NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

EXPERIENCE HENDRIX, LLC,

Plaintiff and Appellant,

v.

THE LAST EXPERIENCE, INC. et al.,

Defendants and Respondents.

B268414

(Los Angeles County Super. Ct. No. BC460695)

APPEAL from a judgment and an order of the Superior Court of Los Angeles County. Mark V. Mooney, Judge. Affirmed.

LeClairRyan, Robert G. Harrison and Christiane Kinney, and McPherson Rane, Edwin F. McPherson for Plaintiff and Appellant.

Blakely Law Group, Brent H. Blakely and Craig A. Huber for Defendants and Respondents.

* * * * * *

This appeal arises out of a contract dispute over whether a film documenting Jimi Hendrix's February 1969 performances at the Royal Albert Hall in London, England will ever see the light of day. For almost a half-century, the two parties (or their predecessors) who own the rights to this film and its accompanying soundtrack have been lost in a purple haze of false starts and litigation. In 2010, however, the parties signed a contract to jointly produce the film for theatrical release, and one party negotiated a deal with a movie studio for a limited theatrical release of the film. Alas, the other party wanted to hold out for a wider release and the deal fell apart. The parties ended up suing each other over the 2010 contract. The trial court rejected one party's bid to rescind the contract and collect $4.1 million in restitution, concluding that there was no failure of consideration; the court went on to award over $300,000 in attorney's fees to the prevailing party. The losing party appeals, arguing that the trial court misread the contract, made unsupported factual findings, and was wrong to award attorney's fees. We conclude there was no error, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

A. The Royal Albert Hall Concerts

Jimi Hendrix (Hendrix) is one of the best guitarists, if not *the* best, in the history of rock music. A year and a half before his untimely death, and six months before his iconic performance of "The Star-Spangled Banner" at Woodstock, Hendrix and his band—the eponymous Jimi Hendrix Experience—put on two concerts at the Royal Albert Hall in London, England on February 18 and 24, 1969, at the tail end of their European tour (the Royal Albert Hall concerts).

B. The Original 1968 Documentary Contract

Prior to the European tour, Hendrix's manager signed a contract with Steve Gold (Gold) and defendant Gerald Goldstein (Goldstein) granting Gold and Goldstein the right to film the tour and use the footage for a concert film (the film), with the revenues to be split evenly between the two camps.

C. The 2010 Agreement to Produce the Documentary

Forty-two years later, in March 2010, the successors to that 1968 contract revived their commitment to making the film by signing a contract to "jointly produce a feature length film intended for theatrical release" "based primarily on the concert footage embodying the" Royal Albert Hall concerts (the 2010 Agreement). Plaintiff Experience Hendrix, LLC (plaintiff) signed as the successor to Hendrix; Goldstein and defendant The Last Experience, Inc. (Last Experience), a corporation formed solely to hold Goldstein's film rights, signed as the successors to Goldstein, Gold, and Hendrix's manager. By this time, the parties had already made several attempts to cooperate in producing the film that had gone nowhere or ended in litigation. Although they "hated each other's guts," the 2010 Agreement was a further effort to move forward in finishing and releasing the film.

In the 2010 Agreement, Goldstein and Last Experience (collectively, defendants) warranted that the video and audio footage from the Royal Albert Hall concerts was their "sole and exclusive property"; acknowledged that Gold's ex-wife had filed a copyright registration on that footage in 1997, but warranted that her registration "was improperly obtained" and that "as between [defendants] and [Gold's ex-wife], [defendants] own the copyright"; and promised to "promptly . . . take all necessary steps to have the Registration amended"; plaintiff simultaneously agreed to "take all reasonable steps necessary to assist [defendants] in connection with any challenge to [defendants'] claim of copyright ownership . . . including, but without limitation, reasonably assisting [defendants] in challenging the impropriety of the Registration."

Plaintiff and defendants further agreed to "jointly agree on all" "creative decisions" and, critically, to "jointly approve all decisions relating to the entering into of agreements concerning the exploitation of the [film], including any distribution agreement." With respect to these "approval[s]," the 2010 Agreement specifically provided that "[n]either party shall withhold its approval in any instance in which such approval is required hereunder for the purpose of altering the material terms of this Agreement or enriching itself under the terms of any side agreement."

The parties agreed to split the film's profits 50/50, with one proviso: Profit sharing would not occur until plaintiff first recouped the $4.1 million it incurred on behalf of itself and defendants in United Kingdom-based litigation to stop the *London Times* newspaper from distributing a bootlegged copy of the audio from the Royal Albert Hall concerts. Plaintiff and defendants ended up prevailing on the merits of their copyright infringement suit, but nevertheless incurred $3 million in attorney's fees and owed the *London Times* $1.1 million in costs and expenses because the ultimate amount of the verdict was less than the newspaper had offered for settlement.

The 2010 Agreement also provided that "the losing party shall be responsible for the prevailing party's reasonable legal fees" "[i]n the event either party commences litigation against the other party to enforce the" agreement's "provisions."

D. Negotiations With Sony Music Entertainment and Sony Pictures Entertainment

Two weeks before signing the 2010 Agreement, plaintiff and Last Experience had signed a contract with Sony Music Entertainment (Sony Music Agreement). In that agreement, Sony Music promised to "distribute the audio-visual recordings that constitute a first class theatrical motion picture comprised substantially" of the Royal Albert Hall concerts. Plaintiff and Last Experience were to deliver the "completed" film by June 30, 2010. Once they did, Sony Music was to pay $2 million and advance $500,000 for "prints and advertising" (that is, for making the celluloid copies of the film for cinemas to screen and for advertising), and was to receive a 25 percent distribution fee and split the profits 50/50 after recouping its prints and advertising advance. The Sony Music Agreement gave plaintiff or Last Experience 120 days to terminate the agreement. Although the Sony Music Agreement was a distribution agreement for both the anticipated soundtrack and film, the parties contemplated "supersed[ing]" the short-form agreement with a longer-form contract also involving one of Sony Music's film distribution affiliates.

Toward that end, plaintiff and defendants met with Sony Pictures Classics (Sony Classics) and Sony Pictures Entertainment (Sony Pictures). Sony Classics had no interest, but plaintiff started to negotiate a film distribution deal with Sony Pictures. Although plaintiff viewed the first Sony Pictures offer as a "piece of crap," plaintiff viewed its second, "final" offer as a "very, very good deal." In this second offer, Sony Pictures agreed to distribute the film for a 17.5 percent fee and to spend a minimum of $750,000 in prints and advertising and, if the first 24 days of the film's box office receipts so warranted, at least

$250,000 more. The offer's $750,000 prints and advertising budget is consistent with a limited "platform release" of the film in five to twenty movie screens spread among five to ten different cities.

Plaintiff was ready to sign this deal. Goldstein was not. For years, Goldstein had openly expressed his vision—to plaintiff and others—that the film have a "wide release" in at least 1,500 theaters, with a prints and advertising budget of $20 million to $50 million. Although plaintiff believed that Goldstein would accept no deal unless it met his vision, Goldstein never so stated in writing, never told Sony Pictures he had an absolute minimum, and viewed his vision as more of an "objective" or a "goal" than a requirement. Goldstein met with Sony Pictures in February 2011, to express his vision. Goldstein walked out of the meeting thinking Sony Pictures would go along with a corresponding wider release if Goldstein raised more prints and advertising money from third parties; Sony Pictures took Goldstein's pitch as a rejection of its limited platform release offer.

A few weeks later, plaintiff informed Sony Music it did not wish to extend its right to terminate the Sony Music Agreement for another 120 days, as it and defendants had been doing while the Sony Pictures negotiations were underway. Not wanting to be stuck with the less favorable film distribution terms contained in the Sony Music Agreement, Goldstein thereafter terminated the Sony Music Agreement.

On March 22, 2011, plaintiff sent defendants a letter rescinding the 2010 Agreement.

II. Procedural Background

In May 2011, plaintiff sued defendants for (1) restitution following rescission, and (2) declaratory relief.[1] As to both claims, plaintiff alleged that the 2010 Agreement was subject to rescission because (1) Goldstein committed fraud by not disclosing that he would accept nothing less than a deal for a very wide film release, and (2) Goldstein acted unreasonably in rejecting the Sony Pictures offer. For relief, plaintiff sought $4.1 million in restitution as well as a declaration that it was the sole owner of the rights to exploit the Royal Albert Hall concerts footage.

Defendants filed a cross-complaint for (1) breach of contract, (2) breach of the implied covenant of good faith and fair dealing, and (3) intentional misrepresentation. All three claims turned on the same basic allegation that plaintiff had lied when it represented, in the 2010 Agreement, that the Royal Albert Hall concerts footage was not already covered by a 2009 contract plaintiff had with Sony Music regarding the "audio only master records" in Hendrix's catalog. Defendants sought unspecific compensatory damages as well as punitive damages.

The trial court granted summary judgment to plaintiff on defendants' cross-complaint, and plaintiff's action proceeded to a five-day bench trial.

Following trial, the trial court issued a tentative and, after receiving objections, final statement of decision. The court rejected both of plaintiff's grounds for rescission. The court found that Goldstein had never hidden his vision for a wide release and

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1 Plaintiff also sued for breach of fiduciary duty, but subsequently dropped that claim.

that he was not insisting upon any absolute minimum, as Goldstein thought he had a "sliding scale" understanding with Sony Pictures—that is, the more prints and advertising money he raised, the wider Sony Pictures would release the film. The court pointed out that plaintiff's complaint acknowledged that very fact, and thus refuted the notion that Goldstein had an absolute minimum.

The trial court also ruled that there was no "failure of consideration" warranting rescission. The court rejected the argument that Goldstein's rejection of the Sony Pictures limited platform release offer breached the 2010 Agreement. "Nothing in the . . . Agreement," the court noted, "required the parties to agree to any specific terms on the distribution of the film . . . . Both parties had an equal right to block the distribution of the film if they believed they could obtain a better deal." The court went on to find that even if Goldstein's rejection of the Sony Pictures offer was "not a sound business decision," Goldstein still did not breach the contract or the implied covenant of good faith and fair dealing because "[i]t was not unreasonable for Goldstein to try and obtain a better deal for the parties." The court also rejected plaintiff's argument that Goldstein had breached the 2010 Agreement by not initiating litigation to wipe away Gold's ex-wife's copyright registration, finding that the 2010 Agreement obligated defendants to "take all necessary steps" to register *their* claim to the copyright and finding that the defendants did precisely that. Because "[n]o evidence was presented . . . that there is any current challenge to defendant's right as copyright owner of the" film, the court concluded that defendants' failure to sue Gold's ex-wife does not "serve as a material failure of consideration to warrant rescission."

After the trial court entered judgment, defendants moved for attorney's fees under the 2010 Agreement. The court awarded $301,444 in attorney's fees.

Plaintiff filed timely notices of appeal from the judgment and the order awarding attorney's fees.

DISCUSSION

I. Ruling on the Merits

A party to a contract may rescind it if, among other things, "the consideration for the obligation of the rescinding party, before it is rendered to him, fails in a material respect from any cause." (Civ. Code, § 1689, subd. (b)(4); *Asmus v. Pacific Bell* (2000) 23 Cal.4th 1, 6, fn. 2.) If the failure of consideration is total—that is, if "'nothing of value has been received under the contract by the party'"—a court may also award the rescinding party restitution. (*Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 230, quoting *Richter v. Union Land etc. Co.* (1900) 129 Cal. 367, 373; *Brown v. Grimes* (2011) 192 Cal.App.4th 265, 281.) Under these circumstances, restitution means "repay[ment of] what has been received by [the breaching party] under the contract." (*Holt v. Ravani* (1963) 221 Cal.App.2d 213, 216.)

On appeal, plaintiff argues that the trial court erred in rejecting its claims that defendants materially breached the 2010 Agreement (and that their breaches constitute a material failure of consideration) when Goldstein (1) refused to approve the Sony Pictures distribution deal, and (2) did not sue Gold's ex-wife for declaratory relief to clear title to the film. (Plaintiff is not challenging the trial court's rejection of its claim that Goldstein fraudulently concealed his vision for a wide release of the film.) To the extent plaintiff's argument requires us to interpret the

2010 Agreement, we do so independently and give controlling weight to the contract's unambiguous language. (*Cuenca v. Cohen* (2017) 8 Cal.App.5th 200, 222.) To the extent plaintiff's arguments require us to evaluate the trial court's factual findings, we review them for substantial evidence. (*Gaines v. Fidelity National Title Ins. Co.* (2016) 62 Cal.4th 1081, 1100.) In undertaking substantial evidence review, we ask whether there is evidence in the record to support the trial court's findings, and do so while construing the record in the light most favorable to those findings, resolving all evidentiary conflicts in favor of those findings, and deferring to the trial court's credibility determinations. (*Atkins v. City of Los Angeles* (2017) 8 Cal.App.5th 696, 737-738.)

A. *Refusal to Approve Sony Pictures Distribution Deal*

The trial court did not err in ruling that Goldstein's rejection of Sony Pictures' film distribution offer did not constitute a breach of the 2010 Agreement (and, consequently, did not amount to a failure of consideration, total or otherwise). The 2010 Agreement obligated the parties to "jointly approve . . . any distribution agreement." Critically, the contract specifically spelled out when a party's refusal to approve would violate the contract—that is, when the refusal was "for the purpose of [(1)] altering the material terms of th[e] Agreement or [(2)] enriching itself under the terms of any side agreement." Goldstein's vision for a wide release of the film may have been unrealistic and thus, as the trial court assumed, "not a sound business decision," but there is substantial evidence in the record to support the finding that Goldstein's longstanding vision was not aimed at altering the terms of the 2010 Agreement or at enriching Goldstein under the terms of any side agreement.

Plaintiff raises three challenges to this reasoning. First, it argues that the 2010 Agreement, like every other contract, is constrained by the implied covenant of good faith and fair dealing (*Thrifty Payless, Inc. v. The Americana at Brand, LLC* (2013) 218 Cal.App.4th 1230, 1244), and this covenant requires us to read into the 2010 Agreement a duty to exercise the discretionary power to approve a distribution deal in "subjective good faith" and in an "objectively" reasonable manner (*Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 372; *Locke v. Warner Bros., Inc.* (1997) 57 Cal.App.4th 354, 363). We reject this argument because it would require us to ignore the express language of the 2010 Agreement, which, as noted above, places only two narrow constraints on the parties' power to approve. This, we cannot do. (*Carma*, at p. 374 ["implied terms should never be read to vary express terms"], citing *Tanner v. Title Ins. & Trust Co.* (1942) 20 Cal.2d 814, 824; *Third Story Music, Inc. v. Waits* (1995) 41 Cal.App.4th 798, 802-806 (*Third Story*); *Balfour, Guthrie & Co. v. Gourmet Farms* (1980) 108 Cal.App.3d 181, 190-191.) We accordingly have no occasion to examine plaintiff's various challenges to the trial court's alternative factual finding that Goldstein acted reasonably in rejecting the Sony Pictures offer. (Accord, *Peak-Las Positas Partners v. Bollag* (2009) 172 Cal.App.4th 101, 106 ["good faith and reasonableness are questions of fact"].)

Second, plaintiff contends that the language in the 2010 Agreement did not expressly grant the parties full discretion regarding approval decisions, and thus cannot be read to confer upon the parties full "blocking rights." (See *Third Story*, *supra*, 41 Cal.App.4th at p. 801 [provision granting party the right to "refrain" from an act "at [its] election"; unfettered discretion];

Brandt v. Lockheed Missiles & Space Co. (1984) 154 Cal.App.3d 1124, 1128 [provision indicating employer "may, but is not obligated to, grant" inventor-employee special pay; unfettered discretion]; *Gerdlund v. Electronic Dispensers International* (1987) 190 Cal.App.3d 263, 268-270 [provision granting party right to terminate contract "at any time and for any reason"; unfettered discretion].) To be sure, the 2010 Agreement did not grant the parties a full and unfettered right to withhold approval of distribution deals on a whim. But the 2010 Agreement expressly placed only two narrow constraints on that right. Implying a reasonableness requirement would negate those narrow constraints and effectively—and impermissibly—rewrite the contract. (*Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1143 ["courts may not rewrite agreements and impose terms to which neither party has agreed"].) Indeed, other provisions of the 2010 Agreement imposed upon the parties a duty to "work in good faith" or to proceed in a "commercial[ly]" "reasonable" manner. The parties knew how to impose a reasonableness requirement when they wanted one; we must give effect to their decision not to place one in the approval provision. (See *Cornette v. Department of Transportation* (2001) 26 Cal.4th 63, 73 ["When one part of a statute contains a term or provision, the omission of that term or provision from another part of the statute indicates the Legislature intended to convey a different meaning"].)

Lastly, plaintiff asserts that Goldstein acted with a self-interested motive—namely, he needed a wide distribution deal in order to turn any profit given how much he owed plaintiff from the *London Times* litigation and how much he owed others. There is no substantial evidence in the record to support this proffered motive, given that Goldstein had been unabashedly sharing his vision for a wide release long before the *London Times* litigation ended up costing plaintiff and defendants $4.1 million. And even if there were such evidence, Goldstein's desire to recoup his losses does not reveal a purpose to "alter[] the material terms" of the 2010 Agreement or to "enrich [him]self under the terms of any side agreement"—the only two motives prohibited by the 2010 Agreement.[2]

B. *Failure to Seek Declaratory Relief Against Gold's Ex-wife*

The trial court also did not err in concluding that defendants had not breached their duties under the 2010 Agreement regarding title to the film. In that agreement, defendants represented that the footage to be used for the film is their "sole and exclusive property"; warranted that, as between themselves and Gold's ex-wife, *they* "own the copyright" to those materials; and promised to "promptly . . . take all necessary steps to have the Registration amended." *Plaintiff* promised to "take all reasonable steps necessary to assist" defendants "in connection with any challenge to the [defendants'] claim of copyright ownership . . . including, but without limitation,

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2 Plaintiff raises a number of other objections to the trial court's ruling—namely, that the court erred in (1) inaccurately reporting that plaintiff refused to extend the Sony Music Agreement (because plaintiff actually refused to extend the termination rights under that agreement), (2) finding that plaintiff's subsequent refusal to extend the termination period in the Sony Music Agreement was relevant or otherwise harmed Goldstein, and (3) treating the Sony Pictures offer and Sony Music Agreement as interrelated. These arguments do not affect our analysis, so we need not address them.

reasonably assisting [defendants] in challenging the impropriety of the Registration." A plain reading of this language obligated defendants to file a copyright registration on the materials, and it is undisputed that defendants did just that.

Plaintiff argues that the 2010 Agreement also required defendants to "challeng[e] the impropriety" of Gold's ex-wife's registration by filing a declaratory relief action against her, and that defendants' failure to do so is a failure of consideration. We disagree, and do so for two reasons. First, the plain language of the 2010 Agreement does not impose upon defendants the duty to file a declaratory relief action or to otherwise clear up title to the film. At most, the contract requires *plaintiff* to assist defendants should they "challeng[e] the impropriety of the [ex-wife's] Registration"; but it does not expressly require *defendants* to initiate such a challenge in the first place.

Second, even if we read the 2010 Agreement as implying an obligation to "challeng[e] the impropriety" of Gold's ex-wife's claim, this would not impose upon defendants an absolute duty to file a declaratory relief action. A contractual provision requiring a party's "best efforts" requires only the party's reasonable diligence—not "every conceivable effort." (*California Pines Property Owners Assn. v. Pedotti* (2012) 206 Cal.App.4th 384, 394-395.) Defendants did not sue Gold's ex-wife for declaratory relief because they could not locate her and because she had not taken any action with respect to her copyright registration since 1997. Because the act of filing a copyright registration constitutes at most "prima facie evidence of the validity of the copyright" that disappears upon the filing of a competing registration (17 U.S.C. § 410(c); *Martha Graham School v. Martha Graham Center* (2d Cir. 2004) 380 F.3d 624, 631), any court adjudicating the copyright claim arising out of this case would be required to look beyond the registrations to the *evidence* supporting the competing claims (*M & D Intern. Corp. v. Chan* (D. Hawaii 1995) 901 F.Supp. 1502, 1509-1510; *Russ Berrie & Co., Inc. v. Jerry Elsner Co., Inc.* (S.D.N.Y. 1980) 482 F.Supp. 980, 987). Accordingly, defendants acted with reasonable diligence in filing a competing copyright registration and in standing at the ready with compelling evidence of the chain of title to the footage in the event Gold's ex-wife ever came "out of the woodwork" to assert her then-13-year-old registration. Under these circumstances, defendants were not obligated to sue a person they could not locate on the chance she might press her old and unsubstantiated competing claim.

II. Attorney's Fees

Although parties generally bear their own attorney's fees, Civil Code section 1717 empowers a court to award "attorney's fees and costs . . . incurred to enforce [a] contract" "where the contract specifically provides" that the prevailing party "[i]n any action on [the] contract" be awarded its "attorney's fees." (Civ. Code, § 1717, subd. (a).) The 2010 Agreement contains just such an attorney's fees provision, and the trial court awarded defendants $301,444 in attorney's fees pursuant to that provision. Our review is limited to whether the trial court abused its discretion. (*Hilltop Investment Associates. v. Leon* (1994) 28 Cal.App.4th 462, 466 (*Hilltop*).) Plaintiff levels three objections at this award.

First, plaintiff asserts that the trial court should not have awarded attorney's fees because plaintiff was trying to *rescind* the 2010 Agreement, not *enforce* it. This argument ignores that "an action to avoid enforcement of a contract is an action 'on a contract' within the meaning of section 1717." (*Eden Township Healthcare Dist. v. Eden Medical Center* (2013) 220 Cal.App.4th 418, 420-421, 426; *Turner v. Schultz* (2009) 175 Cal.App.4th 974, 976, 979-980 [same].) What is more, the argument overlooks that *defendant* prevailed in its position that the contract *was* enforceable.

Second, plaintiff argues that the trial court erred in determining that defendants were prevailing parties because defendants lost on their counterclaims. Civil Code section 1717 defines the "prevailing party" as "the party who recovered a greater relief in the action on the contract." (Civ. Code, § 1717, subd. (b); see also *Silver Creek, LLC v. BlackRock Realty Advisors, Inc.* (2009) 173 Cal.App.4th 1533, 1538.) When parties have sued each other, courts assess prevailing party status by evaluating "the parties' comparative litigation success." (*Silver Creek*, at p. 1540.) A court may declare a party to be a prevailing party even if that party did not prevail on every claim and counterclaim (*Epstein v. Frank* (1981) 125 Cal.App.3d 111, 124-125), and even if neither party obtained relief on its respective claims and counterclaims (*Silver Creek*, at p. 1540; *Hsu v. Abbara* (1995) 9 Cal.4th 863, 875-876 & fn. 10; cf. *Silver Creek*, at p. 1541 [noting that earlier cases suggesting that there is no prevailing party whenever both parties obtain no relief, such as *Hilltop*, *supra*, 28 Cal.App.4th at p. 468 and *McLarand, Vasquez & Partners, Inc. v. Downey Savings & Loan Assn.* (1991) 231 Cal.App.3d 1450, were superseded by *Hsu*].) In cases where neither party prevails on its own claims, the court must examine "the main litigation objective[s] for the parties" and whether they were achieved. (*Silver Creek*, at p. 1540; *Frog Creek Partners, LLC v. Vance Brown, Inc.* (2012) 206 Cal.App.4th 515, 531.)

The trial court did not abuse its discretion in finding defendants to be the prevailing parties. Although plaintiff obtained no relief on its restitution and declaratory relief claims and although defendants obtained no relief on their breach of contract and intentional misrepresentation counterclaims, the trial court did not abuse its discretion in ruling that defendants obtained the "greater relief" as between the two groups. Defendants' victory on the main complaint meant that they did not owe $4.1 million in restitution and got to keep their rights in the Royal Albert Hall concerts footage. By contrast, plaintiff's victory on the cross-complaint meant that plaintiff did not owe unspecified damages for having misrepresented in the 2010 Agreement the terms of its earlier 2009 agreement with Sony. Given that the 2009 agreement with Sony on its face refuted defendants' counterclaims as a matter of law, plaintiff was never at risk of facing any damages, compensatory or punitive. Plaintiff argues that we cannot reach this conclusion because the trial court did not specifically include, in its statement of decision, any facts supporting its finding of prevailing party status. However, our evaluation of the court's ruling rests on the court's legal rulings and express factual findings, not on any implied findings, so the completeness of the statement of decision on this point is irrelevant. (Cf. Code Civ. Proc., § 634 [appellate courts may not infer findings when "a statement of decision does not resolve a controverted issue"].)

Lastly, plaintiff challenges the amount of attorney's fees, asserting without any further argument or citation to the record that (1) some charges are duplicative, (2) the attorneys improperly engaged in "block billing," and (3) the fee award included fees incurred litigating the counterclaims that defendants lost. Plaintiff invites us to comb through the 75 pages of fee bills submitted by defendants. We respectfully decline. A party "must affirmatively demonstrate error through reasoned argument, citation to the appellate record, and discussion of legal authority." (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685.) Plaintiff's failure to do so in this case waives its cursory challenge to the amount of the fee award. (*People v. Hovarter* (2008) 44 Cal.4th 983, 1029.)

DISPOSITION

The judgment and order are affirmed. Defendants are entitled to their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

______________________, J.
HOFFSTADT

We concur:

______________________, Acting P. J.
ASHMANN-GERST

______________________, J.
CHAVEZ