

Calaveras Superior Court  
Civil Law & Motion Calendar Tentative Rulings  
Hon. David M. Sanders, Courtroom #2  
Friday, March 13, 2020

9:00 AM	11CV37528	Motion for Attorney's Fees on Appeal	04/12/2011
Ptff/Pet:	Yerman, John; Yerman, Terry		Atty: Foley, Kenneth M.
Def/Res:	Parker, Don M.; Parker, Patricia; Parker T.G. Jr.; West Coast Real Estate LLC/Dodasa Holding Company LLC		Atty: Perkins & Associates

Tentative Ruling: On November 22, 2019, the Court of Appeal issued its opinion affirming the trial court's judgment and awarded defendants costs on appeal. On January 24, 2020, the Court of Appeal issued its remittitur. On February 18, 2020, defendants filed this motion for attorney's fees on appeal.

Pursuant to Code of Civil Procedure section 1033.5(a)(10)(A), defendants can recover attorney's fees when allowed by contract, which were provided for in the easement agreement that underlies this agreement. The Third District Court of Appeals affirmed the judgment awarding defendants' attorney's fees in the amount of \$40,000. Defendants are entitled to an award of attorney's fees as the prevailing party in the appeal, as this represented an extension of the litigation over the easement agreement.

The Court GRANTS defendants' motion for attorney's fees at an hourly rate of \$300 per hour, which is the customary and usual hourly rate for attorneys in Calaveras County. (Although the Court notes defendants' argument that this appeal required expansion of the attorney pool to areas regularly charging a greater hourly fee, the Court exercises its discretion to limit the award to the customary rate within the community.) Upon review of the billing statement, the Court orders that attorney's fees will be awarded for a total 46.75 hours, to include 5.75 hours for preparation of this motion. The total award of attorney's fees on appeal is \$14,025. (46.75 hours multiplied by \$300 an hour for a total of \$14,025) The Court declines to award fees for the time spent on defendants' Motion to Dismiss as the lack of success for the motion by definition means defendants were not a prevailing party as to those hours; as well as time spent on 9/8/15 for .25, 9/23/15 for .25, 10/15/15 for .25, and 10/19/15 for .25 as duplicative. Therefore, the sum total amount of attorney's fees owed to defendants is \$54,025. (The previously awarded \$40,000 plus the instant \$14,025.)

Defendants' request for costs on appeal in the amount of \$726.49, plus an additional \$60 reimbursement for the filing fee for this motion, for a total of \$786.49, is GRANTED. The trial court originally awarded \$202 in costs. Therefore, the sum total of costs awarded to defendants is \$988.49. (The previously awarded \$202 plus the instant \$726.49.)

The clerk shall provide notice of this ruling to the parties forthwith. Defendants to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

9:00 AM 18CV43526 Motion-Summary Judgment / Summary Adjudication 08/24/2018 05/13/2020 Case Management Conference

Ptff/Pet: Allen, Darrell; Allen, Darrell; Allen, Pamela; Allen, Pamela  
Def/Res: Deutsche Bank National Trust Company; National Default Servicing; National Default Servicing Corporation; Select Portfolio Servicing Inc

Atty: Ulloa, Adela Zevart  
Atty: Stoel Rives Llp

Tentative Ruling: On August 24, 2018, plaintiffs filed the Complaint. On December 20, 2019, defendants filed this motion for summary judgment, in the alternative, summary adjudication, for all twelve causes of action. Plaintiffs oppose the motion and request \$10,550 in attorney's fees. Plaintiffs state in their reply papers that this motion was "premature" and that the issues raised by defendants' motion "are not ripe for determination." However, no request for continuance has been filed (noting plaintiffs' opposition correctly cites the portion of CCP §437c(b) that provides where necessary discovery must be conducted, a continuance must be requested "on or before the date the opposition response to the motion is due" [plaintiffs' opposition 7:7-13]; additionally, plaintiffs provide no legal authority for the conclusory claim that an MSJ/MSA cannot be filed until a trial date is set and the Court is not persuaded that a two month period between representation significantly hampered plaintiffs' ability to conduct discovery).

Defendants' request for judicial notice is GRANTED as to Exhibit C pursuant to Evidence Code sections 452 and 453.

Plaintiffs' request for judicial notice is GRANTED as to Exhibit 1 through 36 pursuant to Evidence Code sections 452 and 453.

The Court does not rule on plaintiffs' objections to evidence. The contested matters were not relevant to the Court's ruling and therefore any decision on defendants' objections is deferred until any further proceedings when they become relevant. (See CCP §437c(q).)

CCP section 437c(p)(2) provides "[a] defendant . . . has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant . . . has met that burden, the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto."

The Court finds the First Amended Complaint addresses all necessary elements of all remaining causes of action. Contrary to defendants' argument, plaintiffs raise triable issues of material fact as to each and every cause of action.

Based on the foregoing, defendants' Motion for Summary Judgment, or in the Alternative, Motion for Summary Adjudication is DENIED. Plaintiffs' request for attorney's fees is also DENIED as the Court finds the present motion is not frivolous as claimed by plaintiffs; while a Motion for Judgment on the Pleadings could have alternatively been filed, defendants have not abused the Discovery Act or any other provision of the CCP by choosing the MSJ/MSA route.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiffs to prepare a formal order pursuant to Rule 3.1312 in conformity with this ruling.

9:00 AM 19CV44032 Motion by Atty Estavillo to be relieved as counsel for Plaintiffs 04/26/2019 05/06/2020 Case Management Conference  
Christopher Dufresne & Estate of Sylvia Brown

Ptff/Pet: Dufresne, Christopher; Estate of Sylvia Brown  
Def/Res: Jpmorgan Chase Bank, N.A.; Quality Loan Service Corp.; Wilmington Trust Company, Not In Its Individual Capacity But Solely As Successor

Atty: Law Offices of Jason Estavillo Pc  
Atty: Molteni, Julie Oliva

Tentative Ruling: The attorney's declaration is sufficient; therefore, the Motion of Law Offices of Jason W. Estavillo, PC to be Relieved as Counsel for the plaintiffs is GRANTED.

The clerk shall provide notice of this ruling to the parties forthwith. The Court will sign the proposed order submitted by Mr. Estavillo.