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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

WATER COURT, LLC, Plaintiff, Cross-Defendant, and Appellant, v. ADAMS WINE GROUP, LLC et al., Defendants, Cross-Complainants, and Appellants, TONY PRINCIPE et al., Cross-Defendants and Respondents.	2d Civil No. B290799 Consolidated with B292780, (Super. Ct. No. 56-2016-00480305-CU-BC-VTA) (Ventura County)
WATER COURT, LLC, Plaintiff, Cross-Defendant, and Respondent, v. ADAMS WINE GROUP, LLC et al., Defendants, Cross-Complainants, and Appellants, TONY PRINCIPE et al., Cross-Defendants and Respondents.	2d Civil No. B293591 Consolidated with B295676, (Super. Ct. No. 56-2016-00480305-CU-BC-VTA) (Ventura County)

This case is about a would-be tenant who breached a $1 million office lease. "Tenants," Adams Wine Group, LLC and Vinesee, LLC (collectively Adams), and Lawrence Dutra, appeal from an amended judgment entered after a jury, by special verdict, found that appellants breached a "build-to-suit" office lease and lease guaranty.[1] The jury awarded the landlord, Water Court, LLC (Water Court), $1,726,638.42 damages, which was reduced to $1,208,032.42 after the trial court conditionally granted a new trial, and Water Court consented to a $518,606 remittitur. (Code Civ. Proc., § 662.5, subd. (a)(2).) Adams and Dutra appeal from the amended judgment and award for $1+ million attorney fees. Water Court cross-appeals from the remittitur, contending that the trial court erred in deducting $63,756 demolition damages twice. It is correct. We modify the amended judgment to reflect that Water Court was awarded $1,208,032.42 plus $63,756, and affirm the judgment as modified. (Code Civ. Proc., § 906.) We affirm the award of $943,028 attorney fees to Water Court and $360,520.50 attorney fees to the real estate broker, Westoaks Commercial Group, Inc. and Tony Principe.

Facts and Procedural History

In April 2015, Adams entered into a five-year lease to rent office space at the Water Court, a large office complex in Westlake Village. The lease required that Water Court evict the existing tenants, remodel or build out the office suites based on an office plan to be approved by Adams, and pay up to $30 per square foot for the build-out with Adams paying any additional build-

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[1] "**Build To Suit (BTS)** A method of leasing property whereby the landlord builds a new building in accordance with a tenant's specifications.

Build-out The space improvements put in place per the tenant's specifications. Takes into consideration the amount of Tenant Finish Allowance . . . provided for in the lease agreement." (13 California Real Estate Law & Practice Scope (2018) ch. 490, GLOSSARY OF CONSTRUCTION AND REAL ESTATE TERMS.)

out costs.[2] The base rent was $17,122 a month. Lawrence Dutra, the founder and CEO of Adams, signed the lease after inspecting the office suites and discussing the build-out allowance with Water Court and Robert D'Ambrossi, a certified office designer with 20 years experience of open office space planning. Tony Principe, a real estate broker for Westoaks Commercial Group, Inc., acted as a dual agent. He warned Dutra that the build-out costs would exceed the $30-a-square-foot allowance if Adams gutted the office space and started from scratch.

The lease provided that Dutra would review the lease with his attorney and retain a consultant to determine the suitability of the premises for the build-out. After the lease was signed, Dutra asked if the build-out could be done for $30 a square foot. Principe said it should be "sufficient" if Dutra did not go "crazy" with the fixtures and finishes.

Dutra asked that the office bathrooms be removed. D'Ambrossi changed the plans but Dutra decided there were too many offices. More changes were made. Two weeks later, Dutra wanted an open space work area with offices circling the open space area. In order to build the open-space, Water Court had to move the computer server room, galley, and wine tasting room to a perimeter wall. Dutra, however, did not want floor-to-ceiling walls and acknowledged that the open space plan would require a "'gut and redo.'" Principe warned that the build-out would exceed the $30 a square foot allowance because the proposed changes affected the doors, ceiling, lighting, air conditioning, plumbing, and sewer lines.

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[2] Paragraph A2 of the lease states: "Lessor's Work. Lessor will provide a build to suit using building standard materials and finishes, pursuant to a mutually agreeable space plan. Lessor shall not be obligated to expend more than $30.00 per useable square foot in connection with the permitting and construction of the Premises. Lessee shall pay for any costs above the $30.00 per square foot prior to the start of any construction."

D'Ambrossi sent Dutra a revised plan for a 4,000-square foot open space area. Dutra requested more changes and, in July 2015, "signed off" on the final revised plan for an open space work area with offices, conference rooms, and glass walls. D'Ambrossi warned that glass walls would be more expensive. Dutra was unconcerned.

Water Court evicted 30 tenants, demolished the office interior, prepared construction drawings, and obtained building permits and construction bids for the build-out. During the demolition, Water Court discovered that shear walls provided structural support to the building and were hidden inside the interior walls. Water Court told Dutra about the shear walls, conducted a walk-through with Dutra, and said it would pay for the structural changes.

November 30 Revised Plan

On November 30, 2015, D'Ambrossi sent Dutra an updated version of the build-out plan that called for six evenly spaced columns and two six-foot shear walls at the bottom of the open space. Approving the November 30 plan, Dutra wrote back "'Good to hear we're back on the rails.'" Dutra made an on-site inspection to see where the columns and new sheer walls would be built. Adams' designer also reviewed the plans, did an on-site inspection, and wrote: "'I'm thrilled with what you were able to do with the columns.'"

On December 22, 2015, Water Court got the build-out bids and told Adams its share of the build-out costs would be $268,773.12 to $328,089.12. Dutra thought the costs were too high and asked "Are we 'dead in the water' here?" He hired real estate broker Sheryl Mazirow to discuss the build-out plan with Water Court.

Water Court met with Dutra and offered to amortize Adams' share of the construction costs over the lease term. Dutra declined this offer. On March 2, 2016, Dutra sent a "**NOTICE OF TERMINATION OF LEASE AND GUARANTY**," and days later, signed a lease to rent office space a block away. Water Court could not relet the gutted-out offices and had to divide

the open space area into smaller office suites, replace the office restrooms, and construct a "'Plain Vanilla [Office] Shell'" to show prospective tenants, all at a cost of $720,213.85 (restoration damages).

Complaint and First Amended Cross-Complaint

Water Court sued for breach of contract and breach of the lease guaranty. Adams filed an amended cross-complaint for fraud and negligent misrepresentation, and for tort damages and indemnity against Westoaks and Principe. The cross-complaint alleged that Adams was fraudulently induced to sign the lease based on the representation that Water Court would convert the offices into an "open landscape plan" at a cost of $30 per square foot.

Nonsuit and Directed Verdict

Before trial, the trial court granted an in limine motion to exclude expert testimony on the standard of care of real estate brokers. After opening statements, the trial court granted nonsuit for Westoaks and Principe on the negligence cause of action. At the conclusion of the trial, it granted Water Court a directed verdict on the cross-complaint for fraud and a directed verdict for Westoaks and Principe on the constructive fraud cause of action.

Special Verdicts and Order Granting New Trial

The jury returned three special verdicts. Special Verdict 1 (breach of lease) awarded Water Court $1,726,638.42 damages, for past rent ($405,755.30), future rent ($480,652.74), the cost of preparing the build-out space ($63,756.16, i.e., reliance damages), restoration costs to restore the premises for reletting ($720,213.85), and broker's commissions ($56,260.37). In Special Verdict 2, the jury awarded $63,756.16 reliance damages (i.e., cost of preparing the build-out space) against Dutra for breach of the lease guaranty. In Special Verdict 3, the jury returned a verdict for Water Court on the cross-complaint for negligent misrepresentation, finding that no false representations were made.

The trial court conditionally granted a new trial on the ground of excessive damages. Water Court consented to the $518,606 remittitur and the trial court entered an amended judgment for $1,208,032.42. (Code Civ. Proc., § 662.5, subd. (a)(2).)

Restoration Damages

Adams argues that the $720,213.85 award for restoration damages is contrary to the law and not a foreseeable damage. Adams forfeited the error when it consented to a modified jury instruction (CACI No. 350) and the special verdict form for restoration damages. (See, e.g., *SCI California Funeral Services*, *Inc. v. Five Bridges Foundation* (2012) 203 Cal.App.4th 549, 563-564 [forfeiture where defendant did not challenge or object to damages methodology at trial]; *Stevens v. Owens-Corning Fiberglass Corp.* (1996) 49 Cal.App.4th 1645, 1653 [invited error where defendant agreed to jury instruction].) It is true that a party harmed by an incorrect statement of law may raise instructional error on appeal without objecting (*Nat'l Medical Transp. Network v. Deloitte & Touche* (1998) 62 Cal.App.4th 412, 440), but here the instruction was a correct statement of the law. (See *Lund v. San Joaquin Railroad* (2003) 31 Cal.4th 1, 7 (*Lund*).)

Forfeiture aside, the damages were authorized by Paragraph 13.2(a) of the lease[3] and Civil Code section 1951.2 which provides that, when the tenant abandons the lease, the lessor may recover lost rent and "[a]ny other amount necessary to compensate the lessor for all the detriment proximately caused by the lessee's failure to perform his obligations under the lease or which in the ordinary course of things would be likely to result therefrom." (*Id.*, subd.

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[3] Paragraph 13.2(a) of the lease stated that if Adams defaulted on the lease, Water Court could recover lost rent and "any other amount necessary to compensate [Water Court] for all the detriment proximately caused by [Adams'] failure to perform its obligations under this Lease, . . . including but not limited to . . . expenses of reletting, including necessary renovation and alteration of the Premises . . . ."

(a)(4); see 2 Friedman et al., Cal. Practice Guide, Landlord-Tenant (The Rutter Group 2019) [¶] 7:485, p. 7-226 [landlord may recover compensatory damages for detriment caused by tenant's breach]; *Willis v. Soda Shoppes of California, Inc.* (1982) 134 Cal.App.3d 899, 904 [restoration damages recoverable under Civ. Code, § 1951.2]; *Lu v. Grewal* (2005) 130 Cal.App.4th 841, 850 (*Lu*) [recoverable damages not limited to lost rent].)

The evidence was compelling. Adams terminated the lease after the evictions and the office suites were demolished. Water Court had to renovate the suites before it could relet the property for the $17,000 a month it was previously receiving. Adams speculates that the award for restoration damages resulted in a windfall but there is no evidence of that. Before Dutra signed the lease, the office suites were fully occupied and upgraded with a modernized kitchen, conference room, restrooms, a granite reception area counter, a HVAC zoning system, a copier/scanner system, and new carpeting, paint, and artwork. All of it was ripped out to build the open-space office that Adams wanted.

Restoration damages ($720,213.85) were proper to restore the premises to what it was before the demolition, i.e., rentable office suites.[4] Adams' expert conceded that the premises were not marketable in a demolished condition. Whether Water Court acted reasonably in mitigating its damages was a factual matter for the jury to decide. The burden was on Adams to show that Water Court failed to reasonably mitigate its damages. (See Civ. Code, § 1951.2, subds. (a)(2)-(3) and (c); *Powerhouse Motorsports Group, Inc. v. Yamaha Motor Corp, U.S.A.* (2013) 221 Cal.App.4th 867, 884.) No showing was made here. Adams is "not entitled to the benefit of [Water Court's] hard

[4] Adams' rent was $17,122 a month with annual rent increases and an option to renew the lease. Before the office suites were restored and relet, the loss of rent was $200,000+ a year or $1+ million over the five-year term of the lease, an amount far in excess of the $720,213.85 mitigation/restoration damages.

work and capital in making the property productive; nor should [Water Court] be punished for bringing the abandoned property back to life." (*Lu*, *supra*, 130 Cal.App.4th at p. 851.)

Directed Verdict on Amended Cross-Complaint for Fraud

Adams asserts that the trial court erred in granting a directed verdict on the amended cross-complaint for fraud. The jury, however, found that no misrepresentation was made. If there was no misrepresentation, there was no fraud or negligent misrepresentation. (See, e.g., *Ventura County Nat. Bank v. Macker* (1996) 49 Cal.App.4th 1528, 1531 ["Negligent misrepresentation is born of the union of negligence and fraud"].) Adams claims there were fraudulent omissions but that theory of recovery was rejected by the jury.[5]

The trial court did not err in granting a directed verdict. The lease provided that Adams would consult its attorneys and hire consultants to determine the feasibility of the build out. It stated that the parties would agree on a build-out plan after the lease was signed which is what Water Court and Dutra did. Because Water Court did not know what design or plan Adams wanted, Water Court had no duty to predict and disclose the cost of the build-out before the lease was signed. (See Civ. Code, § 3531 ["The law never requires impossibilities."].) Dutra knew what he was signing. He was a sophisticated businessman, had office leases at six other locations, and had previously rented office space at Water Court. As soon as Water Court

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[5] Adams claimed that Water Court failed to disclose that a pre-lease inspection was not made or that the build-out allowance was not based on bids or estimates. On appeal, Adams recasts the "misrepresentation" as fraud by "omission," but that was subsumed by a jury instruction that negligent misrepresentation liability can be established by an untrue statement made without reasonable grounds to believe the statement was true when made. (CACI No. 1903.) The jury awarded Water Court damages based on the same "omissions" that Adams now claims supports its cross-complaint for fraud damages.

discovered the shear walls, it agreed to pay the cost of modifying the shear walls for the build-out. There was no fraud, misrepresentation, or concealment of material facts with respect to the shear wall.

Fraud in the Inducement as an Affirmative Defense

Adams argues that the trial court abused its discretion in denying Adams leave to amend its answer to add a fraud-in-the-inducement defense. The motion was made after Water Court's case in chief. The trial court stated "it's too late – too late to amend . . . . [¶] [¶] . . . [Water Court] already having rested; and I'm not inclined to allow amendment to add the fraud in the inducement at this point." That was no surprise. At a pretrial hearing, the trial court warned that Adams "shouldn't be able to negate [this] contract by an unpleaded fraud claim or promissory estoppel." Trial counsel was told there would be no instructions on promissory estoppel or fraud as an affirmative defense and the jury would be instructed on fraud with respect to the cross-complaint. When Adams sought leave to add a fraud-in-the-inducement defense on the 18th day of trial, the trial court found the proposed defense would be "greatly prejudicial."

Adams makes no showing that the trial court abused its discretion or that Adams was denied a fair trial. (*Permalab-Metalab Equipment Corp. v. Maryland Cas. Co.* (1972) 25 Cal.App.3d 465, 472.) Because the directed verdict was properly granted on the fraud cause of action, it logically follows there was no substantive evidence for a fraud-in-the-inducement defense.

Jury Instruction on Integration Clauses

Adams claims that the instruction on the lease integration clauses was incomplete. Appellant forfeited the error by not objecting or requesting an amplification of the instruction. (*Lund*, *supra*, 31 Cal.4th at p. 7.) Forfeiture aside, appellant argues that the instruction prevented the jury from considering what oral statements were made with respect to the cross-complaint for negligent misrepresentation. The jury was instructed that the integration clause governed representations made before or

contemporaneously with the execution of the lease. The instruction quoted language in the lease and lease addendum. The jury considered the post-contract statements and returned a 12-0 special verdict that Water Court did not make a "false representation of one or more facts to Adams/Vinesse and Dutra."

Adams claims that the instruction prevented the jury from considering evidence that could assist in interpreting certain lease terms such as "build-to-suit." The jury was instructed that the parties disputed the meaning of specific words in the lease and "[i]n deciding what the words of the Lease mean, you must decide what the parties intended at the time the Lease was created. You may consider the usual and ordinary meaning of the language used in the Lease as well as the circumstances surrounding the making of the Lease." (CACI No. 314.) Adams claims that the jury was precluded from considering evidence about "usage of trade" as it applies to a build-to-suit commercial lease, but Special Instruction No. 10 stated: "A usage of trade is any practice or method of dealing that is regularly used in a place, vocation, or trade. The jury will determine whether usage of trade is applicable in this case."

Adams complains that the jury was instructed not to consider parol evidence but the trial court impliedly found the lease was a fully integrated contract. Adams does not challenge the finding on appeal and was not prejudiced. "'[I]n determining whether substantial evidence supports a judgment, extrinsic evidence inconsistent with any interpretation to which the instrument is reasonably susceptible becomes irrelevant; as a matter of substantive law such evidence cannot serve to create or alter the obligations under the instrument. Irrelevant evidence cannot support a judgment.' [Citation.]" (*BMW of N. Am. v. New Motor Vehicle Bd.* (1984) 162 Cal.App.3d 980, 990.)

The instructional error, if any, was harmless. Parol evidence is not admissible to vary or contradict the clear and unambiguous terms of a

written, integrated contract. (Code Civ. Proc., § 1856, subd. (a); *Alling v. Universal Manufacturing Corp.* (1992) 5 Cal.App.4th 1412, 1433.) "[I]f the false promise relates to the matter covered by the main agreement and contradicts or varies the terms thereof, any evidence of the false promise directly violates the parol evidence rule and is inadmissible." (*Bank of America v. Lamb Finance Co.* (1960) 179 Cal.App.2d 498, 502.) Adams was told it would not pay build-out costs if it did not "go crazy" with the finishes and stayed within the $30 a square foot build-out allowance. That was consistent with paragraph A2 of the lease which provided that Adams would only pay for construction costs above $30 per square foot.

Water Court's Cross-Appeal – $63,756 Demolition Costs[6]

The trial court reduced Special Verdict 1 by subtracting $229,314 for Water Court's contribution for the build-out (i.e., the $30/square foot build out allowance), $116,000 for the shear wall modifications, and $32,725 for a broker commission not paid due to the lease termination. It also deducted $63,756 "reliance damages for moneys paid by [Water Court] for build-out costs." Water Court cross-appeals on the ground that the $63,756 (demolition costs) was part of the $229,314 deduction for Water Court's build-out contribution (i.e., $30 per square foot). It is correct. At oral argument counsel for Adams, agreed the $63,756 demolition costs are part of and included in the $30/square foot build out allowance, i.e., the $229,314 build-out allowance to be borne by Water Court. Adams' argument that the $63,756 demolition costs are reliance damages and an alternative measure of

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[6] Where the plaintiff consents to the remittitur, as did Adams, the plaintiff waives the right to challenge the reduced damage award on appeal. (*Collins v. Union Pacific Railroad Co.* (2012) 207 Cal.App.4th 867, 882.) "However, when a plaintiff accepts a remittitur and the defendant appeals, the case is in a different posture and the plaintiff cannot be held to have waived his right to appeal. [Citations.]" (*Ibid.*; see *Neal v. Farmers Ins. Exchange* (1978) 21 Cal.3d 910, 918, fn. 1.)

damages is without merit. No matter what the demolition costs are called (i.e., part of the build-out allowance or reliance damages), the trial court deducted those damages when it reduced Special Verdict 1 by subtracting $229,314 for Water Court's contribution for the build-out (i.e., the $30/square foot build out allowance). It erred in deducting the $63,756 a second time from the verdict.

Dutra also guaranteed payment for Water Court's reliance damages (i.e., costs incurred for drafting the open space plan, preparing the engineering plans, and demolition costs). The jury awarded $63,756.16 reliance damages (Special Verdict 2) on the lease guaranty; Dutra has not appealed from the judgment. If Adams pays the judgment, as modified, Water Court is precluded from collecting the $63,756.16 from Dutra. As a guarantor/surety, Dutra can require that Water Court proceed against Adams to collect on the $63,756.16. (Civ. Code, §§ 2787, 2845; see also Civ. Code, § 2847 [principal bound to reimburse its surety].)

Negligence Claim Against Westoaks and Principe

Adams contends that the trial court erred in granting non-suit on the broker negligence cause of action. Westoaks and Principe were sued for breach of a professional duty of care. Whether such a legal duty exists is a question of law to be determined by the trial court. (See, e.g., *Carleton v. Tortosa* (1993) 14 Cal.App.4th 745, 755, 758-759 [broker agreement provided that client was to seek tax advice; broker had no duty to provide tax advice].) The statutory (Civ. Code, § 2079) and common law duty to disclose does not apply to commercial property real estate brokers. (*Smith v. Rickard* (1988) 205 Cal.App.3d 1354, 1360.) Unlike the residential buyer or renter, the purchaser or renter of commercial real estate is more experienced and sophisticated in dealing in real estate. (*Easton v. Strassburger* (1984) 152 Cal.App.3d 90, 102, fn. 8.) So too here. Dutra was experienced in commercial office leases and had previously rented office space at the Water Court office complex.

There was no evidence that Westoaks and Principe breached a duty of care, which is fatal to a cause of action sounding in professional negligence. (Compare *Wilkinson v. Rives* (1981) 116 Cal.App.3d 641, 648 [expert testimony on professional standard of care required]; with *Jorgensen v. Beach N' Bay Realty, Inc.* (1981) 125 Cal.App.3d 155, 163 [expert testimony not required where question of duty "'resolvable by common knowledge"'; negligence action against broker who sold home].) To state a claim for negligence, breach of fiduciary duty, or constructive fraud, "[t]he seller or his or her agent must have actual knowledge in order to be liable for failing to disclose a material fact. [Citation.]" (*Assilzadeh v. Cal. Fed. Bank* (2000) 82 Cal.App.4th 399, 410; *San Diego Hospice v. County of San Diego* (1995) 31 Cal.App.4th 1048, 1055.) There is no evidence of that. The trial court found that Principle had no "inkling that there should have been an investigation by Water Court or himself . . . ."

Award of Attorney Fees to Water Court

Adams asserts that the trial court erred in awarding Water Court $943,028 attorney fees. We review for abuse of discretion and may not reverse unless the award is so large that it shocks the conscience and suggests that passion and prejudice influenced the trial court's determination. (*Pont v. Pont* (2018) 31 Cal.App.5th 428, 447.)

Although Water Court incurred $1,359,122.50 attorney's fees, Adams' expert opined that a reasonable attorney fee was $872,441.31. The trial court reduced Water Court's fees by 25 percent and awarded $943,028 attorney fees, approximately $70,000 more than the amount recommended by Adams' expert. The fee award was reasonable and supported by the evidence.[7]

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[7] Adams argues that the trial court failed to deduct $161,306.38 in costs that were included in the fee request. At the hearing on the motion for fees, Water Court's counsel explained that the fee request did not include costs. The trial court stated "those costs are really out of the line of analysis I . . . engag[ed] in to get to the [$]943[,028 fee award]." Adams' trial attorney

Water Court prevailed on all claims in a five-week trial and was awarded $1.7+ million damages that was reduced to $1.2+ million. In awarding fees, the trial court considered the pretrial settlement offer. (See *Meister v. Regents of University of California* (1998) 67 Cal.App.4th 437, 452-453 [trial court may consider settlement history in determining reasonableness of attorney fees].) Adams offered to settle for $100,000 six weeks before trial, *after* Water Court incurred $552,714 in fees and costs on a contract action that provided for attorney's fees and costs. Water Court rejected the low-ball offer and incurred $800,000 *more* in fees in a protracted five-week trial and post-trial motion for attorney fees.

Adams argues that the attorney fees are excessive and based on Los Angeles County rates rather than Ventura County rates. West Los Angeles partner-level attorneys bill $655 per hour, significantly more than the $520 to $550 per hour rate billed to Water Court. No evidence was received that the fee rate in Ventura County for this type of litigation was less than the amount awarded. The trial court found that the fees, after a 25 percent discount, were reasonable. No abuse of discretion occurred. (*Hjelm v. Prometheus Real Estate Group*, *Inc.* (2016) 3 Cal.App.5th 1155, 1177.)

Adams claims that Water Court's trial attorney bloated the cost bill by overstaffing the case, using block billing, and billing for overhead and clerical tasks. That was considered when the trial court reduced the fee award by 25 percent. Adams complains that the trial court did not make factual findings when it made the fee award calculation. But on review, all findings exist to support the award are inferred. (*California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 754-755.)

Attorney Fees in Defense of Tort Causes of Action

Equally without merit is the argument that fees were improperly awarded for defending against the cross-complaint for fraud and negligent

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stated, "[w]e agree with the Court's analysis in reducing the bills to – by 25 percent to 943,000, and we're prepared to stand on that."

misrepresentation. The lease provision for attorney's fees is broadly worded and provides that the prevailing party shall be awarded fees in an "action or proceeding involving the Premises whether founded in tort, contract or equity . . . ." The trial court was not required to apportion fees if there are different causes based on common core facts and related legal theories. (*Hoffman v. Superior Ready Mix Concrete, L.P.* (2018) 30 Cal.App.5th 474, 485.) Adams complains that the trial court did not compare Water Court's fees with the fees incurred by Westoaks and Principe. The claims against Westoaks and Principe were not as complex and the fees were billed to insurance carriers who typically pay defense attorneys a lower hourly rate. (See *Syers Properties III v. Rankin* (2014) 226 Cal.App.4th 691, 701 [noting insurance defense rates are lower].) We do not second guess the trial court who was "in the best position to value the services rendered by the attorneys in his or her courtroom. [Citation.]" (*Ibid.*)

Attorney Fees – Westoaks and Principe

Westoaks and Principe were awarded $360,520.50 attorney fees based on a lodestar calculation. Adams does not contest the reasonableness of the hourly rate but complains that fees were awarded for time entries that were redacted to protect attorney-client and work product confidentiality. Adams, however, requested that Westoaks and Principe file supplemental papers describing and quantifying the time charged. That was done.

Adams claims that the attorney fees clause does not extend to real estate brokers who are nonsignators to the lease.[8] At the hearing on fees,

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[8] Adams' amended cross-complaint incorporates the lease, alleges that Westoaks and Principe are liable for attorney fees based on the lease and theories of negligence and fraud. "One purpose of [Civil Code] section 1717 is to establish mutuality of remedy when a contractual provision makes recovery of attorney's fees available for only one party. [Citation.]" (*Leach v. Home Savings & Loan Assn.* (1986) 185 Cal.App.3d 1295, 1305; *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 128.)

Adams argued that Paragraph 25(b) of the lease limited Westoaks' fees to no more than its commission ($32,725) for the transaction. The trial court correctly found that Paragraph 31 of the lease controlled. It provides that attorneys' fees shall be awarded to the prevailing party and "[t]he term '**Prevailing Party**' shall include, without limitation, a *Party or Broker* who substantially obtains or defeats the relief sought . . . . The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred." (Italics added.) It created a tripartite contract between the lessor, lessee, and broker. (See, e.g., *Pac. Preferred Props. v. Moss* (1999) 71 Cal.App.4th 1456, 1463.) Adams remaining arguments have been considered but merits no further discussion.

Disposition

We modify the amended judgment to reflect that Water Court was awarded $1,208,032.42 plus $63,756 (demolition costs erroneously deducted twice by the trial court) and affirm the amended judgment as modified. (Code Civ. Proc., § 906.) The award of $943,028 attorney fees to Water Court and $360,520.50 attorney fees to the real estate broker, Westoaks Commercial Group, Inc. and Tony Principe is also affirmed. Water Court, Westoaks, and Principe are awarded costs on appeal with respect to the appeals from the jury verdicts and award for attorney's fees. Water Court is awarded costs on its cross-appeal (B290799).

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Vincent J. O'Neil, Judge

Superior Court County of Ventura

Alston & Bird, Jeffrey A. Rosenfeld and Jesse Steinbach for Defendants, Cross-Complainants and Appellants, Adams Wine Group, Vinesse and Lawrence Dutra.

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Thompson Coe & O'Meara, Stephen M. Caine and Frances M. O'Meara for Cross-Defendants and Respondents Tony Principe and Westoaks Commercial Group.