

**21CV45154**

**CONNOLLY**

**VS**

**GARAMENDI**

**TENTATIVE RULINGS FOR 09-04-24**

**Defendant's motion for attorney fees**

The Court must determine only one prevailing party under Civil Code Section 1717. *Roberts v. Packard, Packard & Johnson* (2013) 217 Cal. App. 4th 822 . Defendant is the prevailing party and is entitled to fees that arise from litigating the contract-based issues.

However the issues relating to the allocation of the cost of the fences was not a contract-based issue. Indeed, it was not raised by plaintiffs' complaint (as bifurcated); rather it was raised by defendant's counter-claim and decided under Civil Code Section 841. Thus, defendant is not entitled to fees incurred in litigating the fence issues.

Defendant is entitled to a reasonable fee, not limited by the amount actually charged by defense counsel. *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 701. The hours and rates sought by defendant are reasonable. The Court overrules plaintiffs' objection and considers defense counsel's declaration in which he estimates how much the fees should be reduced to deduct time spent on the fence issue. It is neither new argument (it is a response to plaintiffs' argument in its opposition brief) nor is it based on "new evidence" (both sides have had the transcript).

The court has examined the proposed lodestar analysis, considered all of the relevant factors required in an attorney fees award (see, e.g., *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096), and reviewed defense counsel's statement of the percentage of time spent on the fence issue. Having considered all these factors as well as everything contained in the papers submitted in support of and opposition to both sides' request for fees, the Court awards defendant attorney fees in the amount of \$361,570.99.

**Plaintiffs' motion for attorney fees**

Plaintiffs were not the prevailing party. Their motion for attorney fees is denied.