1. MORENO v. TAHOE KEYS PROPERTY OWNERS ASSN., SCL2020087

Motion for Attorney Fees

This is an action to enforce a homeowner's association's governing documents after a sewer line breakage allegedly caused damage to plaintiff Fabian Moreno's property. The operative complaint states causes of action for (1) breach of the governing documents, (2) nuisance, (3) continuing trespass, (4) breach of fiduciary duty, (5) negligence, and (6) declaratory relief. On February 21, 2023, defendant Tahoe Keys Property Owners Association ("TKPOA") accepted plaintiff's Code of Civil Procedure section 998 Offer to Compromise ("998 Offer") for an amount of $17,983.22 in exchange for dismissal of the entire action with prejudice. The 998 Offer is silent as to fees and costs.

Pending is plaintiff's motion for attorney fees pursuant to Civil Code sections 1717 and 5975.

1. Preliminary Matters

Plaintiff's request for judicial notice of Exhibit 1, the First Restated Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") of TKPOA, is granted. (Evid. Code § 452, subd. (c); see *Eisen v. Tavangarian* (2019) 36 Cal.App.5th 626, 641, fn. 12 [taking judicial notice of recorded CC&Rs pursuant to Evid. Code § 452, subd. (c)].)

2. Statutory Authority

Attorney fee awards must be specifically authorized by statute or agreement between the parties. (Code Civ. Proc., § 1021; *That v. Alders Maintenance Assn.* (2012) 206 Cal.App.4th 1419, 1428–1429.) When any California statute refers to an award of costs and attorney fees, those fees are recoverable under Code of Civil Procedure section 1032 as "an item and component of the costs to be awarded." (Code Civ. Proc., § 1033.5, subds. (a)(10)(B) & (c)(5).)

Plaintiff claims he is entitled to attorney fees under Civil Code sections 1717 and 5975.

Civil Code section 1717, subdivision (a) provides in relevant 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." (Civ. Code, § 1717, subd. (a).) "The court, upon notice and motion by a party, shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment." (Civ. Code, § 1717, subd. (b)(1).)

The court agrees that plaintiff is entitled to fees pursuant to Civil Code section 1717. Article XII ("Breach or Default"), Section 3, of the First Restated Declaration of CC&Rs of TKPOA specifically provides for attorney fees and costs: "In any action brought because of alleged breach or default of this Declaration by any Owner, the Association or other party hereto, the Court may award to the prevailing party such attorneys' fees and other costs as it may deem just and reasonable." (*Ibid.*)

Plaintiff contends he is the party prevailing on the contract because he met his litigation objective and obtained a net monetary recovery.

Defendant raises two arguments in opposition. First, defendant argues that plaintiff is not the prevailing party because "he did not achieve the objective of an enforcement action which would have been to compel TKPOA to repair the sewer line." (Opp'n., i:27–28.) The court rejects this argument. "[T]he party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract." (Civ. Code, § 1717, subd. (b).) Where the judgment is a "simple, unqualified win" on the contract claim, a trial court has no discretion to deny an attorney fee award to that prevailing party under Civil Code section 1717. (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 876.)

Defendant's second argument is that under Civil Code section 1717, subdivision (b)(2) there should be no prevailing party where plaintiff promised to dismiss the action. Civil Code section 1717, subdivision (b)(2) provides in relevant part, "Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no

prevailing party for purposes of this section." (Civ. Code, § 1717, subd. (b)(2).) In this case, however, there has been no motion for and no entry of dismissal. Thus, the court finds that defendant's argument is premature and Civil Code section 1717, subdivision (b)(2) does not apply.

The court determines plaintiff to be the prevailing party on the contract and entitled to reasonable attorney fees.

Additionally, or in the alternative, the court finds that plaintiff is also entitled to attorney fees pursuant to Civil Code section 5975. (*Id.*, subd. (c) ["In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs."].) "In determining the prevailing party under the Davis-Stirling Act, 'the trial court should "compare the relief awarded on the [ ] claim or claims with the parties" demands on those same claims and their litigation objectives as disclosed by the pleadings, trial briefs, opening statements, and similar sources. The prevailing party determination is to be made ... by 'a comparison of the extent to which each party ha[s] succeeded and failed to succeed in its contentions.' " ' [Citations.]" (*Champir*, *LLC v. Fairbanks Ranch Assn.* (2021) 66 Cal.App.5th 583, 592.)

Here, plaintiff's operative complaint asserts that TKPOA breached its duty to maintain the underground sewer lines, which resulted in damage to plaintiff's property. Further, the complaint alleges that TKPOA reported to plaintiff that it was moving forward with repairs to the sewer line. Due to TKPOA's delay in having those repairs made, plaintiff's property was damaged. Regardless of whether TKPOA was compelled to make the repair as a result of this action, as a practical matter, plaintiff succeeded in his litigation goal of being compensated based on TKPOA's purported breach of its duty to maintain the sewage line as required by the CC&Rs. (See *Champir*, *supra*, 66 Cal.App.5th at p. 593.) Thus, the court finds that plaintiff is the prevailing party in an action to enforce the CC&Rs for purposes of attorney fees pursuant to Civil Code section 5975.

3. Attorney Fees

A court assessing attorney fees begins with a lodestar figure, based on the "careful compilation of the time spent and reasonable hourly compensation of each attorney … involved in the presentation of the case." (*Serrano v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 48; *PLCM Group*, *Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.) The California Supreme Court has noted that anchoring the calculation of attorney fees to the lodestar adjustment method " 'is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.' " (*Serrano III, supra*, 20 Cal.3d at p. 48, fn. 23.)

"After determining the lodestar, the trial court may adjust the lodestar figure based on factors including, but not limited to (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) success of failure, (4) the extent to which the nature of the litigation precluded other employment by the attorneys, (5) the contingent nature of the fee award, (6) that an award against the state would ultimately fall upon the taxpayers, (7) that the attorneys in question received public and charitable funding for the purpose of bringing lawsuits of the character here involved, and (8) that the monies awarded would inure not to the individual benefit of the attorneys involved but the organizations by which they are employed. [Citations.] The lodestar adjustment method 'anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary.' [Citation.]" (*Glaviano v. Sacramento City Unified Sch. Dist.* (2018) 22 Cal.App.5th 744, 751.)

The party seeking attorney fees has the burden of establishing entitlement to an award. To that end, competent evidence as to the nature and value of the attorney's services must be presented. (*City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 784 [evidence furnished should allow the judge to consider whether the case was overstaffed, how much time the attorney spent on particular claims, and whether the hours were reasonably expanded].)

While the fee awards should be fully compensatory, the trial court's role is not to simply rubber stamp the defendant's request. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133; *Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 361.) Rather, the court must ascertain whether the amount sought is reasonable. (*Robertson, supra*, 36 Cal.App.4th at p. 361.)

Here, plaintiff moves for an order awarding attorney fees in the amount of $76,377.00. In support thereof, plaintiff submitted a declaration from his attorney, William Idleman, which includes his firm's billing invoice as Exhibit 2. Mr. Idleman's current hourly rate is $400.00. Other attorneys with his firm who also worked on this case have current hourly rates ranging from $315.00–$500.00; and paralegals, from $125.00–$135.00. All entries were billed at a minimum increment of 0.1 hour. The firm's attorneys and paralegals put a total of 203.20 hours of work into this case, the instant motion excluded. Plaintiff requests an additional $5,960.00 in attorney fees related to the instant motion.

Defendant objects that the amount plaintiff is requesting is unreasonably inflated and includes entries for unrelated matters, nearly 20 hours of inter-office conferring amongst plaintiff's attorneys, unnecessary law and motion work, possible billing for work not performed, and paralegal time for which documentation under Business and Professions Code section 6450, subdivision (d), is not provided.

Based on the court's knowledge of regional attorney fee rates, the court finds that $315.00–$500.00 per hour is within market range for private attorneys doing similar work in the Lake Tahoe area.

Defendant's other objections are persuasive, in part. The attorney billing entries do appear to include some task-padding, over-conferencing, and attorney stacking. (See *Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 272.) Additionally, the paralegal billing entries appear to relate to non-substantive legal work.

Having reviewed the billing log entries and being acquainted with the procedural history of this case, the court agrees with defendant that the following entries should be stricken: $6,886.75 (re: inter-office conferencing); $2,740.50 (re: motion to reclassify the case from limited civil to unlimited civil); $1,701.00 (re: ex parte application to specially set, continue trial, or have motion for summary adjudication heard within 30 days of trial); and $765.50 (non-substantive legal work).

Applying the above, the court finds that plaintiff is entitled to a total of $64,283.75 in attorney fees.

TENTATIVE RULING # 1: PLAINTIFF'S MOTION FOR ATTORNEY FEES IS GRANTED IN PART AND DENIED IN PART. PLAINTIFF IS AWARDED $64,283.75 IN ATTORNEY FEES. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS v. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

2. LEWIS CARILLO JR., ET AL. v. THE VAIL CORPORATION, SC20190226

Motion for Summary Judgment

Due to technical difficulties with the court's newly implemented e-filing system, the plaintiffs' opposition was not technically filed and available to review in the court's system until June 13, 2023. Accordingly, on the court's own motion, due to the need for additional time to finish reviewing the parties' briefing, this matter is continued to June 30, 2023. The court apologizes to the parties for any inconvenience.

TENTATIVE RULING # 2: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, JUNE 30, 2023, IN DEPARTMENT FOUR.

3. STEVEN KACLUDIS, ET AL. v. ARIZ. PIPELINE CO., ET AL., 22CV0268

Motion to Deem Facts Admitted and for Monetary Sanctions

This is a personal injury action arising from a motor vehicle accident. Pending is plaintiff Steven Kacludis's motion to deem requests for admission ("RFAs") admitted and for monetary sanctions based upon the responding party's failure to serve any responses at all in a timely fashion.

On February 23, 2023, plaintiff served RFAs on defendant by U.S. mail and electronically. (Mot., Reilley Decl., ¶ 2 & Ex. A.) The parties mutually agreed to extend the deadline to April 17, 2023. (*Id.*, Reilly Decl., ¶ 3 & Ex. B.) On April 17, 2023, defendant served an unverified response only. (*Id.*, Reilly Decl., ¶ 4 & Ex. C.) While not required to meet and confer prior to filing the motion (Code Civ. Proc., § 2033.280), plaintiff's counsel emailed defendant's counsel on April 20, 2023, to inquire about the verification and advised that plaintiff would wait one week to file the motion. (*Id.*, Reilly Decl., ¶ 5 & Ex. D.) Plaintiff had not received defendant's verification at the time the motion was filed with the court on May 3, 2023. However, defendant served his verification on plaintiff by email on May 8, 2023. (Schori Decl., ¶ 4 & Ex. B.)

Code of Civil Procedure section 2033.210, subdivision (a) requires that the responding party reply "in writing under oath separately to each request." (Code Civ. Proc., § 2033.210, subd. (a).) An RFA response that is unverified is "tantamount to no response at all." (*St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 779 (quoting *Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636).)

Serving verified and substantially compliant responses prior to the hearing on the motion defeats the propounding party's attempt to have the matters deemed admitted. (Code Civ. Proc., § 2033.280, subd. (c); *St. Mary*, *supra*, 223 Cal.App.4th at pp. 776, 778.) However, "[i]t is <u>mandatory</u> that the court impose a monetary sanction … on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated the motion." (Code Civ. Proc., § 2033.280, subd. (c) [emphasis added].)

Accordingly, plaintiff's motion to deem matters admitted is denied. Having reviewed and considered the declarations from plaintiff's counsel concerning fees and costs incurred in bringing the motion, the court finds that a total of $675.00 (1.5 hours x $450.00/hour) is a reasonable sanction under the Discovery Act.

TENTATIVE RULING # 3: PLAINTIFF STEVEN KACLUDIS'S MOTION TO DEEM MATTERS ADMITTED IS DENIED. DEFENDANT SOTO IS ORDERED TO PAY PLAINTIFF'S COUNSEL $675.00 IN SANCTIONS NO LATER THAN 10 DAYS FROM THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDDER. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS v. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.