SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 09/16/22 TIME: 1:30 P.M. DEPT: E CASE NO: CV2001569

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: S. HENDRYX

PETITIONER: SAN GERONIMO HERITAGE ALLIANCE vs. RESPONDENT: COUNTY OF MARIN, ET AL	

NATURE OF PROCEEDINGS: NOTICE OF MOTION – AND MOTION FOR ATTORNEY'S FEES [RLPT] SALMON PROTECTION AND WATERSHED NETWORK [RLPT] PRESTON BROWN

RULING

Real Parties in Interest Salmon Protection and Watershed Network and Preston Brown's (collectively "SPAWN") Motion for Attorney's Fees is GRANTED, in part, in the amount of $129,500.

BACKGROUND

Petitioner San Geronimo Heritage Alliance ("SGHA") is an unincorporated association comprised of ten local residents who were unhappy about the sale of the former San Geronimo Golf Course, a private property sold by its prior owner in 2017. The new private landowner, TPL, elected not to continue the property's golf course operations and was contemplating future use of the property as community park space.

On July 6, 2020, SGHA filed its Verified Petition for Writ of Mandate, and Complaint for Declaratory and Injunctive Relief against Defendants County of Marin ("County"), Board of Supervisors of the County of Marin, TPL, and Real Parties in Interest SPAWN. The Petition sought to stop the replacement and alteration of the San Geronimo Golf Course (the "Property") to open space and parkland.

Shortly after filing its petition, SGHA filed an ex parte application for a stay of the County's decision approving land use permits authorizing SPAWN to undertake development and construction in and around a creek running through the Property in connection with a restoration project. SGHA argued that the work involved the decimation of fairways, green areas, and 58 "protected" and "heritage" trees in violation of County laws that designate the Property's primary use as a golf course. On July 30, 2020, the Court denied the ex parte application,

finding that under Code of Civil Procedure section 10904.5(G) a stay was against the public interest. The Court ruled: "A stay would hamper resources and projects that are in the public interest. The court further finds to perpetuate the conflict on this property in a case where success on the merits is low is against the public interest. The court does not find that the petitioner will suffer irreparable harm."

SGHA filed an Amended Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition") on August 25, 2020. As to SPAWN, the First Cause of Action for Writ of Mandamus alleged that the County's decision to approve the land-use permits to SPAWN was invalid because the permits authorized development and use of the Property that was inconsistent with the applicable provisions of the Development Code, the Marin Countywide Plan, the San Geronimo Valley Community Plan, and the County Code. In the Prayer for Relief, SGHA requested that the court issue a writ of mandate directing the County to vacate the land use permits to SPAWN and also sought to have the Property restored to use as a golf course.

REQUESTS FOR JUDICIAL NOTICE

Petitioner's unopposed Requests for Judicial Notice are GRANTED. (Evid. Code, § 452, subds. (c), (d), and (b).)

LEGAL STANDARD

The private attorney general doctrine is an exception to the usual rule that each party bears its own attorney fees. (Civ. Proc. Code, § 1021.5; *Vosburg v. Cnty. of Fresno* (2020) 54 Cal.App.5th 439.)

Under section 1021.5, the court may award attorney's fees to a "successful party" in any action "that resulted in the enforcement of an important right affecting the public interest," such that a significant benefit "has been conferred on the general public or a large class of persons." The legislative intent of section 1021.5 specified public interest litigation as "litigation designed to promote the public interest by enforcing laws that a ... private entity was violating. (*Adoption of Joshua S.* (2008) 42 Cal.4th 945, 956.) "The enforcement of an important right affecting the public interest implies that those on whom attorney fees are imposed have acted ... in such a way as to violate or compromise that right, thereby requiring its enforcement through litigation." (*Id.*)

A party is the "prevailing party" or "successful party" when it obtains "a favorable judicial decision, i.e., a judicially sanctioned or recognized change in the legal relationship of the parties." (*Marine Forests Society v California Coastal Commission* (2008) 160 Cal.App.4th 867, 877.)

Under Code of Civil Procedure section 1021.5 the "prevailing party" is required to show four requisites for an award of an attorney fees (*Ebbetts Pass Forest Watch v Cal. Dept. of Forestry & Fire Protection* (2010) 187 Cal.App.4th 376, 381):

(1) The suit resulted in the enforcement of an important right affecting the public interest;
(2) A significant benefit was conferred on a large class of persons;
(3) Private enforcement of the right was necessary; and,

(4) The financial burden of private enforcement warrants an award of attorneys' fees.

The burden of proving the existence of all elements necessary for an award of fees under the private attorney general statute, except the element that in the interests of justice, the fees should not be paid out of the recovery in the action, is placed on the party requesting the attorney fees; when that party establishes those elements, the trial court's discretion to deny fees is quite limited, and attorney fees must be awarded unless special circumstances render such an award unjust. (*Vosburg v. Cnty. of Fresno, supra,* 54 Cal.App.5th 439.)

TIMELINESS OF MOTION

The general rule for the timeliness of a motion for an award of attorney fees is set forth in Rules of Court, rule 3.1702. (Rules of Court, rule 3.1702(a).) In this case, SPAWN had 60-days from the date of service of the Notice of Entry of Judgment to file its motion. (Rules of Court, rule 8.104(1)(B).) The sixty-day deadline is not extended when the triggering event, service of the Notice of Entry of Judgment, is served by mail. (*See InSyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129, 1134.)

Here, the County served the Notice of Entry of Judgment by mail on April 18, 2022. That service triggered the sixty-day period for SPAWN to file its motion for attorney's fees. The last day for it to file was on June 17, 2022. The motion was filed on June 21, 2022, sixty-four days after service of the Notice of Entry of Judgment. The motion was therefore technically untimely.

The untimeliness of the filing of the motion for attorney fees is not jurisdictional. For good cause, the trial judge may extend the time for filing a motion for attorney's fees in the absence of a stipulation or for a longer period than allowed by stipulation." (Rules of Court, rule 3.1702, subd. (d).) An extension of time under rule 3.1702(d) need not be granted before the expiration of the time for filing the motion for attorney fees. (*Lewow v. Surfside III Condominium Owners' Assn., Inc.* (2012) 203 Cal.App.4th 128, 135.) Relief under Code of Civil Procedure section 473, subdivision (b), is also available. (*Lee v. Wells Fargo Bank, N.A.* (2001) 88 Cal.App.4th 1187, 1188-1189.)

With respect to the standards applicable to a motion under section 473, the mandatory provisions of section 473 do not apply to the failure timely to file this motion, which failure did not result in a "default" or "dismissal." (See *Douglas v. Willis* (1994) 27 Cal.App.4th 287, 290.) The discretionary provisions of section 473 remain available and provide a basis for determining the existence of good cause. (*Ibid.*)

Here, SPAWN submitted the declaration of Ana Villanueva stating that on June 9, 2022, she served all parties with a copy of this motion by email. (Villanueva Decl. ¶ 2.) On that same day, she placed an original and two copies of the motion in a FedEx box marked for next day delivery to the Court Clerk of Marin County Superior Court. (*Id.* at ¶ 3.) On June 20, 2022, she received the return prepaid FedEx envelop she had included with her filing, with a notice from the clerk rejecting the filing for lack of payment. (*Id.* at ¶¶ 3-4.) Upon receipt of the notice, she immediately contacted the court clerk to address the payment issue. (*Id.* at ¶ 5.) The clerk instructed her to refile the documents via the eDelivery system which included processing the

motion fee. (*Ibid.*) On June 21, 2022, as instructed, she filed the documents via eDelivery and again served them by email on counsel. (*Id.* at ¶ 6.)

Considering the totality of the circumstances here, the Court concludes that this mistake is excusable and constitutes good cause for an extension of time to file the motion for attorney fees such that the filing of the motion is timely. There does not appear to be any prejudice to the opposing party since they were originally served with copies of the motion within the 60-day period. (*Robinson v. U-Haul Company of California* (2016) 4 Cal.App.5th 304, 326 ["Even a claim of inadvertence, if it is not prejudicial, may constitute good cause for a late filing."]) Good cause appearing, the Court extends the time for filing of the motion such that the motion now pending is deemed timely.

DISCUSSION

Entitlement to Attorney's Fees

With this case, Petitioner SGHA sought to keep real property formerly used as the San Geronimo Golf Course from other uses under new ownership. SGHA's position was that the Property had to be maintained as a golf course. As part of this lawsuit, SGHA attacked land use permits issued to SPAWN for a restoration project at Roy's Pools in the creek running through the Property.

SPAWN had worked for several years prior to the lawsuit to obtain the necessary permits to allow the restoration project to proceed under a nearly $3 million grant from the California Department of Fish and Wildlife. The state agency had previously undertaken all necessary environmental review, during which no person raised any concern about the project or its impacts. (Steiner Dec. ¶ 11.)

SGHA sued SPAWN, SPAWN argues, under the misguided hope that invalidating the permits could somehow force the new owner of the property to restore the prior golf course. SPAWN thus sought *pro bono* counsel, working on fee contingency, to defend the permit decisions and fulfill its legal obligations. (See Steiner Dec. ¶¶ 15-17.) SPAWN asserts that defending the Creek Permit against SGHA's frivolous claims was necessary to ensure that SPAWN could complete the public benefit project for which California had awarded millions of taxpayer dollars. Moreover, SPAWN argues, by successfully defending this case, SPAWN vindicated the important public principle that challengers must bring and exhaust their grievances before the appropriate administrative agency, not simply lie in wait and then use the judicial process to raise new issues and craft new arguments that the agency decision makers had no opportunity to address.

SPAWN Was the Successful Party

Here, SPAWN was the successful party under section 1021.5 and ultimately prevailed on its defense against SGHA's claims. Courts have repeatedly held that fee recovery under section 1021.5 is not limited to petitioners, but applies to any prevailing party, including a real party and intervenor, who successfully defends an action and otherwise satisfies the statutory criteria. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 571-72, as modified (Jan. 12, 2005);

see also Vosburg v. Cnty. of Fresno, supra, 54 Cal.App.5th at p. 457. [Real parties in interest may be entitled to attorney fees under section 1021.5].)

SPAWN's Defense of the Case Vindicated an Important Public Interest

Working closely with local, state, and federal agencies, SPAWN spent nearly a decade designing and permitting the restoration project. (See Steiner Decl. ¶¶ 10-14.) During that process, the California Department of Fish and Wildlife served as the "lead agency" for public environmental review under the California Environmental Quality Act ("CEQA"). Neither SGHA nor its members participated in the public comment portion of that process. Once all of the state and federal permitting was completed, SPAWN proceeded to apply for the two required Marin County permits – 1) a Design Review and Tree Removal Permit and 2) a Creek Permit. Neither SGHA nor its members administratively appealed the Design Review and Tree Removal Permit. As the Court concluded in its Statement of Decision on SGHA's writ petition (entered on April 12, 2022), neither SGHA nor its members administratively exhausted the water passage issue germane to the Creek Permit.

SPAWN's defense of this case allowed SPAWN to complete the taxpayer-funded restoration project. The Court finds that the restoration project itself represented important public interests in the environment, protection of endangered species, and removal of non-native flora. Accordingly, the Court finds that this requirement is satisfied.

SPAWN's Defense Conferred a Significant Public Benefit

A "significant benefit" does not require either a pecuniary or economic benefit. (See Code Civ. Proc., § 1021.5.) As stated above, SPAWN's defense of this case allowed SPAWN to complete the taxpayer-funded restoration project, thereby conveying a significant public benefit by protecting central coast coho salmon. The Court finds this requirement has also been satisfied.

SPAWN's Litigation of this Case was Necessary

SPAWN puts forth evidence showing that the County expected it to defend and indemnify it against any challenge to the permits. (See Supplemental Sivas Decl. ¶ 2 and Ex. A (letter from Marin County Counsel to SPAWN's counsel). See also AR 146 (Design Review and Tree Removal Permit).) The defense was necessary to achieve the public benefit. Accordingly, this requirement has been satisfied.

The Financial Burden SPAWN Bore was out of Proportion to any Private Benefit

SPAWN is a project of the Turtle Island Restoration Network, a section 501(c)(3) not-for-profit organization. (See Steiner Decl. ¶¶ 3-4.) SPAWN's paid staff is funded primarily through charitable donations, and its major restoration work, like the Roy's Pools project is funded through public sector pass-through grants. (*Id.* at ¶ 5.) Ultimately, SPAWN received minimal financial or other direct benefit from defending the lawsuit and completing the restoration project; the project's substantial benefits accrue to the environment, the fish and the general public. (Id. at ¶ 19.) SPAWN was not a developer or a construction company profiting financially from the project. (Supp. Steiner Decl. at ¶ 6.) SPAWN's burden far exceeded an

minimal private benefit. Accordingly, the Court finds that this requirement has also been satisfied.

Save Our Heritage Decision Does not Prevent an Award of Fees Under 1021.5

SGHA argues that the *Save Our Heritage* case precludes an award of fees. (*Save Our Heritage Organization v. City of San Diego* (2017) 11 Cal.App.5th 154.) This Court disagrees. If a party meets the criteria for an award of attorney fees under Code of Civil Procedure section 1021.5, the court may deny fees as against a litigant "who did nothing to adversely affect the public interest." (*Id.* at p. 160-161.) In that case, the appellate court rejected petitioner's claim that section 1021.5 attorney fees could never be awarded to a project proponent, but also went on to conclude that "[t]he relevant inquiry in cases where a defendant or real party in interest prevails in defending against litigation and seeks attorney fees from the party who initiated the litigation is whether the litigation was detrimental to the public interest because it sought to curtail or compromise important public rights." (*Id.* at p.161.) In *Save Our Heritage Organization*, the court concluded that petitioners did not seek to curtail or compromise important public rights but rather sought to "correct what *Save Our Heritage Organization* perceived to be violations of state and local environmental, historic preservation, and land use laws by the City."

While the court in that case ultimately found that the litigation at issue was not detrimental, nothing in the *Save Our Heritage* case prevents this Court from finding that SGHA's litigation *was* detrimental to the public interest because it sought to curtail or compromise important public rights.

Unlike *Save Our Heritage Organization* in which the court concluded that petitioners sought to cure perceived violations of state and local environmental laws by the City, it is clear to this Court that the sole goal of SGHA was to continue the use of the Property as a golf course. The restoration project was caught in the crosshairs because SGHA believed that it could obtain its ultimate goal (golf course) by thwarting the restoration project (which would have impacted the location of the holes on the original course to some extent). This is supported by the fact that neither SGHA nor its members participated in the public comment portion of the CEQA analysis for the restoration project, by the fact that neither SGHA nor its members administratively appealed the Design Review and Tree Removal Permit, and by the fact that neither SGHA nor its members administratively exhausted the water passage issue germane to the Creek Permit. As such, the Court finds Petitioner's actions distinguishable from those in *Save Our Heritage*. SGHA was willing to curtail important public rights (by frustrating a restoration project designed to protect endangered fish) to advance its members' agenda for a golf course.

Accordingly, after considering the briefs and evidence submitted, the arguments of the parties, and for good cause appearing, the Court finds that SPAWN is a successful party for purposes of Code of Civil Procedure section 1021.5. The Court further finds that (1) the present litigation resulted in the enforcement of an important right affecting the public interest, (2) a significant benefit was conferred on a large class of persons, (3) private enforcement of the right was necessary, and (4) the financial burden of private enforcement warrants an award of attorneys' fees. (*See Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1214.) Moreover, the Court finds that the litigation was detrimental to the public interest because it sought to curtail or

compromise important public rights in order to obtain its desired outcome (continuation of the Property's use as a golf course). Finally, the Court finds that SPAWN's minimal financial interest does not disqualify it from an award of attorney's fees, nor does the doctrine of unclean hands bar the award.

Consequently, SPAWN is entitled to an award of attorneys' fees under Code of Civil Procedure section 1021.5

Determination of Fee Award

Under California law, a court assessing attorney fees begins with a touchstone or 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* (1977) 20 Cal. 3d 25, 48.) 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." (*Id.* at fn. 23.) The lodestar represents "the basic fee for comparable legal services in the community [and] may be adjusted by the court based on [several] factors." (*Ketchurn v Moses* (2001) 24 Cal.4th 1122, 1132 (*citing Serrano, supra,* 20 Cal.3d at 49.) "The 'experienced trial judge is the best judge of the value of professional services rendered in his court. (*Id.*) "The unadorned lodestar reflects the general local hourly rate for a fee-bearing case; it does not include any compensation for contingent risk, extraordinary skill, or any other factors a trial court may consider." (*Id.* at 1138.)

With respect to the amount of fees to be awarded, SPAWN submitted evidence with its moving papers that the total "unadorned lodestar" incurred in this litigation was $129,500[1]. This amount constituted 185 total hours billed at the rate of $700 per hour. (See Sivas Decl. ¶¶ 20-22, 24.) In its Reply, SPAWN also requested an additional $5,000 for counsel's work on the Reply, but did not support this request with a declaration stating the number of additional hours worked or a timesheet.

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

Here, the Court finds that the 185 hours billed were reasonable given the duration of the litigation, the issues presented, as well as the multiple changes to settled pleadings by SGHA. Moreover, the Court finds that $700 per hour is consistent with the ordinary billing rates charged in this community by private sector environmental attorneys possessing a similar level of experience and expertise to Attorney Sivas and that it is a reasonable amount for Attorney Sivas to charge in this matter.

[1] The Court notes that the Motion seeks $129,745 in fees. However, since the Sivas' Declaration indicates that she is seeking a lodestar representing 185 hours at $700/hour, the Court uses $129,500 (the result of 185 multiplied by 700). (See Sivas Decl. ¶¶ 20, 25.)

Accordingly, the Court GRANTS the Motion for Attorneys fees, in part, in the amount of $129,500. Although moving party requests that the award be made against not only Petitioner, but also jointly and severally against the association's members, moving party provides no authority authorizing the Court to do so. Moreover, the authority of which the Court *is* aware suggests that this action would not be authorized. (See Corp. Code, § 18260 [A money judgment against an unincorporated association, whether organized for profit or not, may be enforced only against the property of the association].) Accordingly, the award is against SGHA only.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for September, 2022 is as follows:
https://www.zoomgov.com/j/1605153328?pwd=eUU1OE9BTG5tWHgrOFNKMmVvd2tFQT09
Meeting ID: 160 515 3328
Passcode: 360075

If you are unable to join by video, you may join by telephone by calling* 1-669-254-5252 *and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marincourt.org/