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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MOHAMMED K. GHODS,

Plaintiff and Appellant,

v.

CITICORP VENDOR FINANCE, INC.,

Defendant and Respondent.

G042251

(Super. Ct. No. 07CC06336)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Jamoia A. Moberly, Judge. Affirmed.

Mohammed K. Ghods and William A. Stahr for Plaintiff and Appellant.

TroyGould, Russ M. Fukano, Kenneth J. MacArthur, and Christopher A.
Lilly for Defendant and Respondent.

This is the second appeal filed by Mohammed K. Ghods, an attorney, regarding his grievance over a broken leased photocopier. He filed a lawsuit seeking \$250,000 in damages, plus punitive damages, and attorney fees and costs. He sued the leasing company, Citicorp Vender Finance, Inc. (Citicorp) and the copier dealer, Select Office Solutions, Inc. (Select). The trial court entered a judgment of dismissal in favor of Citicorp after sustaining its demurrer to Ghods's third amended complaint (TAC) without leave to amend.

In his first appeal, Ghods challenged the judgment, arguing he alleged facts sufficient to support his claims, or the court should have given him leave to amend to correct any perceived deficiencies or uncertainties. We affirmed the judgment, concluding the trial court gave Ghods ample opportunity to remedy the defects and uncertainty in his complaint, and the demurrer was properly sustained without leave to amend. (*Mohammed K. Ghods v. Citicorp Vendor Finance Inc.* (Mar. 30, 2010, G041438) [nonpub. opn.])

Ghods separately appealed from the trial court's postjudgment attorney fee award of \$68,960 under Code of Civil Procedure section 1717. In this second appeal, Ghods maintains Citicorp was not entitled to attorney fees because he did not sue on the contract containing an attorney fee provision, the attorney fee clause was inapplicable, and alternatively, the contract was invalid. Ghods also offers several arguments to support his claim the fees were excessive. We conclude all his arguments lack merit, and we affirm the attorney fee award.

I

In addition to facts regarding the attorney fee order, we have repeated some of our summary of facts from the prior appeal regarding the nature of the underlying dispute because Ghods attempts to downplay the complexity and difficult nature of work performed by Citicorp's attorneys. In December 2001, Ghods leased a photocopier for his law office. He negotiated a deal with Select's employee, Demetri Karidis. Ghods

signed two forms. The first entitled “Machine Order Form” was signed by Ghods and Karidis. On the form, Karidis handwrote a description of the photocopier and supporting equipment. He also wrote the order included “service calls, toner, parts, labor, drums . . . etc. everything but paper and staples.” The order form contained a small box at the bottom entitled “LEASE OPTION.” Ghods alleged Karidis wrote the name Citicorp as the name of the leasing company, a lease term of 60 months, and a monthly amount of \$720.84.

The same day, Ghods signed a standardized form entitled, “Cost Per Copy Rental Agreement” (the CPC Agreement). The CPC Agreement identified Select as the “Supplier,” Ghods as the “User,” and Citicorp as the “Owner.” The two-page contract contained signature lines for Ghods and Citicorp but not Select. The CPC Agreement stated it was a rental agreement between Citicorp (the owner of the copier) and Ghods (the user of the copier). The “initial term of agreement” was 60 months during which time Ghods agreed to pay a minimum monthly amount or .060007 per copy, whichever was higher. The rental rate terms, and an option to increase the rate each year, were described in the second paragraph of the CPC Agreement’s first page.

The third paragraph of the CPC Agreement, under the section “USE AND MAINTENANCE: NO WARRANTIES” stated the equipment was rented “AS IS.” Citicorp specified it was the owner, not the supplier, dealer, or manufacturer of the equipment being rented. It stated Ghods “ha[d] entered into a separate agreement with the dealer or [e]quipment manufacturer for supplies and maintenance for the [e]quipment, which is not part of this Rental Agreement. WE EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER”

The second page of the CPC Agreement contained other terms regarding the lease, including a standard integration clause. In addition, the final clause of the CPC agreement stated, “CUSTOMER P.O.: You agree that any Purchase Order issued to us

covering the rental of this [e]quipment is issued for purposes of authorization and your internal use only, and none of its terms and conditions shall modify the terms and conditions of this [a]greement.”

At issue in this appeal is paragraph nine, titled “DEFAULT AND REMEDIES” that provides, “If you (a) fail to pay . . . or (b) fail to perform any of the other terms, covenants or conditions of this Agreement after ten (10) days written notice; or (c) become insolvent . . . or (d) a receiver, trustee, conservator or liquidator is appointed on your behalf . . . you shall be in default under this Agreement and, we may to the extent permitted by applicable law, exercise any one or more of the following remedies”

This provision listed six remedies, which included taking immediate possession of the copier and charging interest. The last designated remedy permitted Citicorp upon Ghods default to “(vi) to charge [him] for all expenses incurred in connection with the enforcement of any of our remedies, including all costs of collection, reasonable attorney’s fees, and court costs. Lessee shall also be liable for the pre- and postjudgment attorney’s fees and costs incurred by Lessor after a judgment has been entered against Lessee by any court.”

Ghods alleged Select serviced and maintained the copier for two years and then stopped. Citicorp refused to service or repair the copier claiming it was not part of its lease agreement. The copier became useless, but Ghods continued to make the lease payments for the remaining three years of the initial lease term. Citicorp raised the monthly lease amount by 10 percent each year, as permitted by the express terms of the CPC Agreement.

In June 2006, Citicorp advised Ghods the initial term of the lease was scheduled to expire and would be automatically extended unless Ghods timely sent notice as described in the CPC Agreement. Ghods alleged he wrote a letter to Citicorp stating

he did not wish to renew. He claimed Citicorp ignored the letter and it sent more invoices requesting payment on the renewed lease.

In May 2007, Ghods filed his initial complaint alleging four causes of action: (1) breach of the CPC Agreement; (2) accounting; (3) fraud; and (4) unjust enrichment. He alleged Select and Citicorp “breached their obligations to repair and maintain the copier as agreed, made promises without intent to perform, concealed their true intentions regarding who was responsible for maintenance and supply of the copier, have extracted over \$30,000 dollars for an inoperable copier and have caused substantial losses to [Ghods] by their negligent, fraudulent and otherwise wrongful conduct.”

Citicorp demurred to the complaint, arguing Ghods had brought the action “to escape the benefit of his bargain. [He] executed an integrated lease agreement with Citicorp and his entire complaint hinges upon a central theme: obligations allegedly discussed during negotiation, but not part of the final, integrated writing, were not performed.” Citicorp argued Ghods was seeking damages “pursuant to a contract that was never breached, an accounting where there is no fiduciary, and recovery for ‘unjust’ enrichment where there is no basis for restitution in either quasi-contract or constructive trust.”

The trial court overruled the demurrer with respect to Ghods’s causes of action for breach of contract and unjust enrichment. It sustained with leave to amend the demurrer to the second cause of action requesting an accounting. The court reasoned the accounting claim related only to the alleged fraudulent actions of codefendant Select, not Citicorp.

In January 2008, Ghods filed a first amended complaint (FAC) alleging seven causes of action: (1) breach of contract and covenant of good faith and fair dealing; (2) accounting; (3) fraud and deceit; (4) unjust enrichment; (5) inducing breach of contract; (6) intentional interference with prospective economic advantage; and

(7) declaratory relief and punitive damages. Citicorp filed a demurrer and motion to strike, and Ghods filed oppositions.

The court sustained the demurrer as to all the causes of action with leave to amend. It gave the following reasons in its minute order. As to the first cause of action, Ghods added, “[n]umerous conflicting factual allegations If [Ghods] seeks to allege alternative theories, this should be done as separate causes of action.” It ruled the second cause of action for accounting was based on the fraud claim, which was defective. The court explained fraud must be pled with more specificity. The unjust enrichment claim failed for uncertainty, and also because it was based upon the same defective allegations raised in the first, fifth, sixth, and seventh causes of action. The court added Ghods needed to plead “an unambiguous contract or relationship between the parties.”

In May 2008, Ghods filed a second amended complaint (SAC) stating the first and second causes of action were for breach of contract and the covenant of good faith and fair dealing. The other claims remained the same but were renumbered. In its demurrer, Citicorp asserted Ghods no longer disputed the terms of the lease barred his claims, but in an attempt to keep his contract claim alive he pled two alternative contract claims. In one claim, Ghods admitted the CPC Agreement was valid but parts of it were unenforceable. In the alternative claim, Ghods alleged the CPC Agreement was invalid because he never received a copy of the agreement executed by Citicorp. Citicorp argued Ghods had failed to fix the uncertainty and ambiguity problems noted previously by the trial court regarding the remaining causes of action. For example, with respect to the fraud claim, Ghods failed to plead the facts necessary to show the salesperson employed with Select had authority to speak on behalf of Citicorp. Ghods filed an opposition.

The court agreed with Citicorp. It sustained the demurrer with leave to amend the first and second causes of action (both breach of contract), the fourth cause of action for fraud, the fifth cause of action for unjust enrichment, and the eighth cause of action for declaratory relief. It advised Ghods, “By incorporating the preamble 32

paragraphs into each separate cause of action and the exhibits referred to therein, [Ghods] has rendered the causes of action fatally uncertain. It is unclear which document(s) [Ghods] contends is the contract with [Citicorp,] although exhibit D (Rental Agreement) appears to be a fully integrated agreement. As to the fraud [cause of action], it is uncertain as to [Citicorp]. Fraud must be pled with specificity.”

In addition, the court sustained the demurrer *without* leave to amend as to the third cause of action (accounting), the sixth cause of action (inducing breach of contract), and the seventh cause of action (intentional interference with prospective economic advantage). The court reasoned, “A specific sum has been identified by [Ghods. Citicorp] is a party to the contract and none of the parties are strangers thereby defeating the [seventh cause of action].”

In July 2008, Ghods filed his TAC alleging all the same claims except for (1) inducing breach of contract, and (2) intentional interference with prospective economic advantage. Citicorp again demurred and argued the complaint had not been remedied by the amendments, and the accounting claim had already been dismissed by the court. Ghods filed an opposition.

The court sustained the TAC without leave to amend. In the minute order it ruled, “The entire [TAC] is fatally uncertain because [Ghods] incorporates paragraphs 13 and 14 and the conflicting paragraph [15] into each of the causes of action at paragraphs 31, 37, 45, 48, 66, and 71. Citicorp is not a party to the Machine Order Form. The CPC Agreement is an integrated agreement which [Ghods] ratified and [it] specifically states Citicorp is not responsible for service. The [third cause of action] for accounting is improper since the demurrer was previously sustained to that [claim] without leave. The fraud allegations are fatally uncertain and [Ghods] has not pled facts to show ratification even if the specific allegations were adequate. The [fifth and sixth causes of action] fail due to the failure of the contract claims.” Judgment was entered in favor of Citicorp.

Thereafter, Citicorp moved for attorney fees and costs. Before the motion was heard, Ghods filed a notice of appeal on January 6, 2009, regarding the judgment of dismissal. In April 2009, Ghods and Citicorp filed a stipulation with this court requesting appellate review of a February 2009 postjudgment order for attorney fees and costs (awarded after the notice of appeal was filed). They requested permission to augment the record to include the proceedings relating to the postjudgment attorney fees award.

This court granted the request to augment but did not accept the portion of the stipulation to expand the scope of review on appeal to include the postjudgment award. In our order, we invited the parties to submit letter briefs addressing this court's jurisdiction to consider the attorney fees award, and we ordered the issue would be considered in conjunction with the decision on appeal. In response, Ghods filed a letter brief arguing this court had jurisdiction and urging us to make an immediate decision to save him the expense of preparing the second appeal. Citicorp did not file a letter brief.

In his appellate briefs, Ghods devoted just a few paragraphs to an argument concerning the attorney fee award. He argued that if the judgment was reversed, then Citicorp would no longer be the prevailing party, and the postjudgment attorney fee award should also be reversed. Because we affirmed the judgment, there was no reason to consider the jurisdiction question to analyze what would happen if the judgment was reversed. Accordingly, we denied the request to consider the jurisdiction question and never reached the merits of the attorney fee order. (*Mohammed K. Ghods v. Citicorp Vendor Finance Inc.* (Mar. 30, 2010, G041438) [nonpub. opn.].) Ghods's second appeal delineates several new challenges to the attorney fee order. The time is now right to address them.

II

A. *Statutory Background & General Legal Principles*

Except where a contract or statute provides otherwise, each party to a lawsuit must pay its own attorney fees. (Code Civ. Proc., § 1021.) Civil Code section

1717, subdivision (a), provides in part: “In any action on a contract, where the contract specifically provides that attorney’s fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney’s fees in addition to other costs”¹ This provision was enacted to “establish mutuality of remedy where a contractual provision makes recovery of attorney’s fees available for only one party [citations] . . . and to prevent oppressive use of one-sided attorney fee provisions. [Citation.]” (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 128 (*Reynolds*)).²

The second paragraph of section 1717, subdivision (a), provides, “Where a contract provides for attorney’s fees, as set forth above, that provision shall be construed as applying to the entire contract, unless each party was represented by counsel in the negotiation and execution of the contract, and the fact of that representation is specified in the contract.” This paragraph was added by the Legislature to overturn an earlier court decision limiting the scope of an attorney fee provision in a contract. (*Harbor View Hills Community Assn. v. Torley* (1992) 5 Cal.App.4th 343, 348 (*Torley*)). Under this provision, the parties may not “limit an award of attorney’s fees to certain actions or specific provisions of the contract” unless the contract specifies that each party was represented in the negotiation and execution of the contract. (*Ibid.*) “[S]ection 1717 has

¹ All further statutory references are to Civil Code, unless otherwise indicated.

² Section 1717 is “part of an overall legislative policy to enable consumers and others who may be in a disadvantageous contractual bargaining position to protect their rights through the judicial process by permitting recovery of attorney’s fees incurred in litigation in the event they prevail. (See e.g., § 1811.1 [Installment Sales Contracts]; § 2983.4 [Conditional Sales Contracts]; [citations].)” (*Coast Bank v. Holmes* (1971) 19 Cal.App.3d 581, 597, fn. 3.)

been broadened to include all contract actions which include provisions for attorney's fees." (*Sears v. Baccaglio* (1998) 60 Cal.App.4th 1136, 1148.) In this case representation was not specified in the contract, and therefore the attorney fee provision must be construed as applying "to the entire contract[.]" (§ 1717, subd. (a).)

In addition, relevant to this case, is the following legal principle: "When a cause of action for which attorney fees are provided by statute is joined with other causes of action for which attorney fees are not permitted, the prevailing party may recover only on the statutory cause of action." (*Akins v. Enterprise Rent-A-Car Co. of San Francisco* (2000) 79 Cal.App.4th 1127, 1133 (*Akins*).) However, the joinder of causes of action will not dilute the right to attorney fees that are incurred for representation of an issue that is common to both a cause of action for which fees are permitted and one for which they are not. (*Ibid.*, citing *Reynolds, supra*, 25 Cal.3d at pp. 129-130.) Therefore, apportionment is not required where the various claims are so factually or legally intertwined as to make it impracticable to separate the attorney's time between those claims for which fees may be awarded and those for which they may not. (*Akins, supra*, 79 Cal.App.4th at p. 1133; see also *Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 687 ["Apportionment is not required when the claims for relief are so intertwined that it would be impracticable, if not impossible, to separate the attorney's time into compensable and noncompensable units"].)

B. Analysis

Ghods contends section 1717 does not apply because he never attempted to enforce the CPC Agreement but rather alleged it was invalid. He asserts section 1717 cannot apply because the CPC Agreement was only being used as part of Citicorp's defense. (Citing *Gil v. Mansano* (2004) 121 Cal.App.4th 739, 745 (*Gil*).)³ He is wrong.

³ The *Gil* case is inapposite because it involved a fraud case. (*Gil, supra*, 121 Cal.App.4th at pp. 742, 743-745 [provision for award of attorney fees "[i]n the event action is brought to enforce the terms of this [release]" inapplicable where release was

The record belies Ghods's contention his lawsuit was not "on the contract" as required by section 1717. In every version of his complaint, Ghods alleged Citicorp breached all or part of the CPC Agreement as an alternative theory of recovery. In the original complaint, Ghods asserted a breach of the "parties' agreement" and then discussed and attached a copy of the CPC Agreement. Although the complaint was confusing, Ghods alleged breach of several of the CPC Agreement's terms, such as a wrongful increase of the monthly rental rate and the failure to recognize when the "rental contract" was terminated.

Similarly, the breach of contract cause of action in the FAC alleged: "If and to the extent the [CPC Agreement] is valid and enforceable . . . [Ghods] alleges in the alternative that . . . the [CPC Agreement] only supplemented the Machine Order Form such that these two writings collectively comprise the written memoranda evincing [Ghods] contract with" the defendants.

The same is true for the SAC and the TAC, which each alleged two claims for breach of contract. For example, the second cause of action for breach of contract in the TAC alleges portions of the CPC agreement are unenforceable and unconscionable, yet Ghods "satisfied all requirements of paragraph 4 of the" CPC Agreement, and concludes Citicorp breached the "lease agreement" the "alternative agreements" and the "third party agreements" in various ways. We are mindful of the fact Ghods's SAC and TAC were found to be uncertain and confusing because he failed to explain which contract was the basis of each breach of contract claim. Nevertheless, there were sufficient allegations raised for the trial court to determine the lawsuit was "on the contract" within the meaning of section 1717. After all, each complaint discussed a

raised as defense to fraud cause of action; raising of defense not equivalent to bringing action to enforce release.) As we will discuss, Ghods's lawsuit included allegations the CPC Agreement was breached, and was therefore "on the contract" within the meaning of section 1717.

breach of some portion of the CPC Agreement, Ghods attached the CPC Agreement to each version of the complaint, and he steadfastly requested attorney fees in the prayer for relief. If he had been the prevailing party, surely Ghods would have argued Citicorp was liable for attorney fees under the alleged theory Citicorp breached the valid portions of the CPC Agreement, as supplemented by the Machine Order Form.⁴

In this appeal, however, Ghods asserted he would not have been entitled to attorney fees under the CPC Agreement because (1) Citicorp is the only party entitled to attorney fees under the specific terms of the provision, and (2) the attorney fee remedy specifically applies only to cases involving default of the lease. Not so.

The attorney fee clause provided, in relevant part: “[I]f you (a) fail to pay . . . (b) fail to perform . . . or (c) become insolvent . . . you shall be in default . . . [and you may be required to pay] reasonable attorney’s fees” In the contract “you” referred to Ghods. Indeed, by these express terms, Ghods agreed to pay Citicorp’s attorney fees if he defaulted. Citicorp did not agree to pay Ghods any fees.

Ghods argues the right to collect attorney fees would only be reciprocal under section 1717 if the lawsuit related to a default claim. Ghods fails to appreciate this is no longer the law. The Legislature amended section 1717 in 1983 to overturn several cases limiting recovery of attorney fees to a particular type of claim. (*Torley, supra*, 5 Cal.App.4th at p. 349.) The legislature amended the law “to provide complete mutuality of remedy where a contractual provision makes recovery of attorney fees available to one party.” (*Ibid.*) As we discussed above, absent exceptions not applicable in this case, parties may not limit recovery of attorney fees to a particular type of claim, such as a default action. “Where a contract provides for attorney’s fees . . . that provision

⁴ To the extent Ghods attempts to reargue Citicorp is not entitled to attorney fees as the prevailing party because the underlying judgment should be reversed, we decline his request to reconsider this issue. Ghods challenges to the judgment were fully analyzed and rejected in his first appeal. (*Mohammed K. Ghods v. Citicorp Vendor Finance Inc.* (Mar. 30, 2010, G041438) [nonpub. opn.])

shall be construed as applying *to the entire contract . . .*” (§ 1717, subd. (a), italics added.)

Ghods’s final attack relates to the fact the attorney fee award includes fees and costs incurred in defending against the contract claim but also the non-contract claims. He is partially right in stating ordinarily a prevailing party is not entitled to attorney fees related to tort claims that were not “on the contract” and therefore outside of the scope of section 1717. However, as discussed above, a court need not apportion attorney fees incurred for representation of an issue common to both a cause of action properly allowed under section 1717 and one in which they are not allowed. (*Reynolds, supra*, 25 Cal.3d at pp. 129-130.)

For example, in the *Reynolds* case, plaintiff sued defendants for breach of a consignment agreement and a promissory note based on a theory of alter ego. (*Reynolds, supra*, 25 Cal.3d at p. 127.) Only one of the agreements contained an attorney fee provision. Following a trial, the court rejected the alter ego theory and defendants were awarded fees and costs incurred on both the consignment and the note. Our Supreme Court concluded, “All expenses incurred with respect to the alter ego issue—common to both the note and the general line consignment agreement—qualify for award.” (*Id.* at p. 130.)

In the case before us, Citicorp’s defense against Ghods’ tort claims was the same as its defense against the contract claims. The crux of all Ghods’s causes of action was Citicorp’s purported failure to fix the photocopier machine. Citicorp’s reliance on the CPC Agreement to show it had no duty to repair the copier was its core defense to the entire lawsuit. Similarly, its assertion the complaint failed due to issues with “uncertainty” applied equally to every claim. Apportionment is not required where, as here, Ghods’s various claims were so factually and legally intertwined that it was

impracticable to separate out the attorney's time between those claims for which fees may be awarded and those for which they may not. (*Akins, supra*, 79 Cal.App.4th at p. 1133.)

C. The Question of Reasonableness

We will briefly address the issue of whether the amount of attorney fees awarded was reasonable. Our standard of review is limited to an abuse of discretion. (*EnPalm, LLC v. Teitler* (2008) 162 Cal.App.4th 770, 774.) "The discretion invoked is that of the trial court, not the reviewing court, and the trial court's order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made. [Citations.]" (*In re Marriage of Cueva* (1978) 86 Cal.App.3d 290, 296.)

Ghods's challenge to the reasonableness of the attorney fees awarded is based on his belief Citicorp has inflated the number of hours it spent defending itself. In the proceedings below, and on appeal, he took no issue with the hourly rate charged or the work performed, but rather he claimed he was confident the case was not a complex matter and it could not have taken as much time as claimed. He boldly asserted the ridiculous request for "\$70,000 for filing three demurrers on the same issue" lacked any factual support. On appeal, he faults the trial court for accepting what he considered to be "vacuous declarations" instead of the actual billing statements, which he claimed were required by the law and standard practice guides.

In making the above argument, Ghods fails to appreciate both the trial court, and this court, are thoroughly familiar with the convoluted issues of his case, the number of documents filed, and the level of complexity of the litigation. Before the hearing, the trial court stated it had considered Citicorp's attorney's declarations supporting the motion for attorney fees. Those declarations contained a month by month description of the work performed, the hours spent, and the rates. By their account the

dispute was neither small nor simple. Citicorp vigorously defended a lawsuit with a large potential liability (\$250,000) over a period of one year.

At the hearing, the record reflects the trial court considered Ghods's argument the declarations were "vacuous." Ghods's expressly agreed with the trial court's assessment the dispute did *not* relate to the attorneys' descriptions of the work performed but rather to the number of hours they spent on those projects. Ghods clarified on the record, "You're absolutely right. I don't accuse counsel of having done other things and having put it on this bill at all."

Having fine-tuned the issue, the trial court took the matter under submission. It exercised its discretion and reduced the fee award from the requested \$88,180 and awarded Citicorp \$69,960. This \$18,220 reduction demonstrates the court weighed the evidence and independently considered the nature of the work performed and computed an attorney fee award based on the uncontested hourly rate. Based on the record, and undisputed *quantity* of work performed, it cannot be said the trial court's ruling was an abuse of discretion.

D. Costs

Ghods also asserts the taxable costs should not be included in the award, citing to *Hsu v. Semiconductor Systems, Inc.* (2005) 126 Cal.App.4th 1330, 1342 (*Hsu*). *Hsu*, however, does not have analogous facts to the case at hand. In *Hsu*, the court did not allow "costs" for two reasons. First, the court found the costs need to be specifically litigated and proven at trial, rather than post-trial. (*Id.* at p. 1341.) Second, the types of costs requested were two categories of expenses "not allowable as costs, except when expressly authorized by law." (Code Civ. Proc., § 1033.5, subd. (b)(1) & (3).) (*Ibid.*) In this case, Ghods's complaint against Citicorp was dismissed at the pleading stage. There are no facts in the record to suggest the costs requested were those limited few not allowed under Civil Code Section 1033.5 as in *Hsu*. Here, we have costs relating to

filings, motions, and service of process fees, all permitted under Civil Code section 1033.5.

E. Attorney Fees on Appeal

“Where a contract or a statute creates a right for the prevailing party to recover attorney fees, the prevailing party is also entitled to attorney fees on appeal. [Citation.]” (*Villinger/Nicholls Development Co. v. Meleyco* (1995) 31 Cal.App.4th 321, 329.) We grant Citicorp’s motion for attorney fees on appeal. “Although we have the power to appraise and fix attorney fees on appeal, we deem it the better practice to remand the cause to the trial court to determine the appropriate amount of such fees. [Citation.]” (*Akins, supra*, 79 Cal.App.4th at p. 1134.)

III

The postjudgment order is affirmed. Citicorp shall recover costs and attorney fees on appeal.

O’LEARY, ACTING P. J.

WE CONCUR:

MOORE, J.

IKOLA, J.