

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

SECOND DIVISION  
MARCH 31, 2011

1-09-1720

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

DANIEL F. LOYA and EDUARDO LOYA,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellants-Cross-Appellees,	)	Cook County.
	)	
v.	)	
	)	No. 07 CH 5862
THE AUSTIN 1900 BUILDING, L.P., as beneficiary under	)	
LaSalle Bank Trust No. 117863-08 and LASALLE BANK	)	
NATIONAL ASSOCIATION Trust No. 117863-08,	)	Honorable
	)	Martin S. Agran,
Defendants-Appellees-Cross-Appellants.	)	Judge Presiding.

---

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.  
Justices Connors and Harris concurred in the judgment.

**ORDER**

*Held:* The plaintiffs filed this lawsuit for specific performance of a real estate installment contract and reached an agreement with the defendants prior to trial, reserving two issues. We affirm the trial court's ruling that the plaintiffs are not entitled to a refund of the interest they paid on the contract, for the period commencing with the date of their alleged tender of performance under the original contract, up to and including the date when the agreement resolving the lawsuit was negotiated. We reverse the trial court's ruling that the plaintiffs are not entitled to supplement their request for attorney fees and costs, and remand the cause with directions.

In March 2007, plaintiffs-appellants-cross-appellees, Daniel F. Loya and Eduardo Loya (the Loyas) initiated a lawsuit in the circuit court of Cook County for specific performance of an

1-09-1720

installment contract which they had entered into in May 2005 to purchase a parcel of land in Chicago, Illinois from the defendants-appellees-cross-appellants, The Austin 1900 Building, L.P. (Austin 1900). The seller owned the property in trust under LaSalle Bank Trust No. 117863-08. On July 21, 2008, prior to trial, the parties entered into an agreement in which they developed a framework to transfer title of the property to the Loyas. The agreement provided that once either the conveyance or the conveyance into escrow was complete, if the issues of attorney fees and retroactive interest had not been resolved through negotiation, these two issues would be submitted to the circuit court, on stipulated facts, for resolution.

On September 16, 2008, the Loyas filed a petition for an award of attorney fees and an award of interest. On January 21, 2009, the trial court awarded the Loyas attorney fees incurred by them through July 21, 2008, and the interest they had paid on the installment contract from January 2007 to July 21, 2008. The court also denied the Loyas' oral request to supplement their attorney fees petition. The court then dismissed the case, but retained jurisdiction in order to enforce the settlement agreement. The court's order stated that there was no just reason to delay an appeal or enforcement of the trial court's ruling.

On February 18, 2009, Austin 1900 filed a post-judgment motion to vacate and modify the trial court's judgment. On June 2, 2009, the trial court vacated the portion of its judgment regarding the interest awarded to the Loyas. The court found that the Loyas prevailed in the case, and denied the motion to vacate and modify the award of attorney fees to the Loyas. The court again denied the Loyas' oral request to supplement their attorney fees petition. The court stated that its decision was final and appealable and there was no just reason to delay an appeal. The Loyas filed their timely

notice of appeal (Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008)) from the June 2, 2009, judgment that vacated their interest award and denied their oral request to supplement their attorney fees petition. Austin 1900 filed a timely cross-appeal (Ill. S. Ct. Rule 303(a)(3) (eff. May 30, 2008)) from the circuit court's award of attorney fees to the Loyas. This court therefore has jurisdiction.

On appeal, the Loyas contend that: (1) the trial court erred in vacating the interest award based upon arguments and facts not included in the stipulated facts before the court; (2) the court's decision to vacate the interest award was contrary to law; and (3) the trial court erred in denying their request to supplement their attorney fee petition. On its cross-appeal, Austin 1900 argues that: (1) the trial court correctly ruled that the Loyas were not entitled to the interest award in order to prevent an inequitable windfall recovery by them, and they had not made a valid tender of performance; (2) the trial court correctly ruled that the Loyas should not be allowed to supplement their attorney fees petition; and (3) the award of fees was improper because the Loyas were not a prevailing party.

For the reasons that follow, we affirm in part, reverse in part, and remand the case to the circuit court with directions.

#### BACKGROUND

A joint stipulation of facts filed by the parties outlines the following series of events. An installment contract was entered into in May 2005 between the Loyas and Austin 1900 for the purchase by the Loyas of a parcel of land in Chicago, Illinois. The land was part of a larger parcel owned by Austin 1900. LaSalle Bank National Association held legal title to the parcel of land as trustee of a land trust under LaSalle Bank Trust No. 117863-08. The contract called for a lump sum payment of \$100,000 by the Loyas at the contract signing and the balance of \$162,500, plus six

1-09-1720

months rent of \$5,300, by paying monthly payments of \$2,217.49 for 10 years. If the Loyas made all payments and performed the covenants of the contract, Austin 1900 would convey title to the property to the Loyas in fee simple. The installment contract allowed the Loyas “the privilege of prepayment at any time without penalty.”

In September 2006, only one and a half years into the contract period, the Loyas gave Austin 1900 telephone notice that they wanted to close on the property. Around September 2006, the Loyas deposited, into their business operating account, an amount sufficient to satisfy the principal balance remaining to purchase the property. The Loyas never sent a check to Austin 1900 nor segregated the deposited funds with which they intended to pay the remaining balance due into a different bank account. In October 2006, the Loyas’ counsel sent a letter to Austin 1900 stating that they had not heard from Austin 1900 and the Loyas were willing and able to pay off the debt and close on the property as soon as possible. There was no response to the letter. In January 2007 the Loyas sent Austin 1900 another letter. That second letter contained a threat of a lawsuit for specific performance and attorney fees.

After receipt of the Loyas’ letters, Austin 1900 contacted Zenith Electronics (Zenith) who held a mortgage interest on the larger parcel of property, including the land purchased by the Loyas. Austin 1900 desired to negotiate a release of the Loyas’ parcel from the larger mortgage and to settle other disputes that Austin 1900 had with Zenith. Austin 1900 continued negotiations with Zenith throughout the course of the litigation of this lawsuit. The parties also included in the stipulated facts filed with this appeal, information that there was an easement agreement being negotiated by Austin 1900 with a third party so that the Loyas would have rights of ingress and egress from the

1-09-1720

property.

In March 2007, the Loyas filed a lawsuit in the circuit court of Cook County against Austin 1900 and the land trustee LaSalle Bank, requesting specific performance of the contract. Prior to the start of trial, on July 21, 2008, the parties negotiated a settlement. The settlement agreement outlined the procedure for conveyance of the property and required the Loyas to deposit the funds for the balance of the purchase price into an escrow account, which they did. The Loyas' monthly principal and interest payment to Austin 1900 under the contract ceased after they deposited the funds into the escrow account. The agreement contained a provision which required that if the issues of attorney fees and retroactive interest had not been resolved through negotiation by the time the conveyance or conveyance into escrow was completed, the parties would submit stipulated facts to the trial court in order to resolve the two issues.

Subsequently, the issues regarding attorney fees and retroactive interest were not resolved and the Loyas filed a petition in the circuit court of Cook County on September 16, 2008, seeking resolution. In the petition, the Loyas requested the amount of \$25,467.86 to cover attorney fees and costs through July 21, 2008. In addition, the Loyas requested the amount of \$22,639.23, which was the interest paid by them on the installment contract from January 2007, the date of their alleged tender of performance under the original agreement to purchase the land, to July 21, 2008, the date of the settlement agreement which provided for transfer of the land to the Loyas.

Austin 1900 filed a response to the Loyas' petition and argued that the issues really distilled to a single question which was: whether the Loyas ever made a legal tender of the purchase price sufficient to trigger Austin 1900's contractual obligation to transfer the property title to the Loyas.

1-09-1720

Austin 1900 argued that because the Loyas deposited and commingled the purchase price funds in their business account and kept sole possession of the money, the Loyas failed to make a true legal tender of the purchase price and were not entitled to relief in the form of a refund of their interest payments during the disputed period.

On January 21, 2009, the trial court entered an order which stated that it found that the Loyas had made “sufficient tender” and awarded them the interest they requested. Further, the trial court granted the Loyas the sums that they had requested for attorney fees and costs. The court, however, denied the Loyas’ oral request to supplement their attorney fee petition. The court then dismissed the case but retained jurisdiction for the sole purpose of enforcing the settlement agreement.

Austin 1900 then filed a motion to modify the trial court’s judgment, and centered its argument on the equitable concerns of what it termed, double-recovery by the Loyas of the interest paid by them between January 2007 and July 2008. During the litigation period until the time of settlement, the Loyas had maintained full possession and control of the purchase funds and kept “whatever interest or other gain” they received on the sum. Austin 1900 argued that the Loyas had virtually all of the incidents of ownership. Austin 1900 surmised that the Loyas operated their business, presumably generating revenue and profits, while using the land with no obligation to pay Austin 1900 for use and occupancy of the premises. Austin 1900 also argued that the Loyas had the right to relet the premises to generate income if they so chose. In sum, Austin 1900's argument pointed out the injustice of allowing the Loyas to enjoy all of the benefits of occupying the land, then later seeking a refund of the interest they had paid to Austin 1900 during that period.

In an order entered on June 2, 2009, the trial court reversed its decision granting return of the

1-09-1720

interest payments to the Loyas and vacated the prior award to them of \$22,639.23. The court went on to state that it was denying Austin 1900's request to vacate the award of attorney fees to the Loyas since as the prevailing party, the Loyas were entitled to attorney fees. However, the court denied the Loyas' oral request to supplement their petition for attorney fees incurred by them after July 21, 2008. The court declared its order to be final and appealable.

On appeal, the Loyas contend that: (1) the trial court erred in vacating the interest award based upon arguments and facts not included in the stipulated facts before the court; (2) the court's decision to vacate the interest award was contrary to law; and (3) the trial court erred in denying their request to supplement their attorney fee petition. On its cross-appeal, Austin 1900 argues that: (1) the trial court correctly ruled that the Loyas were not entitled to the interest award in order to prevent an inequitable windfall recovery, and further, they had not made a valid tender of performance; (2) the trial court correctly ruled that the Loyas should not be allowed to supplement their attorney fees petition; and (3) the award of attorney fees was improper because the Loyas were not a prevailing party.

#### ANALYSIS

The issues in this case as related to all parties and their respective appeals may be summarized as follows, whether the trial court erred by: (1) declining to award interest to the Loyas based on their alleged lack of tender of the purchase price and on the equitable considerations of the situation; (2) awarding attorney fees to the Loyas; and (3) denying the Loyas leave to supplement their attorney fees petition to include expenses incurred after July 21, 2008, the date of the negotiated settlement.

The first issue concerns the award of interest that the Loyas paid on the installment contract. The period of disputed interest dates from January 2007, the date of the alleged tender of the purchase price, to July 21, 2008, the date of the settlement agreement. The Loyas argue that because they deposited the amount of the purchase price into their business account on or around September 2006 and then made a formal request by letter in January 2007 for specific performance, they fulfilled their obligation for tender of the purchase price in January 2007. The parties stipulated that the Loyas never sent a check to Austin 1900 or segregated the purchase price funds into an account other than the Loyas' business account until the time of the settlement agreement in July 2008. During the pendency of the litigation, the amount in the Loyas' business account, in which the purchase price had been deposited, never fell below an amount necessary to satisfy the balance remaining to purchase the property. The Loyas contend that they would not have had to pay the disputed interest if Austin 1900 had complied with its contractual obligation to transfer the property to the Loyas after their demand in January 2007. Therefore, the Loyas conclude that Austin 1900 was not entitled to receive any benefit from its wrongful breach of contract.

The parties stipulated to the facts before the trial court. The Loyas point out that parties are bound by their stipulations unless the stipulations are shown to be unreasonable, fraudulent or violative of public policy. *Sanborn v. Sanborn*, 78 Ill. App. 3d 146, 149, 396 N.E.2d 1192, 1195 (1979). The interpretation of a contract is a question of law that will be determined by a reviewing court independent of the trial court's decision, and in accordance with the general rules of contracts. *Schwinder v. Austin Bank of Chicago*, 348 Ill. App. 3d 461, 469, 809 N.E.2d 180, 189-90 (2004).

In its ruling on January 21, 2009, the trial court decided that the propriety of interest

1-09-1720

payments by the Loyas to Austin 1900 from January 2007 to the time the Loyas deposited the purchase money into a segregated account in July 2008 depended on whether the Loyas gave a valid tender by: (1) sending a letter to Austin 1900 stating they were ready, willing and able to purchase the property; and (2) depositing the money into their business account. The court included in its order that the Loyas had made “sufficient tender.” Before the trial court, Austin 1900 made an equitable argument on its motion to reconsider the ruling. They argued that the Loyas would reap double recovery because they enjoyed the benefits of possession while claiming they would not have to pay interest to Austin 1900.

The Loyas note that the decision by a trial court to grant or deny a motion to reconsider is generally reviewed for abuse of discretion. *Farley Metals, Inc. v. Barber Colman Co.*, 269 Ill. App. 3d 104, 116, 645 N.E.2d 964, 971 (1994). However, where, as here, the movant asks the court to reexamine its previous application or purported mis-application of existing law, then the trial court’s decision is reviewed *de novo*. *People v. \$280,020 U.S. Currency*, 372 Ill. App. 3d 785, 791, 866 N.E.2d 1232, 1238-39 (2007); *Swiatek v. Azran*, 359 Ill. App. 3d 500, 503, 834 N.E.2d 602, 604 (2005).

The Loyas claim that the trial court was correct in its January 2009 ruling. They argue that the court’s ruling was based upon the theory that the Loyas had made legal tender of their offer and thus no longer had an obligation to pay interest. They note that in cases of specific performance, it is sufficient that a plaintiff is ready to buy and offers to pay the sum due under the contract. See *Macy v. Brown*, 326 Ill. 556, 564, 158 N.E. 216, 219 (1927) (where the supreme court held that when two parties are required to act at the same time under a contract, a tender means an offer

1-09-1720

accompanied by the ability to do the act required of the person making the tender, provided that the other party does what he is required to do). The Loyas deposited the balance of the purchase price into their business account and have pointed out that the balance in that account never fell below the amount needed to purchase the property.

The Loyas argue that Austin 1900 raised the equitable argument for the first time in its motion to vacate the trial court's initial award of interest to the Loyas. Further, the arguments used in support of Austin 1900's motion contained facts outside of the stipulations which the parties had agreed upon and submitted to the court. The Loyas urge that there was only a single issue presented to the trial court by the parties. That issue was whether there was a tender of performance by them under the installment contract. The Loyas highlight their point by the statement in Austin 1900's response to the Loyas' petition for interest. Austin 1900 stated that the issues of interest and attorney fees distilled to a single question of whether there was a triggering event which required Austin 1900 to transfer title to the Loyas. Austin 1900 also speculated about what the Loyas earned on the interest and on the money in their business account, and what uses they might or could have made of the property in order to make a profit. This speculation of the benefits the Loyas might have received while they were in possession of the property was beyond the stipulated facts submitted to the trial court and is disputed by the Loyas on appeal.

The Loyas also contend that the trial court erred in reversing its decision on the award of interest because Austin 1900's motion to vacate the initial award was not based upon: (1) newly discovered evidence not available at the first hearing; (2) changes in the law; and (3) an error in the court's application of existing law. *Gardner v. Navistar International Transportation Corp.*, 213

Ill. App. 3d 242, 248, 571 N.E.2d 1107, 1111 (1991). A litigant should not be allowed to stand mute, lose a motion, and then gather new information to present to the trial court to show that it erred in its ruling. *Id.* at 248, 571 N.E.2d at 1111. There is no report of proceedings contained in the record on appeal. Thus we do not know the basis of the trial court's reversal of its decision. We note that the equitable theory advanced by Austin 1900 was not made initially and was only introduced by Austin 1900 in its motion for reconsideration. Thus it is not unreasonable to infer that the trial court considered this theory in its reversal. The trial court was within its discretion to consider the equities. We also assume that the Loyas had an opportunity to respond to Austin 1900's equitable argument during the trial court's reconsideration. The question of tender of the balance of a purchase price when a vendee is in possession of the premises is inextricably linked to the question of equities between the parties.

In the case of *Dato v. Mascarello*, 197 Ill. App. 3d 847, 557 N.E.2d 181 (1989), the court was faced with a situation where the purchaser under a sales contract had paid the initial earnest money and had taken possession of the property pursuant to the terms of the contract. The seller was to hold a purchase money mortgage from the buyers to secure a portion of the purchase price. The closing was delayed because of disputes between the parties and a lawsuit was filed by the purchasers for specific performance. The parties subsequently worked out an agreement to close the sale of the property on a date that was seven months after the date of the original contract. The parties found themselves in court again settling issues related to the delay in closing among other things. As part of its ruling, the appellate court agreed with the trial court that the plaintiffs should pay the defendants the amount of interest due under the terms of the purchase money mortgage for the seven

1-09-1720

months that the plaintiffs were in possession of the property but had not yet closed. *Id.* at 854-55, 557 N.E.2d at 186.

The court in *Dato* relied upon another case, *Hanson v. Duffy*, 106 Ill. App. 3d 727, 435 N.E.2d 1373 (1982), which involved a forcible entry and detainer action after a tenant's holdover of the premises. In that case, the tenant claimed that he properly exercised an option to purchase the property but was wrongfully prevented from completing the transaction and thus brought a lawsuit for specific performance against the owner of the property. The appellate court held that the purchaser never went beyond mere representation that he had sufficient funds to close. The court noted the equitable rule that "under an executory sales contract the vendor is entitled to interest at the legal rate on the unpaid purchase balance from the vendee in possession, even though the vendor had failed to deliver the deed as required, *unless the vendee has placed the purchase money beyond his own use, or meanwhile incurred liability for payment of interest to a prospective mortgagee.*" *Hanson*, 106 Ill. App. 3d at 732, 435 N.E.2d at 1378 (emphasis added). The court relied on the long recognized equitable proposition that a vendee should not enjoy beneficial use of both the premises and the purchase money without compensating the vendor for either. *Id.* at 732, 435 N.E.2d at 1378.

In the case of *In re Estate of Krotzsch*, 48 Ill. App. 3d 178, 362 N.E.2d 805 (1977), the court addressed the issue of what constituted a valid tender as a defense to a claim for interest by the non-performing party. In that case, the buyers sent a letter to the seller stating that they had the money available to pay off the balance of the sales contract. However, the record failed to disclose whether the buyers deposited the balance with the court or in any way segregated the funds so that the buyers were deprived of the money's use. The court in *Krotzsch* weighed the equities, saying that a buyer

1-09-1720

should not be permitted to have both use of the land and the purchase money. Referring to the classic case of *Atchison, Topeka & Santa Fe R.R. Co. v. Chicago & Western Indiana R.R. Co.*, 162 Ill. 632, 44 N.E. 823 (1896), the court reasoned that if a vendee retains possession of a property because the vendor does not have marketable title, it would be grossly inequitable to allow the vendee to hold both the land and the purchase money. *Krotzsch*, 48 Ill. App. 3d at 182, 362 N.E.2d at 808.

In cases where the issue is tender of a purchase price by a vendee in possession, the courts balance the equities between the parties. *Id.* at 182, 362 N.E.2d at 808. The Loyas, by only depositing the amount of the remaining purchase price into an account commingled with their business funds, did not relinquish their control over, nor did they divest themselves of the benefit of the money. Notwithstanding the lack of affidavits or evidence regarding actual benefits that the Loyas may have reaped by possessing the property and the money, we believe that it is enough that they were in possession of the property under the terms of the contract during the period in question. Accordingly, we hold that the trial court's decision to refuse to order a refund to the Loyas of the amount of interest paid to Austin 1900 for the period from January 2007 to the date of the agreement in July 2008 was not unreasonable.

We next address the issue of whether the trial court correctly awarded the Loyas attorney fees. The installment contract between the parties stated:

*“Attorneys’ Fees:* In the event that either party should find it necessary to retain an attorney for the enforcement of any of the provisions hereunder occasioned by the fault of the other party, the

party not in default shall be entitled to recovery for reasonable attorneys' fees and court costs incurred whether said attorneys' fees are incurred for the purpose of negotiation, trial, appellate, or other legal services. Buyers agree that attorneys' fees, court costs, and accrued real estate taxes are recoverable by sellers even though the property may be forfeited, the balance accelerated, or the property foreclosed on under the provision hereof."

The contract does not use the term "prevailing party," but uses the term "party not in default" when describing which party is entitled to attorney fees. The parties entered into a settlement agreement on July 21, 2008, prior to the trial date. Two issues were reserved for later resolution. The parties agreed as follows: "Retroactive interest/Attorney Fees: Once the Conveyance or conveyance into escrow are complete, these items (if not resolved through negotiation) will be submitted to the court on stipulated facts." The two issues were not resolved prior to the escrow being established, and thus the Loyas presented them before the trial court for resolution.

The Loyas argued to the trial court that they were entitled to an award of attorney fees and costs because they had to retain counsel to pursue the purchase of the property by filing a lawsuit for specific performance because of Austin 1900's default. On January 21, 2009, the trial court granted the Loyas the sum of \$25,477.86 for attorney fees incurred by them through July 21, 2008, the date of the settlement agreement. The trial court subsequently affirmed that ruling on June 2, 2009, as part of its ruling on Austin's 1900 post-judgment motion. The court added a specific finding in its order that "plaintiffs prevailed on the case and are the prevailing party for the purpose of awarding

attorney fees.” Austin 1900 argues on appeal that the trial court’s ruling was incorrect. Austin 1900 claims that the Loyas did not prevail on any substantive issue in the case, and thus, cannot be deemed the prevailing party.

If a contract authorizes one party is to be entitled to attorney fees, it is error for the trial court to withhold them. *Myers v. Popp Enterprises, Inc.*, 216 Ill. App. 3d 830, 838, 576 N.E.2d 452, 457 (1991). We are required to strictly construe a contractual provision regarding attorney fees. *Bjork v. Draper*, 381 Ill. App. 3d 528, 544, 886 N.E.2d 563, 576 (2008). In this case, we are not being asked to review the reasonableness of the award of attorney fees. We are instead reviewing whether the trial court granted attorney fees and costs properly under the terms of the installment contract. Our standard of review is *de novo* and we interpret the contract independently of the trial court’s interpretation. *Erlenbush v. Largent*, 353 Ill. App. 3d 949, 952, 819 N.E.2d 1186, 1189 (2004).

Austin 1900 argues that after the parties settled their dispute, the Loyas had only one issue remaining on which they could seek judicial relief, and that was, the award of interest paid to Austin 1900 during the 19-month period before the July 2008 settlement agreement. Austin 1900 claims that the trial court was required to declare it in default in order for the Loyas to be considered the prevailing party. Austin 1900 cites *Chapman v. Engel*, 372 Ill. App. 3d 84, 865 N.E.2d 330 (2007) in support of its argument. In that case, a determination of fault was a necessary condition for a fee-shifting provision in the contract, and the trial court specifically found that neither side had breached the contract. Therefore, since the triggering event never happened, the appellate court held that the shifting provision in the contract did not apply to the case. *Id.* at 88-89, 865 N.E.2d at 334.

Here, in contrast, Austin 1900 was clearly in default as outlined in the contract because it did

1-09-1720

not convey title when the Loyas made a written demand as allowed by the contract. A review of the record reveals that the Loyas were put in a position of having to retain counsel to enforce their rights under the contract against Austin 1900.

In their initial petition, the Loyas requested attorney fees and costs through July 21, 2008, the date of the negotiated settlement agreement. After the motion for reconsideration was filed, the Loyas then orally requested to supplement the attorney fees petition through June 2, 2009. On appeal, the Loyas request that the case be remanded to the trial court for a hearing on the additional attorney fees, including the cost of the present appeal. See *Erlenbush*, 353 Ill. App. 3d at 953, 819 N.E.2d at 1190 (2004) (where the appellate court granted the successful party in a breach of contract lawsuit attorney fees incurred while prosecuting the appeal, since an appeal is the continuation of the same action). The Loyas also cite *McNiff v. Mazda Motor of America, Inc.*, 384 Ill. App. 3d 401, 892 N.E.2d 598 (2008) which concerned the award of attorney fees to a successful claimant in a warranty action. In that case, the appellate court held that it was error not to award additional attorney fees to the plaintiff for time the attorneys spent on the motion for reconsideration filed by the defendant. *Id.* at 408, 892 N.E.2d at 605.

Austin 1900 argues that the Loyas were not the “prevailing party” in the lawsuit and not entitled to fees because they were not successful on a significant issue and did not achieve some benefit in bringing the lawsuit. *Grossinger Motorcorp, Inc. v. American National Bank & Trust Co.*, 240 Ill. App. 3d 737, 753, 607 N.E.2d 1337, 1348 (1992). Austin 1900 further argues that even if this court were to agree that the Loyas are entitled to attorney fees initially requested, their request to supplement the petition should be denied because the additional fees are mostly related to the

1-09-1720

issue of return of the interest awarded by the trial court. Austin 1900 also theorizes that if this court were to abide by a strict interpretation of the terms of the contract and award attorney fees to the Loyas because they retained counsel to enforce their contractual rights, then Austin 1900 would likewise be entitled to fees for having to enforce its rights with respect to the award of interest to the Loyas.

We are not persuaded by the arguments advanced by Austin 1900 on this point. We hold that a strict reading of the contract calls for an award of attorney fees to the Loyas, not because they were a “prevailing party,” a term absent from the contract, but because they had to retain counsel to enforce contractual rights under the agreement. Further, the Loyas are clearly the non-defaulting party.

We hold that the portion of the trial court’s order denying the Loyas request to supplement their attorney fees petition must be reversed. This cause is remanded to the trial court for review of the supplemental attorney fees and costs petition, which, as the contract states, were “incurred for the purpose of negotiation, trial, appellate, or other legal services.”

Accordingly, the ruling of the trial court is affirmed as to the judgment regarding the denial of a refund of interest to the Loyas. The trial court’s ruling as to the attorney fees awarded to the Loyas is affirmed, and the case is remanded to the trial court with instructions that the Loyas be allowed to supplement their petition for attorney fees and costs as outlined in the contract.

Affirmed in part and reversed in part; cause remanded with directions.