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Contractual Attorney Fees – No Breach Required

In an “action on a contract” that provides for attorney fees and costs, the party prevailing on the contract is entitled to reasonable attorney fees and other costs. (Civ. Code § 1717, subd. (a).) But, can negligence and fraud tort claims relating to a contract be an “action on a contract” that triggers attorney fees? The answer is “yes,” according to *Yoon v. Cam IX Trust* (2021) 60 Cal.App.5th 388.

Plaintiff Yoon sued defendants in connection with a trustee’s sale of plaintiff’s home. Plaintiff’s claims at trial were for negligence and fraud. He alleged that defendants failed to review his request for a short sale, and told him the foreclosure sale date had been postponed for several days (although it had not), causing him to miss the deadline to make the loan current or finalize a short sale. The jury found for defendants on both claims.

Defendants moved for attorney fees under Civil Code section 1717, on the ground that the note and deed of trust provided for the recovery of attorney fees, and under Code of Civil Procedure section 2033.420, for expenses defendants incurred to prove the truth of matters plaintiff failed to admit in response to requests for admission.

The trial court found that plaintiff’s causes of action “directly relate to enforcement of the note through foreclosure or required defendants to defend against a challenge to the underlying validity of the obligation” under Civil Code section 1717. The court also found that “expenses are recoverable for proving that defendants did not breach their duty of care and did not make a misrepresentation” regarding the admission requests. Defendants were awarded attorney fees of \$191,619.47 and costs of \$29,345.97.

Plaintiff argued on appeal that it was improper to award fees under clauses in a promissory note and deed of trust, where plaintiff’s lawsuit did not assert a breach of contract claim (and defendants only sought to show no negligence or misrepresentation in the foreclosure process). The Court of Appeal disagreed, noting that “on a contract” under Civil Code section 1717 does not mean only traditional breach of contract causes of action. Rather, California courts liberally construe “on a contract” to extend to any action as long as an action “involves” a contract and one of the parties would be entitled to recover attorney fees under the contract if that party prevails in its lawsuit.

Here, “[plaintiff’s] lawsuit was an effort to avoid the enforcement of the note and deed of trust; [and] his suit arose from defendants’ alleged conduct in the course of enforcing the terms of those documents.” Thus, “plaintiff’s tort claims ‘directly relate to enforcement of the note through foreclosure.’ ” The court also affirmed the second basis for the fee award, arising from plaintiff’s denial of defendants’ requests for admission. “[P]laintiff did not show any of the exceptions to an award of the costs of proof applied.”