, the basis for the elder abuse claim was Stump's Market's alleged breach of the lease. We are satisfied the trial court could reasonably find the elder abuse and lease claims so intertwined that it would be "impracticable, if not impossible, to separate the attorney's time into compensable and noncompensable units." (*Bell v. Vista Unified School Dist.*, *supra*, 82 Cal.App.4th at p. 687.)

Plaza also contends Stump's Market's claims for trespass, nuisance, interference with use and enjoyment of the leased premises, and forcible entry were unrelated to the lease claims. We disagree. The actions that give rise to these claims stem from Plaza's allegations that Stump's Market breached the lease and Plaza had the right to possession of the premises. It was reasonable for the trial court to find these tort claims involved the same core facts as the lease claims. As such, we conclude the trial court did not abuse its discretion in failing to apportion fees between contract and tort claims.

#### DISPOSITION

The orders are affirmed. Stump's Market is awarded its costs of this appeal.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

McDONALD, J.