

## The Limits of Trial Court's Discretion Under Civil Code Section 1717

By

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The case of *de la Cuesta v. Benham* 2011 WL 1126585, tests the limits of a trial court's discretionary authority to determine that there is no "prevailing party" under Civil Code section 1717. In *de la Cuesta*, a landlord brought an unlawful detainer action and sought unpaid rent. The tenant asserted she owed nothing to the landlord because of the leaks in the premises. The day before trial the tenant vacated the premises, so the case went to trial only on the landlord's money claims. The landlord recovered 70% of what he claimed was owing. Nevertheless, the trial court ruled that there was no "prevailing party" for purposes of the attorney fee clause in the lease agreement.

The Appellate Court reversed, holding that even under the abuse of discretion standard the result was so lopsided that it was unreasonable not to hold the landlord as the prevailing party.

During the trial, the trial court reduced the damages claimed by the landlord due to the leaks and reduction of the common areas maintenance charges. Nonetheless, the landlord was awarded \$69,500 at the conclusion of trial. Costs were to be determined by posttrial motion, and when the landlord made a motion for \$42,200 in attorneys fees, the trial court denied it. Denying the motion, the trial court held "The court finds that there is no prevailing party for purposes of awarding attorney's fees. While plaintiff did obtain possession that was due to defendant surrendering the property. The amended trial brief filed by plaintiff on 12/01/09 requested total monetary damages of \$103,015 which was reduced significantly. The plaintiff's statement of decision filed 01/22/10 notes that the court reduced the [common area maintenance] charges requested and the award was reduced due to water damage. This appears to be good news and bad news situation under *Nasser [v. Superior Court]* (1984) 156 Cal.App.3d 52, 59-60, 202 Cal.Rptr. 552, the Court has discretion not to award fees."

The Court of Appeal disagreed and stated that the governing case for determination of "prevailing party" is *Hsu v. Abbara* (1995) 9 Cal.4th 863 ("*Hsu*") with additional light thrown on the subject by *Scott Co. v. Blount, Inc.* (1999) 20 Cal.4th 1103, 1109.

In *Hsu*, after "a flurry of offers and counteroffers that had not resulted in a deal to sell a house, the would-be buyers sued the erstwhile sellers, claiming that the buyers had indeed accepted a particular counteroffer to buy the house for \$297,000. The buyers lost when the trial court ruled that the purported acceptance extinguished the previous counteroffer for \$297,000; even so, the trial court denied the winning (but now absolved of any obligation to perform) "sellers" their attorneys fees, albeit not giving any explanation." The appellate Court upheld the trial court's decision but the "Supreme Court reversed, holding that the sellers were *entitled* to their fees because they had obtained a 'simple, unqualified win.'" *de la Cuesta*, (Citing *Hsu, Supra*, 9 Cal.4th at 870, 876-877.)

The *de la Cuesta* Court discussed the *Hsu* decision and the Supreme Court's addressing of "discretionary" and "entitlement" clauses of section 1717 of the Civil Code.

The *de la Cuesta* Court stated that entitlement clause comes first. The statute declares that "(a) the trial court must determine who is the 'prevailing party' and then (b) defining the 'prevailing party' as the party who recovered a greater relief in the action on the contract." *Id.* The prevailing party on the contract shall be the party who recovered a greater relief in the action on the contract. *Id.* Then, the Court stated, comes the discretionary clause, which gives a court permission to determine no party prevailed on the contract.

Interpreting the *Hsu* decision, the Court stated that a "simple unqualified win" takes the case out of the discretionary clause and puts it into the entitlement clause. *Id.* (Citing *Hsu, Supra*, 9 Cal.4th at 876-877.) Further interpreting *Hsu* decision, the Court stated that where litigation success is not fairly disputable, the winner is entitled to the attorney's fees.

*Hsu* was not very clear as to what happens when the results are not so unequivocal. However, the case of *Scott Co. v. Blount, Inc., supra*, provided the necessary answer. The *Scott Co.* Court stated that "If neither party achieves a complete victory on all the contract claims, it is within the discretion of the trial court to determine which party prevailed on the contract or whether, on balance, neither party prevailed sufficiently to justify an award of attorney fees." *Id.* (Citing *Scott Co. v. Blount, Inc. supra*, 20 Cal.4th at 1109, italics added by *de la Cuesta* Court)

The *de la Cuesta* Appellate Court further stated that it agreed with the trial court that the result of the trial was short of a "complete victory". Thus, the Court stated that there was no *legal* error.

Next, the Court addressed whether there was abuse of discretion. Interpreting the language of the section 1717, the Court stated that the statute allows discretion to the trial court and empowers it to identify the party obtaining 'a greater relief' by examining the results of the action in relative terms. The Court recognized that in litigation, attorneys generally overstate the damages suffered by the client. As such, if anything short of a "complete victory" were to allow the trial court unrestricted freedom to ignore the substance of a result, then trial courts would have the freedom to nullify the normal expectations of parties who enter into contracts with prevailing party attorney fee clauses. The *Hsu* Court supported the same interpretation by stating that the "courts should respect substance rather than form, and to this extent should be guided by 'equitable considerations'" *de la Cuesta.* (Citing *Hsu, supra*, 9 Cal.4th at 877.)

"If the results in a case are lopsided in terms of one party obtaining 'greater relief' than the other in comparative terms, it may be an abuse of discretion for the trial court *not* to recognize that the party obtaining the 'greater' relief was indeed the prevailing party." *de la Cuesta.* (Citing *Silver Creek, LLC v. BlackRock Realty Advisors, Inc.* (2009) 173 Cal.App.4th 1533, 1541.) However, how lopsided must the results be for it to be an abuse of discretion not to acknowledge one party as prevailing, remained a question. The *de la Cuesta* Court said it will not attempt to manufacture a one-size-fits-all rule to answer this question. However, the Court continued in this case the trial court abused the discretion.

Of the greatest significance in determining whether there was a prevailing party is the relative extent of the success of each party in comparison to its basic litigation position. Here, the tenant alleged she owed nothing, the landlord alleged he was owed \$103,000. The landlord received almost \$70,000, as such approximately 70% of what he asked. And the tenant received nothing. Furthermore, considering equitable considerations, the Court held that the landlord won since the tenant vacated the premises a day before trial. The lawsuit was for unlawful detainer and as such vacation of premises was one of the landlord's litigation objectives. Furthermore, during trial the court unequivocally rejected all tenant's fraud allegations and instead chose to offset the back rent owed by tenant by 20%.

Therefore, the Court held that it was clear that the landlord obtained the "greater" part of its two litigation objectives: repossession of the premises and compensation for the tenant's occupation. The discretion must be reasonable given the totality of the case and all the facts and circumstances.