Judge Benson – Law & Motion – Wednesday, August 24, 2022 @ 9:00 AM
TENTATIVE RULINGS

1. **18CV04146 Thurman, Darrin v. Cantek America, Inc. et al.**

EVENT: Specially Appearing Defendant Leadermac Machinery Co. LTD's Motion to Quash Service of Summons on Cross-Complaint and to Dismiss Leadermac Machinery Co. LTD from this Action For Lack of Jurisdiction (CCP §§ 418.10 and 581(h))

Specially Appearing Defendant Leadermac Machinery Co. LTD's Motion to Quash Service of Summons on Cross-Complaint and to Dismiss Leadermac Machinery Co. LTD from this Action For Lack of Jurisdiction (CCP §§ 418.10 and 581(h) is continued to November 16, 2022 at 9:00am. Meanwhile, Cross-Complainants Cantek America and Akhurst Machinery, Inc. are permitted to conduct jurisdictional discovery. Prior to the November 16 hearing, the Court sets the following supplemental briefing schedule:

Cross-Complainant's supplemental brief: October 26, 2022

Cross-Defendant's supplemental brief: November 4, 2022

Cross-Defendant Leadermac shall prepare and submit a form of order.

2. **22CV01525 In re: Stilwell, Trish**

EVENT: Change of Name (Adult)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

3. **22CV01423 In re: Sloan, Tanya Kay**

EVENT: Petition for Change of Name (Adult)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

4. **20CV02347 Silano, Joel M. v. FCA US, LLC et al.**

EVENT: Plaintiff's Motion for Reconsideration of July 6, 2022 Order Granting Defendant's Motion For Summary Adjudication as to Plaintiff's Lemon Law Claims

Plaintiff's Motion for Reconsideration of July 6, 2022 Order Granting Defendant's Motion For Summary Adjudication as to Plaintiff's Lemon Law Claims is Denied. The Court concurs with Defendant in that there is no new law or circumstances presented. The arguments made by Plaintiff were previously made on summary judgment. The fact that *Rodriguez v. FCA* US is pending review from the Supreme Court does not create a new law or circumstance, considering *Rodriguez* was not depublished.

Defendant shall prepare and submit a form of order within 10 days.

5. **20CV01220 California Open Lands v. Butte County Department of Public Works**

EVENT: Plaintiff's Motion For Enforcement of Costs

Plaintiff's Motion For Enforcement of Costs is Granted as provided herein.

Preliminarily, while the Court understands the County's arguments concerning COL's alleged failures regarding the notice requirements of 7(A) of the Conservation Easement (hereinafter "CE") and the allegations that some of the remedies in the settlement agreement were proposed prior to litigation, this does not change the conclusion that the terms of the settlement establish that COL was a "prevailing party" as that term is defined by case law. Because the dispute in this case was resolved by a settlement agreement rather than by adjudication, we begin by examining the settlement agreement. (See, *Morrison v. Vineyard Creek L.P.* (2011) 193 Cal.App.4th 1254, 1264) The question is whether the claims "contributed substantially to remedying the conditions" at which the claims or lawsuit were directed. (*Id*.)

While some of the terms do nothing more than essentially restate the language of the CE, the settlement also provides that the County is obligated to provide affirmative remedies including restoration of the preserve and increased monitoring of water flows. As a result, these terms appear to be in furtherance of the relief that was sought in this case. Consequently, COL is a prevailing party as the terms of the settlement "contributed substantially to remedying the conditions" at which the lawsuit was directed.

Regarding the amount of attorneys' fees and costs, the Court agrees with the County's contention that this is not a complex Clean Water Act case, but at it's core is a breach of

contract case. While it is true that environmental issues overlay context, that does not change the fact that legal analysis boiled down to contractual interpretation and questions of breach. Therefore, the Court finds that specialized expertise requiring higher hourly rates was not required nor necessary. Therefore, the Court is exercising its discretion in declining to apply "out of town rates." As the Court further details below, the circumstances in this case support diminution of the fees and costs sought by COL. Thus, the Court will apply the rates of $350/hour for lead counsel and $200/hour for associate counsel, and finds that to be fair and reasonable.

As to whether the total number of hours billed as to the summary judgment motions are reasonable or excessive, the Court finds that 370 hours for the two motions is excessive. While it is true that two separate motions were filed, there was significant overlap between the two and both involved interpretation of the same contractual documents. Thus, the Court is reducing the billable hours from 370 to 200.

Regarding COL's request for a multiplier, the request is denied. Additionally, the Court finds reason to support the further reduction of fees. Specifically, the County has presented credible evidence that it offered to restore the preserve prior to COL's commencement of litigation. In reviewing the prelitigation proposal, the Court finds that it was very similar if not identical to what was agreed upon in the final settlement as it pertains to restoration. Further, the Court finds that restoration was a significant and central term to the settlement agreement. As a result, the Court finds it would be inequitable to the County not to account for this fact.

Where the ratio between public benefits and expected litigant benefits is relatively low so must be the ratio between expected litigant benefits and litigant costs in order to justify a fee award. (*Los Angeles Police Protective League v. City of Los Angeles* (1986) 188 Cal.App. 3d 1, 10) Here, it cannot be said that the litigation furthered an achievement of the benefit of restoration since it was available pre-litigation. As a result, the benefit in terms of what was achieved through litigation is necessarily adjusted in that context.

Therefore, the Court is reducing the final attorney fee award by 30%.

Next, COL has requested the enforcement of costs. The relevant clause in the CE provides:

> **Costs of Enforcement**: Reasonable costs incurred by any party enforcing the terms of this Easement, *including without limitation*, costs of suit and attorney's fees, and any costs of restoration necessitated by a violation of the terms of this Easement shall be borne by the breaching party. If a party prevails in any action to enforce the terms of this Easement, such party's costs of suit, *including without limitation*, attorneys' fees, shall be borne by the other party. [Emphasis Added]

With that in mind, the Court finds that the language of the clause implicitly requires some reasonable and necessary relationship between the cost incurred and the pursuit litigation. Here, COL has identified (3) categories of costs: Litigation costs, Consulting Expert Fees, and Costs of Staff Time.

Upon review, the Court finds that the "litigation costs" are directly related to the litigation as set forth below. As to the "Consulting Expert Fees" and "Costs of Staff", the Court finds that Plaintiff has failed to meet its burden in showing how those costs are related to this litigation. The burden is on the party seeking attorney fees to prove that the fees it seeks are reasonable. (*Center for Biological Diversity v. County of San Bernadino* (2010) 188 Cal.App.4th 603, 615) Although these are costs, the same principle that Plaintiff has the burden of demonstrating how the costs were necessitated by the violations would logically apply.

Here Mr. Packard's statement that the expert work was necessary because of "technical and legal arguments regarding the character and quality of the wetlands" is vague and conclusory. Similarly, regarding "Costs of Staff" Ms. Nielsen's allocation of time to "Neal Rd. Easement Defense is also vague and conclusory. Consequently the Court finds that COL has failed to meet its burden in demonstrating how these costs were necessary in this case.

Based on the foregoing, Fees and Costs are awarded as follows:

Mr. Carlon: 417.5 hours x $200/hour =	$83,500.00	
Mr. Acree: 224.9 hours x $350/hour =	$78,715.00	
Mr. Packard: 234.7 hours x $350/hour =	$82,145.00	
Total Attorneys' Fees pre multiplier	$244,360.00	
Less 30%		($73,308.00)
Subtotal	$171,052.00	
Consulting Attorneys' Fees	$9,265.00	
Total Attorneys' Fees	$180,317.00	
Litigation Costs	3,590.56	
Total Attorneys' Fees and Costs	$183,907.56	

Plaintiff shall prepare and submit a form of order approved as to form consistent with this ruling within 10 days.

6. <u>22CV01558 Bones, Toni Passalacua v. Shaw, Patricia</u>

EVENT: Petition for Permanent Injunction Pursuant to Civil Code § 798.88

The Petition for Permanent Injunction Pursuant to Civil Code § 798.88 is GRANTED and is unopposed. The Court finds Petitioner has met her burden of establishing with clear and convincing evidence that Respondent is in continuing violation of the rules and regulations specified in the Petition. The Court will sign the proposed order.

7-8. 21CV00045 Stott Outdoor Advertising, a General Partnership v. White, Blaine D et al

EVENT: (1) Plaintiff-Intervenor Mahoney Capital, LP's ("Mahoney" herein) Motion for Summary Adjudication

(2) Plaintiff Stott's Motion for Summary Judgment, or in the Alternative, Summary Adjudication

Plaintiff-Intervenor Mahoney Capital, LP's ("Mahoney" herein) Motion for Summary Adjudication is DENIED. Mahoney's Request for Judicial Notice is granted. The Court finds that Mahoney's claim (including the ability to succeed on a claim for specific performance against either Stott Outdoor Advertising's ("Stott" herein) or Defendants Jennifer and Blaine White) is predicated on the ability to show it was a bona fide purchaser, and the Court finds that there is a triable issue of fact in this regard. Specifically, whether Mahoney had notice of Stott's right of first refusal under the Agreement of Lease executed February 10, 2006 ("Lease" herein). [UMF Nos. 12, 17, 19, 23, 31, 32, 36, 37, 38, 55, 62, 66, 79, 80, 81, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 111 and 112.] In regard to the additional arguments raised by Mahoney, the Court finds that there are also triable issues of fact as to whether the Lease contains a sufficient description of the property to render it certain and in compliance with the Subdivision Map Act [UMF Nos. 12, 14, 15, 16, 50, 52 and 53.], and whether Stott's right of first refusal extends beyond 5737 Skyway to the adjoining property [UMF Nos 11, 15, 16, 19, 20, 28, 42, 43 and 52.]. The Motion for Summary Adjudication is denied in its entirety and Stott shall submit a form of order consistent with this ruling within two weeks.

Plaintiff Stott's Motion for Summary Judgment, or in the Alternative, Summary Adjudication is DENIED. As to the procedural issues raised by Mahoney, the Court finds that the typographical error in the Notice of Motion in regard to the hearing date does not render the notice improper as the correct hearing date is set forth in the caption of each of the documents submitted in support of the Motion, and the hearing date is correctly reflected in the Court's online docket. As such, the Court deems notice proper. Both Stott's and Mahoney's respective Requests for Judicial Notice are granted. The Court acknowledges the deficiency of the Separate Statement submitted by Stott in support of its Motion, but in its discretion, declines to render that a sufficient ground for denying the Motion. See, Code of Civil Procedure §437c(b)(1). The Court finds that Mahoney's claim (including the ability to succeed on a claim for specific performance against either Stott Outdoor Advertising's ("Stott" herein) or Defendants Jennifer and Blaine White) is predicated on the ability to show it was a bona fide purchaser, and the Court finds that there is a triable issue of fact in this regard. Specifically, whether Mahoney had notice of Stott's right of first refusal under the Agreement of Lease executed February 10, 2006 ("Lease" herein). [UMF Nos. 4, 7, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and Additional UMF in Opposition Nos. 1, 7, 9, 11, 15, 24, 25, 26 and 28.] In regard to the additional arguments raised by Mahoney, the Court finds that there are also triable

issues of fact as to whether the Lease contains a sufficient description of the property to render it certain and in compliance with the Subdivision Map Act [UMF Nos. 1, 3 and Additional UMF in Opposition Nos. 1, 2, and 3.], and whether Stott's right of first refusal extends beyond 5737 Skyway to the adjoining property [UMF Nos. 1, 3 and Additional UMF In Opposition Nos. 2, 3, 5, 8, 32, 39, 40 and 41.]. The Motion for Summary Judgment, or in the Alternative, Summary Adjudication is denied in its entirety and Mahoney shall submit a form of order consistent with this ruling within two weeks.