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FIFTH DIVISION  
April 29, 2016

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|--|---|-------------------|
| BECKETT MEDIA, LLC, a Limited Liability Company,       | ) | Appeal from the   |
|  | ) | Circuit Court of  |
|  | ) | Cook County.      |
| Plaintiff-Appellee,                                    | ) |                   |
|  | ) |                   |
| v.   | ) | No. 10 L 11219    |
|  | ) |                   |
| ONRAMP TECHNOLOGIES, LLC, a Limited Liability Company, | ) | The Honorable     |
|  | ) | Thomas R. Mulroy, |
| Defendant-Appellant.                                   | ) | Judge Presiding.  |

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Reyes and Justice Burke concurred in the judgment.

**ORDER**

¶ 1 *HELD:* The trial court failed to apply the proper test to determine whether there was a prevailing party in the underlying case where it relied on the jury's verdict rather than considering the significance of the issues presented in the case.

¶ 2 Defendant, OnRamp Technologies, LLC, (OnRamp) appeals the trial court's order denying its request to be declared the prevailing party in the underlying case brought by plaintiff, Beckett Media, LLC (Beckett). In the underlying case, plaintiff alleged defendant violated the

terms of the parties' agreement, raising actions for breach of contract, uniform deceptive trade practices, consumer fraud, unjust enrichment, and replevin. Defendant filed a counterclaim for breach of contract. Plaintiff's consumer fraud and unjust enrichment actions ultimately were voluntarily dismissed. The breach of contract claim and counterclaim were tried by a jury, which found in favor of defendant on plaintiff's claim and in favor of plaintiff on defendant's counterclaim. With regard to the remaining claims, the trial court entered an order denying plaintiff's claim for unjust enrichment, denying plaintiff's request for replevin damages, and denying defendant's request for a declaration that it was the prevailing party for purposes of attorney fees under the parties' agreement. On appeal, defendant contends the trial court erred in denying its request to be named the prevailing party where the decision was based on whether defendant succeeded in obtaining a favorable verdict on all of the issues presented, *i.e.*, its counterclaim, rather than being successful on the significant issue and obtaining some benefit. On cross-appeal, plaintiff contends the trial court erred in failing to declare it the prevailing party. Based on the following, we reverse and remand for further proceedings.

¶ 3

### FACTS

¶ 4 On June 18, 2009, the parties entered into a client services agreement whereby defendant granted plaintiff a license to use defendant's applications and website for inventory management and sales solutions. Pursuant to section 10.3 of the contract, the parties agreed that "[i]n the event of any litigation of any controversy or dispute arising out of or related to this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs."

¶ 5 On October 1, 2010, plaintiff filed a complaint, alleging breach of contract, violation of the Uniform Deceptive Trade Practices Act (815 ILCS 510 /1 *et seq.* (West 2008)), violation of the Consumer Fraud and Deceptive Businesses Practices Act (815 ILCS 505 /1 *et seq.* (West

2008)), and unjust enrichment. Later, in response to plaintiff's second-amended complaint, defendant filed a motion for summary judgment, which was denied. Thereafter, however, the parties entered into a stipulation to voluntarily dismiss the uniform deceptive trade practices claim and the consumer fraud claim with prejudice. Plaintiff then filed a third-amended complaint, alleging breach of contract, unjust enrichment, and replevin. In the replevin action, plaintiff sought the return of its server from defendant and requested money damages incurred as a result of defendant's refusal to return said server. Defendant responded with an answer and a counterclaim, alleging it performed all of the conditions, covenants, and promises under the parties' agreement and that plaintiff breached the agreement by failing to make a final payment.

¶ 6 A four-day jury trial was held on plaintiff's breach of contract claim and defendant's breach of contract counterclaim. The jury ultimately found in favor of defendant and against plaintiff on plaintiff's claim requesting \$290,000 for defendant's breach of the parties' agreement. The jury additionally found in favor of plaintiff and against defendant on defendant's counterclaim requesting \$10,000 as final payment under the parties' agreement.

¶ 7 The trial court then requested briefs regarding the outstanding claims of unjust enrichment and replevin. In its brief, plaintiff sought \$45,079.50 in its replevin claim for damages resulting from fees it paid to defendant for "storage" of its server, as well as the return of its server. With regard to its unjust enrichment claim, plaintiff sought \$20,000 for payments made to defendant for services not rendered. In addition, plaintiff argued, with respect to attorney fees, that it was too soon to declare a prevailing party. Defendant responded that plaintiff failed to establish its replevin and unjust enrichment claims, and argued that it was the prevailing party.

¶ 8 On December 18, 2014, the trial court heard arguments on the claims, during which defendant objected to the return of plaintiff's server. Defendant argued that, according to the terms of the parties' agreement, plaintiff was responsible for purchasing the server and providing it to defendant to maintain and store its contents. In contrast, plaintiff argued that defendant wrongfully detained the server. As the arguments progressed, defendant denied wrongfully detaining the server, but agreed to return it to plaintiff. The trial court then denied plaintiff's replevin claim and ordered that the parties split any storage fees required to maintain the server up until that point. The court additionally denied plaintiff's unjust enrichment claim. With regard to the entitlement of attorney fees, defendant argued that it was the prevailing party because it successfully defended against the "primary issue in this case," namely, "Beckett's claim for \$290,000 for breach of contract." Defendant additionally argued that it provided a complete defense for plaintiff's claims of unjust enrichment, consumer fraud, deceptive trade practices, and replevin. The trial court noted that defendant failed to succeed in its counterclaim. In response, defendant argued that its counterclaim was *de minimus*, in that it was for the \$10,000 final payment under the contract only. Plaintiff countered by arguing that there was no prevailing party because both sides presented evidence on their breach of contract claims and both sides lost. Ultimately, the trial court stated "I am not going to find that you're entitled to attorney's fees under the contract," reasoning that "I don't think you look at the damages claimed. I think you look at the verdict."

¶ 9 On December 22, 2014, the trial court entered a written judgment memorializing its verbal rulings. Specifically, the court's order denied plaintiff's claim for unjust enrichment, denied plaintiff's replevin claim, and directed defendant to "voluntarily deliver [plaintiff's]

server" to plaintiff on or before January 9, 2015. The trial court's order additionally denied defendant's request to be declared the prevailing party.

¶ 10 Defendant filed a notice of appeal, appealing that part of the trial court's December 22, 2014, order denying its request to be declared the prevailing party. Plaintiff then filed a cross-appeal, appealing that portion of the trial court's December 22, 2014, order denying its claim for replevin damages and failing to declare it the prevailing party. Plaintiff has since filed a motion to dismiss its cross-appeal with respect to the replevin damages only.

¶ 11 ANALYSIS

¶ 12 Defendant contends the trial court erred in denying its request to be named the prevailing party where it achieved complete success in defending against all of plaintiff's claims.

¶ 13 I. Standard of Review

¶ 14 As an initial matter, we must resolve the parties' dispute regarding the appropriate standard of review. Defendant argues the issue on appeal is whether the trial court erred in misapplying the law, which is a question of law we review *de novo*. More specifically, defendant maintains that the question before us is whether the "verdict test," as applied by the trial court to deny its request to be declared the prevailing party, was proper or whether the "significant issue test" should have been applied. Plaintiff, in contrast, argues that the issue on appeal is whether there was a prevailing party at all, which is a determination within the trial court's discretion.

¶ 15 Generally, a trial court has broad discretion to award attorney fees and its decision will not be disturbed on appeal absent an abuse of that discretion. *In re Estate of Callahan*, 144 Ill. 2d 32, 43-44 (1991); *Peleton, Inc. v. McGivern's, Inc.*, 375 Ill. App. 3d 222, 225 (2007). "The rationale for this standard is that a party challenging a trial court's decision regarding attorney

fees is actually challenging the trial court's discretion in determining what is reasonable.' " *Peleton, Inc.*, 375 Ill. App. 3d at 225 (quoting *Guerrant v. Roth*, 334 Ill. App. 3d 259, 262 (2002)).

¶ 16 In this case, however, defendant does not challenge the reasonableness of the trial court's decision to effectively deny attorney fees by refusing to declare it the prevailing party; rather, defendant challenges whether the trial court properly applied the law in denying defendant's request. Where the facts are uncontroverted, as in this case, and "the issue is the circuit court's application of the law, a question of law is presented, and we review *de novo*." *Mirar Development, Inc. v. Kroner*, 308 Ill. App. 3d 483, 485 (1999). We, therefore, conclude that the appropriate standard for our review is *de novo*. Under the *de novo* standard, this court gives little or no deference to the trial court's ruling. *Jayko v. Fraczek*, 2012 IL App (1st) 103665, ¶ 3.

¶ 17 II. Prevailing Party

¶ 18 Defendant contends that the trial court erred in refusing to declare it the prevailing party where, based on the value, complexity, and time required to litigate the issues at trial, defendant prevailed on the significant issue presented to the jury, namely, plaintiff's breach of contract claim. Defendant maintains that the trial court applied the incorrect test to determine whether there was a prevailing party where it announced a "verdict test" instead of applying the well-established "significant issue test."

¶ 19 The general rule of law is that an unsuccessful party to a lawsuit is not responsible for the payment of the other party's attorney fees. *Powers v. Rockford Stop-N-Go, Inc.*, 326 Ill. App. 3d 511, 515 (2001); *Mirar Development, Inc.*, 308 Ill. App. 3d at 488. The parties, however, may alter this rule by including a provision in their contract awarding attorney fees. *Id.* Such

contractual provisions must be strictly construed and enforced at the discretion of the trial court. *Mirar Development, Inc.*, 308 Ill. App. 3d at 488.

¶ 20 In this case, the parties' agreement included a provision for the awarding of attorney fees. Specifically, section 10.3 of the agreement provided that "[i]n the event of any litigation of any controversy or dispute arising out of or related to this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs."

¶ 21 This court has held that "[a] party can be considered a 'prevailing party' for purposes of awarding fees when he is successful on *any significant issue* in the action and achieves some benefit in bringing suit [citation], receives a judgment in his favor [citation] or by obtaining an affirmative recovery. [Citation.]" (Emphasis added.) *Grossinger Motorcorp., Inc. v. American National Bank & Trust Co.*, 240 Ill. App. 3d 737, 753 (1992). A party need not succeed on all of the claims in order to be considered the prevailing party. *Powers*, 326 Ill. App. 3d at 515. In fact, "a successful litigant is still considered the prevailing party under a fee-shifting provision even if the judgment amount is below the amount claimed." *Id.* "However, when the dispute involves multiple claims and both parties have won and lost on different claims, it may be inappropriate to find that either party is the prevailing party and an award of attorney fees to either is inappropriate." *Id.*

¶ 22 Defendant argues the trial court erred in applying a "verdict test" in denying its request to be named the prevailing party in the litigation. The record reveals the following:

"THE COURT: Then lastly attorneys' fees.

MR. SPATZ [Defendant's counsel]: Your Honor, I think there is no question that

OnRamp-

THE COURT: Who won?

MR. SPATZ: OnRamp won—

THE COURT: How do you figure that?

MR. SPATZ: --by any measure. The case law says that to be declared the—that only one party first is declared a prevailing party –

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MR. SPATZ: The primary issue in this case was Beckett's claim for \$290,000 for breach of contract. That's what this case was, was a breach of contract claim [for] \$290,000. They also then filed claims for unjust enrichment, consumer fraud, deceptive business practices and replevin. They have—they haven't won on any of those claims. We have a complete defense verdict for all of those claims.

You know, simply put—

THE COURT: And you had a counterclaim?

MR. SPATZ: We had a counterclaim which was for \$10,000 which was just the final payment under the contract. In the scope of what was happening in this case that is a de minimus claim that shouldn't change the analysis under the law.

THE COURT: The attorneys' fees are provided for in the contract?

MR. SPATZ: Yes, your Honor.

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THE COURT: And how is that that—How can you [plaintiff] argue that they are not the prevailing party?

MR. HESSER [Plaintiff's counsel]: Because relating to this agreement is the breach of contract claim that both parties brought. The case law that we cited suggests



and confirms actually—[t]he amount is not at issue. Whether they had \$10,000 or we had a million dollars that's not what the analysis is. It's what was significant.

We presented two days worth of evidence, they presented two days worth of evidence. If they didn't have a counterclaim I would agree, but they did have a counterclaim and their counterclaim was for breach of contract.

THE COURT: Wait, wait, wait, wait. You agree what?

MR. HESSER: That they might have been the prevailing party if they didn't have a counterclaim, but they pursued a counterclaim. They both—[b]oth sides presented evidence for two separate days to the jury on a breach of contract claim. Both sides were arguing that there was a breach of contract. Both sides lost. Both sides prevailed on the other party's counterclaim on the same breach of contract. So there is no prevailing party.

MR. SPATZ: In the counterclaim the jury's verdict is ambiguous on that as to whether there was—because there wasn't significant time spent on this issue at trial \*\*\*

THE COURT: Which issue?

MR. SPATZ: The issue of the \$10,000. There was ambiguous testimony at trial as to whether that extra \$10,000 was a final payment under the contract which we viewed it as versus-

THE COURT: Maybe, but you lost.

MR. SPATZ: versus payment towards—

THE COURT: But you lost.

MR. SPATZ: Yeah, I understand. But I am saying that it is a de minimus—what was—it's not a –

THE COURT: I don't think you look at the damages claimed. I think you look at the verdict.

Anyway, I am going to find that you're not entitled to your attorneys' fees under the contract. I appreciate your arguments.

MR. SPATZ: Your Honor, I will just say under Powers, the case that they cite, the judge does—the Court does say you consider the value of the claim, the complexity and the time devoted that to trial and in balancing the—and the other Court said you can be—said that if you had an excellent result you should be declared the prevailing party. I think there is no question here—

THE COURT: I have ruled already."

¶ 23 The record reveals that the trial court did not conduct an analysis of the most significant issue presented in this litigation prior to ruling that defendant was not the prevailing party. Instead, the trial court found that the determining factor for deeming a party the prevailing party was "the verdict." Our courts, however, have stated that a party may be considered the prevailing party without having succeeded on all of the claims. *Powers*, 326 Ill. App. 3d at 515. In other words, a party may be the prevailing party even where it has not received a winning verdict on all of the claims. We recognize there are circumstances in which neither party may be considered the prevailing party where the dispute involves multiple claims and both parties have won and lost on different claims. See *id.* That said, where there are multiple claims, as was the case here, this court has repeatedly analyzed the significance of the issues in the case in order to ascertain whether either party prevailed. See, e.g., *Timan v. Ourada*, 2012 Il App (2d) 100834, ¶ 30; *Peleton, Inc.*, 375 Ill. App. 3d at 228; *Powers*, 326 Ill. App. 3d at 517-18. In *Powers*, this court instructed that an issue may be deemed significant based on the value of the remaining

claims, their complexity, and the time devoted to the other issues at trial. *Powers*, 326 Ill. App. 3d at 517-18. The record is clear that the trial court did not conduct an analysis of the significance of the claims at issue in this case. We, therefore, must reverse and remand this cause for further review. We make no judgment as to whether defendant, plaintiff, or neither should be deemed the prevailing party. Moreover, when the proper test is applied by the trial court, the trial court's decision is within its discretion. See *Callahan*, 144 Ill. 2d at 43-44.

¶ 24 Based on the foregoing, we need not address the remaining contentions presented on appeal.

¶ 25 **CONCLUSION**

¶ 26 We reverse that part of the trial court's December 22, 2014, order denying defendant's request to be named the prevailing party for purposes of attorney fees. We remand this cause to the trial court to apply the proper "significant issue test" to determine whether defendant, plaintiff, or neither is the prevailing party.

¶ 27 Reversed; remanded with instructions.