SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Beverly Hills Courthouse, Department 205

23SMCV04140 October 2, 2024
ROBERT BRILLIANT, AS TRUSTEE OF THE BRILLIANT FAMILY TRUST DATED JULY 1, 1988, et al. vs MULHOLLAND ESTATES HOMEOWNERS ASSOCIATION, A CALIFORNIA NON-PROFIT CORPORATION, et al. 1:30 PM

Judge: Honorable Edward B. Moreton, Jr. CSR: None
Judicial Assistant: J. Fletes ERM: None
Courtroom Assistant: R. Salazar Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order Re Ruling on Defendant Tyson Beem as Trustee of the Maximillian Trust's Motion for Attorneys' Fees

The Court, having taken the matter under submission on 10/02/2024 for Hearing on Motion for Attorney Fees, now rules as follows:

BACKGROUND

This action arises from a dispute between neighbors. Plaintiffs Robert and Barbara Brilliant own the real property located at 14131 Beresford Road (the "Brilliant Property"). Defendant Tyson Beem as Trustee of the Maximillion Trust dated February 11, 2013 (the "Trust") owns the real property located at 14143 Beresford Road, Beverly Hills, California (the "Trust Property").

The properties are governed by the Mulholland Estates Homeowners Association, Inc.'s ("HOA") Declaration of Covenants, Conditions and Restrictions ("Declaration" or "CC&R's") and Architectural Standards & Design Guidelines ("Design Guidelines") (collectively, the Governing Documents"). Plaintiffs allege that certain trees on the Trust Property block their views and violate the CC&R's and Design Guidelines. Plaintiffs have also sued the HOA and other neighbors.

The operative complaint alleges claims for (1) breach of contract, (2) enforcement of equitable servitudes, (3) breach of the covenant of good faith and fair dealing, (4) breach of fiduciary duty, (5) nuisance, (6) negligence, (7) negligent misrepresentation, and (8) declaratory relief. All of the claims are alleged against the Trust, except for the fourth cause of action for breach of fiduciary duty.

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On April 19, 2024, this Court sustained the Trust's demurrer without leave to amend and on May 7, 2024, entered a judgment of dismissal in favor of the Trust. The judgment stated that, subject to a motion, the Trust would be entitled to any attorneys' fees allowable by contract or law. (Brody Decl. Ex. D.)

This hearing is on the Trust's motion for attorneys' fees. The Trust argues it is entitled to recover attorneys' fees pursuant to statute (Civ. Code § 5975(c)) and contract (CC&R, Art. XVIII, Section 9.) The Trust seeks $142,149 in attorneys' fees incurred to date plus $7,500 in connection with bringing this motion.

REQUEST FOR JUDICIAL NOTICE

The Trust seeks judicial notice of the CC&R's. The Court grants the request pursuant to Evid. Code §§ 452(h) and 453.

DISCUSSION

As a threshold matter, the Court must first consider Plaintiffs' claim that their notice of appeal stays the action, and the Court cannot consider the Trust's motion for attorneys' fees. It is true that following an appeal, under Code Civ. Proc. § 916, ordinarily "`the trial court is divested of' subject matter jurisdiction over any matter embraced in or affected by the appeal during the pendency of that appeal." (Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal.4th 180, 196-197.) However, "an appeal does not stay proceedings on 'ancillary or collateral matters which do not affect the judgment [or order] on appeal' even though the proceedings may render the appeal moot." (Id. at 191, citing Betz v. Pankow (1993) 16 Cal.App.4th 931, 938.)

As a matter of law, a motion for award of attorneys' fees is an ancillary matter that the court retains jurisdiction to consider, notwithstanding the pendency of an appeal of the judgment. (Robertson v. Rodriguez (1995) 36 Cal.App.4th 347, 360, citing Nazemi v. Tseng (1992) 5 Cal.App.4th 1633, 1639 (trial court "retains jurisdiction to entertain a motion for attorney fees despite an appeal"); see also Doe v. Luster (2006) 145 Cal.App.4th 139, 144 (even if the order granting the special motion to strike is appealed, the court still has discretion to consider the motion for attorneys' fees).)

"[A]n award of attorney fees as costs is a collateral matter which is embraced in the action but is

not affected by the order from which an appeal is taken. Consequently, filing of a notice of appeal does not stay any proceedings … and does not prevent the trial court from determining a proper award of attorney fees claimed as costs." (Bankes v. Lucas (1992) 9 Cal. App. 4th 365, 369, superseded by statute on other grounds.) As a matter of settled law, therefore, Plaintiff's notice of appeal does not stay this collateral matter, and the Court has jurisdiction to consider the Trust's motion for attorneys' fees.

Plaintiffs argue that this Court is divested of jurisdiction to rule on this motion because the judgment is not a "money judgment" and awarded "costs only." Not so. Plaintiffs have conflated Code Civ. Proc. § 916 (which governs when proceedings are stayed) with Code Civ. Proc. § 917.1 (which governs when enforcement of a judgment is stayed).

Code of Civil Procedure § 916(a) states that "the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order." Code of Civil Procedure § 917.1, on the other hand, dictates when the perfecting of an appeal stays the enforcement of a judgment, and under what circumstances an undertaking is required to effect such stay. As this motion pertains merely to the determination of the amount of attorneys' fees to be awarded, and not enforcement of the judgment, Code Civ. Proc. § 917.1 is simply not relevant to this motion.

In support of their argument, Plaintiffs cite to a series of irrelevant and questioned cases that deal with enforcement of a judgment rather than award of attorneys' fees pending an appeal. Plaintiffs cite to Pecsok v. Black (1992) Cal.App.4th 456, a case involving writs of execution and supersedeas on the execution of a judgment which was overruled by the California Supreme Court the same year it was issued. (See Bank of San Pedro v. Super. Ct. (1992) 3 Cal.4th 797.) Plaintiffs also cite to Nielsen v. Stumbos (1990) 226 Cal.App.3d 301—a case receiving negative treatment in Behniwal v. Mix (2007) 147 Cal.App.4th 621, where the question presented was "whether the award of attorney fees…should be treated as…a money judgment which, in the absence of a bond, is enforceable notwithstanding the pendency of an appeal." Again, these issues of enforcement of a judgment and when an undertaking is required are not relevant to the Court's jurisdiction over this motion.

The Court next considers the substance of the motion for attorneys' fees. The Trust argues it is

entitled to attorneys' fees and costs as a matter of contract and statute. The Court agrees.

Civ. Code § 1717 provides that a prevailing party shall be entitled to recover its reasonable attorneys' fees in any action on a contract, where the contract provides for attorneys' fees and costs incurred in enforcing the contract. Here, the CC&R's provide that "[i]n the event any action is instituted to enforce any of the provisions contained in this Declaration, the Articles, Bylaws or Association Rules, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment reasonable attorneys' fees and costs of suit." (Brody Decl. Ex. A.)

Further, pursuant to Civ. Code §5975(c), "In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorneys' fees and costs." The underlying action sought to enforce the CC&R's, and accordingly, §5975(c) requires that the prevailing party be awarded its attorneys' fees and costs. Pursuant to §5975(c), a fee award to the prevailing party in an action to enforce CC&Rs is mandatory. (See Rancho Mirage Country Club Homeowners Ass'n v. Hazelbaker (2016) 2 Cal. App. 5th 252, 263.)

Moreover, to the extent the action went beyond a breach of contract action and included tort claims, as is the case here, the "parties may validly agree that the prevailing party will be awarded attorney fees incurred in any litigation between themselves, whether such litigation sounds in tort or contract." (Xuereb v. Marcus & Millichap, Inc. (1992) 3 Cal.App.4th 1338, 1341.) Here, the CC&R's provide that the Trust is entitled to recover its attorneys' fees for "any action" filed to enforce the CC&R's. (RJN, Ex. 4.)

There can be no serious dispute that the Trust is the prevailing party. The "prevailing party" is the party who recovered "greater relief" in the action. (Civ. Code § 1717(b)(1).) Code Civ. Proc. § 1032(a)(4) defines a prevailing party as including "a defendant in whose favor a dismissal is entered." The order sustaining the Trust's demurrer dismissed the entire complaint against the Trust with prejudice, and a final judgment was entered in the Trust's favor. (Brody Decl. Exs. C, D.)

The Court next considers the amount of attorneys' fees to award. The starting point for any fee award is the lodestar which is the reasonable hourly rate multiplied by the reasonable hours spent. (Serrano v. Priest (Serrano III) (1977) 20 Cal.3d 25, 48.)

Defense counsel charges an hourly rate of $900 to $1065 for partners, $625 to $845 for associates, and $465 for a paralegal. (Brody Decl. ¶9.) As set forth in the Declaration of William Brody, the billed rates are consistent with what counsel charges and receives from its other clients. (Id. ¶¶ 8-10.) The fact that counsel's rates are what they customarily charge and are routinely paid is indicative that their rates are reasonable and consistent with market rates for legal services in California. (See e.g., Flannery v. Cal. Highway Patrol (1998) 61 Cal. App. 4th 629, 633-34 (1998) (to determine reasonable rates, court considered, among other things, the attorneys' "customary billing rate").)

Counsel's rates are also in line with rates found to be reasonable in Los Angeles. (See, e.g., Netlist Inc. v. Samsung Elecs. Co., 341 F.R.D. 650, 675 (C.D. Cal. 2022) (finding $1,160 and $1,370 for partners and $845 to $1,060 for associates to be reasonable hourly rates for attorneys in Los Angeles); Hope Med. Enterprises, Inc. v. Fagrgon Compounding Servs., LLC, 2022 WL 826903, at *3 (C.D. Cal. 2022) (finding "attorneys' billing rates of $895 to $1,295 per hour for partners and of counsel, and between $565 and $985 for associates is reasonable within the legal community of Los Angeles").

Plaintiffs argue that the hourly rates charged by Defendant's counsel is not reasonable as compared with rates charged by Plaintiffs' own counsel. Plaintiffs' counsel has been practicing for the same length of time as Mr. Brody, is a partner, has extensive experience litigating HOA disputes, and currently bills at $495 per hour, nearly half what Mr. Brody claims is his reasonable hourly rate, even less than what Brody's associate charges, and is almost in line with the rates charged by Brody's paralegal. (Boss Decl. ¶14.) Indeed, for much of this case, Plaintiffs' counsel billed at $425 per hour which is $40 less than the hourly rate charged by Defendant's paralegal. (Id.)

On balance, the Court concludes that defense counsel's rates are reasonable. Plaintiffs' counsel practices in Orange County, which is not the relevant legal market. Moreover, as Defendant notes, defense counsel's rates are what they customarily charge and receive which is indicative of the prevailing market rate. The actual rate that the attorney can command in the market is "highly relevant proof of the prevailing community rate." (Elser v. I.A.M. Nat. Pension Fund (C.D. Cal. 1984) 579 F. Supp. 1375, 1379; see also Bihun v. AT&T Information Systems, Inc. (1993) 13 Cal.App.4th 976, 997 (a court should consider "fees customarily charged by that attorney and others in the community for similar work".)

Plaintiffs cite three cases that they allege are "better comparators" for determining reasonable hourly rates, but those cases are not comparable: Teixeria v. BMW of North America, LLC, 2023 WL 9894462 (C.D. Cal. Nov. 1, 2023) is a "lemon law" case which are relatively simple cases, where much of the work is copied from one case to the next. Alvarado v. Freedman, 2019 WL 1397304 (Cal. Ct. App. March 28, 2019) is an unpublished California Court of Appeals case, and is therefore not citable authority. Moreover, it is more than five years old, and the fees awarded was that attorney's customary hourly rate. (Id. at *4.) Contreras v. City of Los Angeles, 2013 WL 1296763 (C.D. Cal. March 28, 2013), is more than ten years old, and therefore irrelevant to the determination of a reasonable hourly fee in Los Angeles today.

The Court next considers the amount of hours expended. There is a legal presumption that the attorneys' fees sought were reasonable and necessarily incurred. (Bender v. County of Los Angeles (2013) 217 Cal.App.4th 968, 987 ("verified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous...").)

Under California law, "[a]n attorney's testimony as to the number of hours worked is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." (Steiny and Company v. California Electric Supply Co. (2000) 79 Cal. App. 4th 285, 293; Martino v. Denevi (1986) 182 Cal. App. 3d 553, 559). Courts are not expected to "closely scrutinize each claimed attorney-hour but have instead used information on attorney time spent to 'focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys.'" (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 505 (citations omitted).) "By and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case[.]" (Moreno v. City of Sacramento (9th Cir. 2008) 534 F.3d 1106, 1112.) The critical factor in determining the reasonableness of the fee is "the degree of success obtained." (Farrar v. Hobby (1992) 506 U.S. 103, 114 (citation omitted).) The reasonableness of the hours spent is to be assessed in light of the entire course of the litigation, including pretrial matters, discovery and litigation tactics. (See Vo v. Las Virgenes Municipal Water Dist. (2000) 79 Cal. App. 4th 440, 447; see also Grossman v. Park Fort Washington Ass'n (2012) 212 Cal. App. 4th 1128, 1134.)

In total, the Trust incurred $142,1492 in fees in connection with its defense of Plaintiffs' claims. (Brody Decl. ¶¶ 11-12, Ex. E.) It has submitted a detailed record of the fees incurred, including time entries, billing details and descriptions for specific tasks performed, even though not

required as a matter of California law. (Brody Decl. Ex. E.) The fees included pre-litigation mandatory mediation and settlement discussions, research and analysis regarding numerous legal theories and causes of action, review of extensive CC&R's and a lengthy history dating back to 2002, research, drafting and arguing a demurrer, various court appearances, and other related matters. (Brody Decl., ¶ 11.) In addition, unlike with some of the other defendants, the Trust had to prepare extensive responses to nearly 300 separate discovery requests from Plaintiffs. (Brody Decl. ¶¶ 7, 11.) This included 108 requests for production, 118 Requests for Admission, 48 Special Interrogatories and a set of Form Interrogatories. (Id.) According to Defendant, these requests required extensive drafting, factual research and analysis. (Id.)

Plaintiffs dispute the hours incurred were reasonably necessary. First, Plaintiffs argue that the time billed by Debbie White, described as a "transactional partner" who "represents the interests of the Defendant in transactional and strategic matters," was wholly unnecessary. The Court agrees. There is no reason that any transactional attorney needed to be involved in this litigation matter. And there is no reason that this case needed to be staffed with two attorneys with 20+ years of experience. Defendant argues that Ms. White represents the principal of the client in transactional and strategic matters and has extensive experience with the client. But there is no indication that any of this experience was pertinent to the HOA dispute at issue here. Accordingly, the Court declines to award any fees attributable to Ms. White, resulting in a reduction of $7,809.50.

Second, Plaintiffs point out that one associate (Devin Spencer) billed .5 hours at the very beginning of the case on February 3, 2022 for a conference call and then disappeared from the case entirely. His time will be struck, resulting in a reduction of $317.50.

Third, Plaintiffs argue that the two primary attorneys on the case (partner William Brody and associate Kyle Petersen) showed a pattern of excessive and duplicative billing. For example, Brody has three entries between February 24, 2022 and March 3, 2022 preparing and drafting the exact same "email response." Between March 4, 2022 and March 25, 2022, Brody had three separate entries of "follow up" to the same communication. Between April 26, 2022 and June 20, 2022, Brody had three separate entries of otherwise unexplained "follow up" to the same mediation." Petersen had multiple entries "reviewing" the same documents over and over again, such as Plaintiffs' discovery requests which he reviewed five times. Petersen also reviewed the case management conference statement no fewer than four times. The Court finds these entries troubling and will reduce the total fees by 30% to account for any redundancies. The discount is

also appropriate given that most of the hours (101.3 hours) were billed by the partner in the case in comparison to the associate (40.3 hours). The case would been less costly had the partner shifted many of his tasks to the associate, as it should be.

Fourth, Plaintiffs point out that Defendant's counsel billed $18,000 for preparing discovery responses that contained largely boilerplate objections and identical responses. For example, Defendant simply copied and pasted the responses to Requests 3, 4, 85, 92 and 93. Defendant responded it "currently lacks sufficient information to admit or deny this Request and on that ground[] denies it" to another 25 RFAs. Defendant then lodged objections and refused to answer to a further 55 RFAs. Defendant made a straightforward admission or denial to fewer than 25 RFAs. According to Plaintiff, the other discovery responses served by Defendant reflect a similar pattern of non-substantive and boilerplate objections. The Court does not conclude this time was excessive because even if the responses were identical or objected to, they still required a factual investigation and legal research. Counsel had to review the Governing Documents, obtain the client's input and incorporate any changes, and conduct legal research on the many requests that sought legal conclusions. Plaintiffs cannot be heard to complain on the amount of fees incurred to respond to what appears to be an inordinately excessive number of discovery requests that Plaintiffs themselves served.

Fifth, Plaintiffs argue that in assessing the fees sought by Defendant, the Court should consider that Defendant's counsel was simply riding on the coat-tails of the other two Defendants (Faith Media and the Kaplans), including filing its demurrer after the two other Defendants had already filed theirs and bringing this motion for attorneys' fees after Faith Media and the Kaplans had already moved for their own fees. The Court does not find this argument persuasive since Defendant's papers were not simply a cut and paste of the other filings. Even if Defendant relied on some of the work done by other parties, it still needed to research and confirm the cases, supplement the research, prepare briefs, fully read and understand documents, engage in meet and confers, analyze and understand the issues, and attend the hearing. Moreover, counsel submitted a declaration testifying that they actually worked and billed the time on the demurrer, and its detailed time records prove it. Under California law, this evidence is entitled to a presumption of credibility. (Horsford v. Board of Trustees of California State University (2005) 132 Cal.App.4th 359, 396.)

Finally, a prevailing party is entitled to fees for time spent preparing and litigating its attorneys' fees motion. Thus, the Court includes an additional award for fees and costs incurred in drafting

the instant Motion, reviewing and analyzing the Opposition, preparing a Reply Memorandum thereto, and appearing at the hearing. (Estate of Trynin (1989) 49 Ca1.3d 868; M.C. & D. Capital Corp. v. Gilmaker (1988) 204 Cal.App.3d 671.) These fees total $7,500.

In sum, the Court will award (1) Brody and Petersen's total fees discounted by 30% (or $93,815.40), plus (2) $7,500 for preparing the fees motion and reply and attending the hearing, for a total of $101,315.40.

CONCLUSION

For the foregoing reasons, the Court GRANTS IN PART and DENIES IN PART the Trust's motion for attorneys' fees. The Trust is awarded $101,315.40 in attorneys' fees in favor of the Trust and against Plaintiffs.

The Motion for Attorney Fees filed by TYSON BEEM, TRUSTEE OF THE MAXAMILLION TRUST filed by TYSON BEEM, TRUSTEE OF THE MAXAMILLION TRUST DATED FEBRUARY 11, 2013 on 08/05/2024 is Granted in Part.

Certificate of Mailing is attached.