IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOINT VENTURE FOURPLAY, Appellant/Cross Respondent, v. VERONIKA E. LOISTL, a single person, Respondent/Cross Appellant.	)	No. 64038-1-I DIVISION ONE UNPUBLISHED OPINION FILED: May 2, 2011

Appelwick, J. — Facing foreclosure on a home she owned, Loistl entered into an agreement with Joint Venture Fourplay, a real estate investment business. Fourplay paid off the existing mortgage on the home and advanced additional funds to make repairs and improvements to the house. Fourplay sued to collect the amounts advanced, interest, and lost profits. Fourplay appeals the trial court's denial of damages for lost profits and the trial court's failure to award attorney fees to Fourplay. Loistl cross appeals, arguing the trial court erred when it concluded that the amounts advanced were due and payable at the time of trial. We remand for correction of the postjudgment interest rate. We affirm on all other grounds.

FACTS

In 2003, Veronika Loistl was approximately $25,000 in default on a

$142,000 mortgage against a house she owned and was facing foreclosure. Loistl approached her acquaintance Frank Colacurcio, Sr., for advice. Among other things, Colacurcio was a partner of Fourplay, a real estate investment business. Loistl did not want to lose the house in a foreclosure sale. Fourplay agreed to loan Loistl sufficient money to pay off her mortgage. It also agreed to loan her sufficient additional money to improve the property to increase its sale and rental value. Counsel for Fourplay drafted three documents for Loistl to sign to memorialize the agreement, including a promissory note in the amount of $173,144.81, a deed of trust against the property, and a contract for improvement of property. The documents did not contain a due date for repayment or require periodic payments by Loistl on the loan amount. These advances were to carry interest at the rate of six percent annually and were to be paid back from the proceeds of the sale of the property or from rental income. Loistl met with David Ebert, another partner of Fourplay, and signed the documents.

At the time of the signing, Loistl did not have independent counsel. Fourplay referred her to one of its own lawyers to review the agreements. She did not consult any lawyer before signing the documents.

The property was not rented and it was not sold. The parties contest whether this was an "investment" property or whether this was simply a loan which would be repaid and, when repaid, the house would remain a residence for Loistl. In May 2006, Fourplay demanded payment but did not say how much

was owed. No additional effort to collect was made until the present suit was filed.

Fourplay brought this breach of contract action seeking repayment of the principal plus interest on the amounts owing under the two agreements. Fourplay did not seek an order for the sale of the home. Fourplay did not plead a claim for profits lost when Loistl did not sell her home in 2006, but it did try that claim to the bench without objection.[1] The trial court concluded that at the time of trial Loistl owed the principal amount plus six percent interest, or $227,282.51. It denied Fourplay any additional relief on the claim for lost profits. The court also concluded that there was no prevailing party and declined to award attorney fees. The court set judgment interest at twelve percent, rather than the six percent rate set in the agreement. Fourplay appeals. Loistl cross appeals.

DISCUSSION

I. Were the Amounts Due and Payable?

Neither agreement to advance funds nor the deed of trust contained a specific due date for repayment of the funds advanced. Each was tied to an anticipated sale of the property. The trial court concluded that Fourplay was entitled to the principal amount of the loan not repaid from Loistl and "[i]t is due and owing." Loistl argues that the trial court erred by inserting a time for performance term that was not in the agreement and contends that the note is

[1] Fourplay's complaint did not request relief on this basis. But, the parties tried the lost profits issue by implied consent and the claim may be treated as if it was raised in the complaint. CR 15(b).

not due until the sale of the property.[2] Contract interpretation is a question of law reviewed de novo. Berg v. Hudesman, 115 Wn.2d 657, 668, 801 P.2d 222 (1990); Knipschield v. C–J Recreation, Inc., 74 Wn. App. 212, 215, 872 P.2d 1102 (1994).

When a contract is silent as to duration or states a time for performance in general or indefinite terms, the court is to impose a reasonable time. Pepper & Tanner, Inc. v. KEDO, Inc., 13 Wn. App. 433, 435, 535 P.2d 857 (1975); Byrne v. Ackerlund, 108 Wn.2d 445, 455, 739 P.2d 1138 (1987). A reasonable time is to be determined by the nature of the contract, the position of the parties, their intent, and the circumstances surrounding performance. Pepper, 13 Wn. App. at 435. But, a reasonable "time for performance" term may only be implied where the contract imposes a definite obligation to perform. Byrne, 108 Wn.2d at 455.

The note here stated, "FOR VALUE RECEIVED, the undersigned hereby jointly and severally promise to pay to the order of the Joint Venture Fourplay, the sum of . . . $173,144.81 . . . with 6% interest per annum on the unpaid balance." The note also stated that Loistl was to pay off her obligation "[f]rom the proceeds received by [Loistl] for the sale of said property, which will consist of 50% of the proceeds." Loistl also agreed to "remain fully bound until this note is fully paid." The note's language imposed a sufficiently definite obligation to

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[2] Although Loistl did assign error to the trial court's conclusion that any amount is currently owed, Loistl does not argue that the trial court erred in concluding, in its discretion after reviewing the evidence at trial, that a "reasonable time" means that repayment is now due. That question is not before us. She merely argues that the trial court erred in entering a due date as a matter of law.

repay the loan and interest to permit the trial court to fill in the time for performance gap in the agreement.

Loistl argues that any ambiguity in the time for performance term should be construed against the drafter.[3] But, Washington law requires the court to impose a reasonable time for performance term, rather than construe the missing term. See Byrne, 108 Wn.2d at 455; Pepper, 13 Wn. App. at 435.

Loistl also argued that the trial court violated the parol evidence rule by considering additional evidence. Under that rule, Washington courts may consult extrinsic evidence of the circumstances under which the contract was made to aid interpretation, but not to show a party's unilateral intent, intent independent of the contract, or to contradict or modify the contract as it was written. Hollis v. Garwall, Inc., 137 Wn.2d 683, 695, 974 P.2d 836 (1999). But, that rule is not violated where a contract does not supply a time for performance term. The law supplies a reasonable time and the court may consider the nature of the contract, the position of the parties, their intent, and the circumstances surrounding performance in order to determine what a reasonable time for performance may be. Pepper, 13 Wn. App. at 435. The trial court did not violate the parol evidence rule by considering exactly this type of additional evidence.

[3] The rule calling for construction of a contract against the drafter is a rule of last resort. See Roberts, Jackson & Assocs. v. Pier 66 Corp., 41 Wn. App. 64, 69, 702 P.2d 137 (1985) (rule that ambiguity be resolved against the drafter applies only where intent of parties cannot be otherwise determined).

The trial court did not err in supplying the time for performance of the note and improvement contract.

II. Was Fourplay Entitled to Lost Profits?

Fourplay alleges that the trial court erred by failing to award it additional lost profits as a remedy for Loistl's breach of contract. Fourplay contends that the agreement required Loistl to sell the property within a reasonable time and that Loistl breached the contract by not selling at the time that would have maximized the price.

Loistl and Ebert both testified to their understanding of the agreement. Ebert testified that the agreement was the following:

> That [Fourplay] would loan 175 thousand dollars on the home, that [Fourplay] would loan money to get the home cosmetically ready to rent, that we would put the home on the market and try and sell it at its highest price, and that there would be a six percent interest rate on the monies, and that after the sale of the home, the principal that was loan, the 175, give or take, would be taken off, plus interest, the improvements on the home, plus interest, would be taken off, and that with [sic] what was left would be split fifty/fifty.

He testified that before the documents were drawn up by Fourplay's lawyer, he met with Loistl and discussed the terms of the agreement, including the agreement to improve the home for sale, and she agreed to the arrangement.

Loistl disagreed with Ebert's testimony. When asked if she saw the language from the agreement, "'From the proceeds received by the borrower for the sale of said property, which will consist of fifty percent of the proceeds, the debts will be paid,'" she agreed. She testified that she had not been informed

about such language before signing the documents. She also testified that, "I didn't want to sell it; I wanted to live in it." She signed the documents believing she could pay off the loans through a refinance.[4] She moved into the house at some point after the agreement and lived in the house through trial. She attempted to refinance but was unable to do so.

A. Statements by Colacurcio

As a threshold matter, both parties attempt to establish support for their interpretation of the agreement through testimony relating to previous conversations with Colacurcio. Colacurcio did not testify at trial. Both Loistl and Ebert testified to conversations they had with Colacurcio.[5] Ebert's direction for

[4] Fourplay additionally assigns error to the trial court's finding that "[i]n 2006, defendant tried to refinance and pay plaintiff, but plaintiff would not cooperate or provide a pay-off amount." This court reviews a trial court's challenged findings of fact for substantial evidence. Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 879, 73 P.3d 369 (2003).

Fourplay does not dispute that it did not respond to general inquiries by potential lenders. Loistl provides no authority that imposes such a duty on Fourplay, nor has she cited authority that the conduct she testified to affects her legal rights. Nothing in the agreements allow for or preclude refinancing. But, even if the finding of fact is incorrect it has no bearing on the claims raised here. There is no evidence that the trial court relied on it. Any error is harmless.

[5] Neither party specifies exactly which statements are at issue. Loistl testified to the following:

> Q. [By Loistl's counsel] Did Mr. Colacurcio give you any advice?
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> A. Yes, he was -- he said "Don't get stressed over this. Don't worry about it. I will take care of it. I will help you."

She also testified that Colacurcio told her, "'Look, don't worry about this. It is not the end of the world. We will get it sorted out.'" She also explained that "[her]

preparing the agreement was attributed to Colacurcio. Loistl's understanding of what they agreed to and whether the documents conform to that came from

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conversations were with Mr. [Colacurcio]. And, the conversations were that [she] was looking for something temporary until [she] could go out and get a new 30-year fixed, conforming, normal-type of mortgage." She also explained that her intention when she signed the agreement was to stay in the house, and that "was the whole point of my conversation with Mr. [Colacurcio]." When her counsel asked, "Did you ever inform Mr. Colacurcio of that?" Loistl responded, "Of course, I talked [to him] about it, yes." Loistl then testified that when she told Colacurcio that she would like to pay off the loan in 12 to 24 months, he responded, "'That will be fine. I will tell the others.'"

Finally, she testified that she asked Colacurcio to explain a demand for payment she received. She testified that he responded:

> "Don't worry about it. Just wanted to get your attention, to make sure that -- you need to be daily living in the house because an empty house deteriorates. So we want to make sure you are there."
>
> . . . "The concern is that if you are not in it and living in it every day, day-to-day, then" . . . a house deteriorates.

Fourplay objected. The trial court admitted the statements.

Ebert also testified to his conversations with Colacurcio:

> Q. How did you become aware of a potential business opportunity with Ms. Loistl in 2003?
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> A. I had a conversation with Frank Colacurcio, Sr., and he told me that the defendant was in trouble with her home, and that he thought we may be able to help her out. She was looking for a loan, if we were interested. At that time I asked him if any of the particulars of the loan had been discussed? What were we talking about? And he gave me a figure of around 175 thousand dollars, give or take. And he described what he discussed with the defendant as far as the structure of the loan.
>
> Q. What did he describe?

The trial court then sustained Loistl's objection to the final question as hearsay.

Colacurcio.

Fourplay contends that the trial court erred in admitting this testimony because the statements by Colacurcio were inadmissible hearsay. Loistl argued at trial that the statements constituted an admission by a party-opponent under ER 801(d)(2)(iii) or (iv). We review the trial court's interpretation of a rule of evidence de novo as a matter of law. State v. Fisher, 165 Wn.2d 727, 745, 202 P.3d 937 (2009). We then review a trial court's evidentiary rulings for an abuse of discretion. City of Kennewick v. Day, 142 Wn.2d 1, 5, 11 P.3d 304 (2000).

A statement is not hearsay[6] if it is offered against a party and is a statement by a person authorized by the party to make a statement. ER 801(d)(2). It is not in dispute that Fourplay constituted a joint venture, that Colacurcio was a partner of the joint venture, or that these transactions were within the scope of the joint venture.

Ebert testified that he was the managing partner of the joint venture. But, Fourplay provides no authority that as a matter of law that designation deprives any other partner of the power to speak for or bind the joint venture. Colacurcio was a partner of the joint venture. "'As a general rule, each one of several joint adventurers has power to bind the others in matters which are strictly within the

[6] Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. ER 801(c). A statement is not hearsay if it is an admission by a party-opponent. ER 801(d)(2). An admission by a party opponent includes a statement offered against a party that is either a statement by a person authorized by the party to make a statement concerning the subject or a statement by the party's agent or servant acting within the scope of the authority to make the statement for the party. ER 801(d)(2).

scope of the joint enterprise.'" Dingle v. Camp, 121 Wash. 393, 397, 209 P. 853 (1922) (quoting 15 Ruling Case L. 505). Colacurcio had an equal right to speak for the joint venture. Colacurcio had apparent authority to bind the joint venture, and his statements were not hearsay under ER 801(d)(2).

The trial court did not err in admitting the statements and we may consider them here in evaluating the intent of the parties to the agreements at issue here.

B. The Nature of the Agreement

Fourplay contends that the trial court's conclusion that the agreement was a loan, not an investment, was not supported by substantial evidence. Relying on the three documents and the testimony of Ebert, Fourplay claims a right to 50 percent of the proceeds of a sale based on an agreement to "share in [the] profit on the sale of the home." Fourplay apparently argues that to this profit sharing arrangement, Loistl contributed property and Fourplay contributed cash to invest in improvements to increase the value of the property. Fourplay is not claiming that they owned a present interest in the property.[7] Fourplay does not assert that a time certain was agreed to for sale. In May 2006, Fourplay sent a notice demanding payment but did not say how much was owed. Fourplay did not follow up on the notice by demanding a sale or suing on the note at that time. Rather, Fourplay argues it was entitled to maximize profits and that those profits would have been maximized by sale at the height of the real estate market in

[7] Therefore, Loistl's arguments relating to the statute of frauds are inapposite.

2006 when notice was given. We must determine whether the documents constitute a mere loan agreement secured by a deed of trust or whether they created something more, in the form of a profit sharing agreement.

The trial court found that the advances made by Fourplay, along with interest, "were to be paid back, from the proceeds of [the] sale of the property or from rental income." But, the trial court found that the terms of the contract were, "at best, ambiguous, such as how, if and when profits would be divided." It also found that "[t]he remaining terms of the agreement are beyond repair by this court due to the very poor drafting of the original agreement." The trial court concluded the agreement was a loan and not an investment. Again, we review the trial court's interpretation of a contract de novo. Knipschield, 74 Wn. App. at 215.

The touchstone of contract interpretation is the parties' intent. Tanner Elec. Coop. v. Puget Sound Power & Light Co., 128 Wn.2d 656, 674, 911 P.2d 1301 (1996). Under the objective theory of contract interpretation, a court must attempt to ascertain the intent of the parties from the ordinary meaning of the words within the contract. Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 503, 115 P.3d 262 (2005). A contract is ambiguous if it is susceptible to more than one reasonable interpretation. Quadrant Corp. v. Am. States Ins. Co., 154 Wn.2d 165, 171, 110 P.3d 733 (2005). In determining the parties' intent, we also view "'the contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the

contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties.'" Berg, 115 Wn.2d at 667 (quoting Stender v. Twin City Foods, Inc., 82 Wn2d 250, 254, 510 P.2d 221 (1973)). Extrinsic evidence may be used to interpret a contract regardless of whether the contract language is ambiguous. Berg, 115 Wn.2d at 669.

The contract for improvement of property stated:

> This agreement will terminate upon the sale of the house on the property and the satisfaction of the promissory note held by Fourplay from Ms. Loistl and the payment of balance owed to Fourplay for improvements to the property.

This document also stated that it was a fully integrated document. On the face of that document, no profit sharing agreement is evident.

The promissory note stated that the amount due under that document would be paid off:

> From the proceeds received by [Loistl] for the sale of said property, which will consist of 50% of the proceeds.

The deed of trust secured the note and the improvement contract.[8] It refers to an amount. It provided:

> That [Loistl] retained 50% interest related ONLY to [Loistl's] right to receive 50% of the proceeds from any sale of the entire property.
>
> . . . .
>
> [Loistl] . . . will abide by [Fourplay's] sale, so long as it is commercially reasonable at the time of sale.

[8] The deed of trust refers to the note of even date, but the note is not dated with the same date.

None of the documents use words like profit sharing, joint venture, partnership, or business venture. The language of the documents does not expressly state that Fourplay has a right to receive any portion of the proceeds other than that due under the improvement agreement or promissory note. The language in the deed of trust is related only to Loistl's right to receive 50 percent of the proceeds from any sale. The deed of trust does not vest Fourplay with outright ownership in a 50 percent interest. It provides only a security interest, which gives Fourplay a statutory right to sell the property to recover on the note. The plain language does not create a profit sharing arrangement.

The trial court found the language ambiguous at best. We agree. The documents here could be read to support Loistl's claim that the parties agreed to a loan, but not an investment. They could also be read to provide that Loistl was entitled to 50 percent of the proceeds from the sale and to cap Loistl's obligation to pay down her obligation under the two contracts at 50 percent of the proceeds. But, she has not argued for such an interpretation. The documents could possibly be read to split the proceeds 50/50 with Loistl obligated to satisfy her obligation on the two debts out of her 50 percent of the proceeds, and make up any deficiency. But, Fourplay has not argued for such an interpretation. The only interpretation of the contract advocated by Fourplay is that the amounts due on the improvement contract and note were to be paid out of the proceeds, with the remaining profits divided equally among Fourplay and Loistl. This is not a reasonable interpretation of the plain language of the documents.[9]

Even if Fourplay's interpretation could be fairly read in the contract, we would still evaluate the circumstances surrounding the making of the contract to determine whether the parties reached a meeting of the minds on profit sharing. Whether there is mutual assent must be gleaned from the parties' words and acts, to which we impute a corresponding intention. Multicare Med. Ctr. v. Dep't of Soc. & Health Servs., 114 Wn.2d 572, 587, 790 P.2d 124 (1990). This determination is typically a question of fact. Sea-Van Invs. Assocs. v. Hamilton, 125 Wn.2d 120, 126, 881 P.2d 1035 (1994). The trial court's findings of fact will not be disturbed if supported by substantial evidence. Frank Coluccio Constr. Co. v. King County, 136 Wn. App. 751, 761, 150 P.3d 1147 (2007). Substantial evidence means sufficient evidence to persuade a rational, fair-minded person that the premise is true. Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). We defer to the trier of fact on issues of credibility and the weight of conflicting evidence. Burnside v. Simpson Paper Co., 123 Wn.2d 93, 108, 864 P.2d 937 (1994).

The parties' testimony about their respective intentions is very different. Loistl testified that she sought a simple loan, that she sought to remain in her home, and that she could refinance under the agreement rather than sell. Loistl testified that the language of the agreements was not specifically negotiated and

[9] The trial court found the agreement ambiguous and then construed the contract against the drafter, Fourplay. No such construction was in fact required. See Berg, 115 Wn.2d at 663 (distinguishing between interpretation of a contract, or the ascertainment of its meaning, and construction of a contract, or determining the legal effect of the language). Rather, the contract simply does not support Fourplay's interpretation.

that she first saw the disputed language when she went to sign the documents. Ebert testified that after reducing the proceeds from the sale of the home by the amount of the loans plus interest, the parties would split the profits from the sale "fifty/fifty." Ebert also testified that six percent interest was not enough to warrant Fourplay's involvement in the transaction and that Fourplay only became involved to make an investment from which it would be entitled to a share of the profits. No meeting of the minds on splitting the net proceeds or profits is apparent. Nothing about the postexecution conduct of the parties belies this conclusion. The trial court's finding of fact number 6 provides the facts to conclude the parties had not agreed to a mutual investment. Fourplay did not assign error to that part of the finding of fact, so it is a verity on appeal. The existence of the loan obligation itself is not in dispute. Substantial evidence in the record supports the trial court's conclusion that the parties did not agree to a profit sharing arrangement. The trial court did not err in refusing to grant Fourplay the remedy of lost profits.

III. Postjudgment Interest Rate

RCW 4.56.110(1) requires that judgment founded on written contracts bear interest at the rate specified in the contract. The note here specified a rate of six percent per annum. The trial court entered a 12 percent postjudgment interest rate on the judgment against Loistl. This was error. We remand for correction.

IV. Attorney Fees at Trial

Fourplay challenges the trial court's refusal to award attorney fees. RCW 4.84.330 provides that, where a contract or lease authorizes attorney fees for one but not all of the parties, the prevailing party is entitled to fees, whether or not that party is the party specified in the contract. The note here contained a unilateral fee provision. Therefore, RCW 4.84.330 applies. An award of attorney fees under RCW 4.84.330 is mandatory, with no discretion except as to the amount. Singleton v. Frost, 108 Wn.2d 723, 729, 742 P.2d 1224 (1987); Kofmehl v. Steelman, 80 Wn. App. 279, 286, 908 P.2d 391 (1996). Whether a party is a "prevailing party" is a mixed question of law and fact that this court reviews under an error of law standard. Eagle Point Condo. Owners Ass'n v. Coy, 102 Wn. App. 697, 706, 9 P.3d 898 (2000). The question as to which party is the substantially prevailing party is often subjective and difficult to assess. Marassi v. Lau, 71 Wn. App. 912, 917, 859 P.2d 605 (1993), abrogated on other grounds by Wachovia SBA Lending, Inc. v. Kraft, 165 Wn.2d 481, 490-92, 200 P.3d 683 (2009).[10] The trial court here concluded that there was no prevailing party.

Under RCW 4.84.330, "prevailing party" means the party in whose favor final judgment is rendered. As a general rule, the prevailing party is one who receives an affirmative judgment in its favor. Riss v. Angel, 131 Wn.2d 612,

[10] Wachovia eviscerated the holding in Marassi that a defendant is a prevailing party after a plaintiff voluntarily dismisses its claims under CR 15(a). Wachovia, 165 Wn.2d at 490; Marassi, 71 Wn. App. at 918-20. But, the Supreme Court's criticism in Wachovia did not extend to the discussion of the proportionality approach to fee awards under RCW 4.84.330.

633, 934 P.2d 669 (1997). But, if neither party wholly prevails, the determination of who is the substantially prevailing party depends on the extent of the relief accorded. Transpac Dev., Inc. v. Young Suk Oh, 132 Wn. App. 212, 217-19, 130 P.3d 892 (2006); Marine Enter., Inc. v. Sec. Pac. Trading Corp., 50 Wn. App. 768, 772, 750 P.2d 1290 (1988). In Marassi, we concluded that where multiple and distinct claims were at issue, the trial court should take a "proportionality approach." 71 Wn. App. at 917; see also Transpac, 132 Wn. App. at 219 ("[W]hen distinct and severable claims are involved, an order that leaves both parties to bear their own costs is not adequately supported by a bare conclusion that each party recovered on a substantial theory."); Int'l Raceway, Inc. v. JDFJ Corp., 97 Wn. App. 1, 8, 970 P.2d 343 (1999) ("Because in these situations 'the question of which party has substantially prevailed becomes extremely subjective and difficult to assess[,]' the proportionality approach is appropriate in all contract and lease cases where multiple distinct and severable claims are at issue" and RCW 4.84.330 applies) (quoting Marassi, 71 Wn. App. at 917) (alteration in original). But, if both parties prevail on major issues, both parties bear their own costs and fees.[11] Marassi, 71 Wn. App. at 916; Phillips Bldg. Co.

[11] Fourplay contended at oral argument that the prevailing party is the party which receives the net judgment in its favor. Contrary to Fourplay's assertions, the statutory definition of prevailing party does not use the term "net judgment;" in fact it refers to "the party in whose favor final judgment is rendered." RCW 4.84.330. As this court explained in Marassi, awarding fees to the person who received a "net affirmative judgment" rule would be unjust in cases where parties, like Loistl, did not raise counterclaims of its own, but merely defended those claims raised by the plaintiff. Marassi, 71 Wn. App. at 916-17. The fee award should also take into account those claims that the defendant refuted. Id. at 917

v. An, 81 Wn. App. 696, 702, 915 P.2d 1146 (1996).

Fourplay contends in reply that it remained the prevailing party despite recovering judgment in its favor for an amount less than the amount it sought. Fourplay cites Silverdale Hotel Assocs. v. Lomas & Nettleton Co., 36 Wn. App. 762, 773-74, 677 P.2d 773 (1984) ("A party need not recover its entire claim in order to be considered the prevailing party."). Loistl did not merely reduce the amount of damages obtained by Fourplay on one claim. Here, Fourplay proceeded to trial on two distinct claims. Fourplay sought repayment of the loan and interest and also sought lost profits on a joint venture contract theory. Fourplay prevailed on the loan issue. Loistl prevailed by defending against the lost profits issue.[12] Both parties prevailed on major claims. Silverdale does not require an award of fees in Fourplay's favor. We affirm the trial court's denial of fees.

V. Attorney Fees on Appeal

Both parties request fees on appeal. As previously noted, the contract contained a provision awarding attorney fees to the prevailing party in the case of litigation. A contractual provision for an award of attorney fees at trial

[12] One may be a prevailing party for defending against a claim raised by the plaintiff. See, e.g., Marassi, 71 Wn. App. at 917 ("A proportionality approach awards the plaintiff attorney fees for the claims it prevails upon, and likewise awards fees to the defendant for the claims it has prevailed upon."); Crest, Inc. v. Costco Wholesale Corp., 128 Wn. App. 760, 772-73, 115 P.3d 349 (2005) (trial court did not err in finding defendant to be a prevailing party under RCW 4.84.330 when it successfully defended the major claim of the case even though the trial court granted a judgment to the plaintiff based on other claims).

supports an award of attorney fees on appeal. Reeves v. McClain, 56 Wn. App. 301, 311, 783 P.2d 606 (1989).

The parties agreed the trial court erred on the judgment interest rate. Otherwise, each party prevailed on the same issue on which it prevailed below. Because both parties prevail on major issues raised on appeal, both parties should bear their own costs and fees. Marassi, 71 Wn. App. at 916. We award no fees.

We remand for correction of the postjudgment interest rate. On all other grounds, we affirm.

WE CONCUR: