

FILED: August 27, 2014

IN THE COURT OF APPEALS OF THE STATE OF OREGON

16TH GROUP, LLC, an Oregon limited liability company,
Plaintiff-Appellant,

v.

LYNCH MECHANICAL CONSTRUCTION, LLC, an Oregon limited liability
company;
and MARTIN R. RALSTON,
Defendants-Respondents.

Multnomah County Circuit Court
101217740

A151536

David F. Rees, Judge.

Submitted on October 11, 2013.

Michael J. Kavanaugh filed the brief for appellant.

Nicholas J. Henderson and Motschenbacher & Blattner, LLP, filed the brief for respondents.

Before Armstrong, Presiding Judge, and Nakamoto, Judge, and De Muniz, Senior Judge.

DE MUNIZ, S. J.

Reversed and remanded with instructions to award plaintiff reasonable attorney fees for time spent on the recovery of common area maintenance charges due under the lease; otherwise affirmed.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Appellant

- No costs allowed.
 Costs allowed, payable by Respondents.
 Costs allowed, to abide the outcome on remand, payable by
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1 DE MUNIZ, S. J.

2 Plaintiff filed an action against defendants for breach of lease, alleging that
3 defendants had failed to pay rent due under the lease, had failed to pay common area
4 maintenance (CAM) charges due under the lease, and had damaged the leased property in
5 violation of certain provisions of the lease.¹ The trial court entered judgment for plaintiff
6 on the breach-of-lease claim, assigning specific damage awards to the rent due, the CAM
7 charges due, and the damage to the leased property caused by defendant's improper
8 removal of HVAC equipment. In a supplemental judgment, the trial court awarded
9 attorney fees to both plaintiff and defendants. Plaintiff appeals that judgment, arguing
10 that the trial court erred in awarding attorney fees to defendants. For the reasons
11 explained below, we agree with plaintiff, reverse the award of attorney fees to
12 defendants, and remand to the trial court for an award of reasonable attorney fees to
13 plaintiff.

14 The facts pertinent on appeal are undisputed. In September 2005, the
15 parties signed a lease agreement. The agreement provided that, should either party bring
16 an action involving the premises, the prevailing party would be entitled to reasonable
17 attorney fees. Section 31 of the lease states:

18 "Attorneys' Fees. If any Party or Broker brings an action or proceeding
19 involving the Premises whether founded in tort, contract or equity, or to
20 declare rights hereunder, the Prevailing Party (as hereafter defined) in any

¹ Plaintiff alleged two claims for relief in its amended complaint. The first claim was for breach of the lease; the second claim was for breach of contract unrelated to the breach-of-lease claim. The latter claim was dismissed and is not involved in this appeal.

1 such proceeding, action, or appeal thereon, shall be entitled to reasonable
2 attorneys' fees. * * * The term, 'Prevailing Party' shall include, without
3 limitation, a Party or Broker who substantially obtains or defeats the relief
4 sought, as the case may be, whether by compromise, settlement, judgment,
5 or the abandonment by the other Party or Broker of its claim or defense."

6 The agreement defines "rent" as "[a]ll monetary obligations of Lessee to Lessor under the
7 terms of this Lease (except for the Security Deposit)."

8 As described earlier, plaintiff brought an action against defendants for
9 breach of the lease, alleging that defendants had (1) failed to pay holdover rent, (2) failed
10 to pay CAM charges due under the lease, and (3) installed and removed an HVAC system
11 without permission and in doing so damaged the roof, the floor, and the garage door of
12 the premises. On the breach-of-lease claim, plaintiff sought to recover \$77,246.33.

13 The trial court awarded plaintiff damages of \$28,428.00 for holdover rent
14 and \$2,842.80 for late fees on the holdover rent, with interest; rent of \$11,734.00 for
15 unpaid CAM charges; and rent of \$5,000.00 for the removal of equipment (subject to a
16 \$3,000.00 rent credit in defendants' favor for their security deposit). Although the court
17 awarded plaintiff damages for the unpaid CAM charges, the court stated in the general
18 judgment, "the Court finds that defendants did not breach any obligation to pay CAM
19 charges and the first time plaintiff presented proper evidence of CAM charges to
20 defendant[s] was at trial."

21 With regard to attorney fees under the lease, the trial court reasoned that
22 plaintiff's allegations constituted three separate claims for breach of lease. In a
23 supplemental judgment, the court awarded plaintiff attorney fees for the time spent on the

1 breach-of-lease claims related to the holdover rent and the removal of the HVAC system,
2 but awarded attorney fees to defendants on the breach-of-lease claim related to the CAM
3 charges, concluding that defendants had prevailed on that claim. As noted earlier,
4 plaintiff challenges the award of attorney fees to defendants.

5 Under the terms of the lease agreement, the trial court was required to
6 award attorney fees to the "prevailing party" and, thus, had no discretion to refuse to do
7 so. *See Beggs v. Hart*, 221 Or App 528, 536, 191 P3d 747 (2008) (when a claim is based
8 on a contract that requires the award of attorney fees, the court does not have discretion
9 to decline to identify and award attorney fees to the prevailing party); *Ladum v. City of*
10 *Reedsport*, 83 Or App 666, 669, 733 P2d 66 (1987) (same). Absent a contrary indication,
11 the parties are presumed to refer to ORS 20.077 for the meaning of "prevailing party,"
12 and both parties argued only that that definition applied here. Accordingly, to determine
13 the "prevailing party" in the action, the trial court was required to apply the provisions of
14 ORS 20.077:

15 "(1) In any action or suit in which one or more claims are asserted
16 for which an award of attorney fees is either authorized or required, the
17 prevailing party on each claim shall be determined as provided in this
18 section. The provisions of this section apply to all proceedings in the action
19 or suit, including arbitration, trial and appeal.

20 "(2) For the purposes of making an award of attorney fees on a
21 claim, the prevailing party is the party who receives a favorable judgment
22 or arbitration award on the claim. If more than one claim is made in an
23 action or suit for which an award of attorney fees is either authorized or
24 required, the court or arbitrator shall:

25 "(a) Identify each party that prevails on a claim for which attorney
26 fees could be awarded;

1 (b) Decide whether to award attorney fees on claims for which the
2 court or arbitrator is authorized to award attorney fees, and the amount of
3 the award;

4 (c) Decide the amount of the award of attorney fees on claims for
5 which the court or arbitrator is required to award attorney fees; and

6 (d) Enter a judgment that complies with the requirements of ORS
7 18.038 and 18.042."

8 Under the statute, attorney fees are awarded to a "prevailing party" on a
9 claim-by-claim basis. *See Lemargie v. Johnson*, 212 Or App 451, 454 n 3, 157 P3d 1284
10 (2007) ("Under ORS 20.077, there can be more than one prevailing party in actions that
11 involve multiple claims or counterclaims * * *."). Thus, to the extent that a claim
12 requires an award of attorney fees, under ORS 20.077(2)(c) the court "shall" award
13 attorney fees to the "prevailing party" on that "claim."

14 We need not decide whether the trial court was correct, under ORS 20.077,
15 in segregating plaintiff's breach-of-lease claim into three separate "claims" and then
16 determining a "prevailing party" on each of them individually. Although the trial court
17 commented that it did not find that defendants had breached the lease in failing to pay the
18 CAM charges, it nevertheless awarded plaintiff, "rent of \$11,734.00 for unpaid [CAM]
19 charges" in the general judgment. The prevailing party on a claim is the party that
20 received a *favorable judgment on a claim*, and that is determined by "weigh[ing] 'what
21 was sought by each party against the result obtained.'" *Beggs*, 221 Or App at 538-39
22 (quoting *Lawrence v. Peel*, 45 Or App 233, 243, 607 P2d 1386 (1980)). Thus, despite the
23 court's comments, plaintiff, not defendants prevailed as matter of law with regard to the

1 unpaid CAM charges. Because plaintiff prevailed, the trial court erred in awarding
2 attorney fees to defendants in the supplemental judgment.

3 Reversed and remanded with instructions to award plaintiff reasonable
4 attorney fees for time spent on the recovery of common area maintenance charges due
5 under the lease; otherwise affirmed.