
PARTIES/ATTORNEYS

Plaintiff	Dana Brancati	Richard Wideman
Defendant	Cachuma Village, LLC	Rafael Gonzalez, Sean Stratford-Jones Mullen & Henzell L.L.P.

TENTATIVE RULING

On October 23, 2024, the court ordered personal appearances however the court strikes that order and will now permit Zoom appearances.

For the reasons discussed below, the debtor's exam of William Green is vacated. The objection to the order for appearance and motion to strike the objection are both moot.

The motion for attorney's fees against Dana Brancati is granted. No opposition was filed. The court determines that Cachuma Village LLC is the prevailing party; that no apportionment is required as the contract is sufficiently broad to encompass both tort and contract claims; that the hourly rates and services rendered were reasonable; and therefore orders fees in the amount of \$181,047.50. A new proposed order commensurate with this ruling must be submitted that omits the finding that Brancati and Green are jointly liable for the fees.

On September 7, 2016, plaintiffs Dana Brancati and William Green filed a complaint against defendants Cachuma Village, LLC, and Anne "Nancy" Crawford-Hall, for breach of the warranty of habitability, fraud, constructive eviction, and "personal injuries and property damage," based on mold growth inside the residence. Defendant Cachuma Village, LLC answered on November 28, 2016. It does not appear that Anne "Nancy" Crawford Hall was ever served, or ever appeared. William Green dismissed his complaint on July 26, 2021, effectively dismissing himself as a plaintiff. Brancati continued litigation.

As relevant for our purposes, Judge Staffel granted Cachuma Village's motion in limine, excluding plaintiff's expert from testifying about toxic mold. On May 17, 2022, at plaintiff's request, the court ordered dismissal of the action. Plaintiff appealed. On August 25, 2022, while the appeal was pending, the court awarded attorneys' fees to Cachuma Village in the amount of \$181,047.50 and costs

in the amount of \$41,560.14 for a total judgment of \$222,607.64 against plaintiffs Dana Brancati and William Green.¹

The Court of Appeal ultimately reversed the trial court's ruling on the motion in limine in a published opinion, concluding the expert Dr. Simon should be allowed to testify. (*Brancati v. Cachuma Village LLC* (2023) 96 Cal.App.5th 499, 502.) The remittitur was issued on February 7, 2024.

On May 28, 2024, this court granted Cachuma Village's motion to dismiss for failure to bring the case to trial within 5 years pursuant to Code of Civil Procedure sections 583.310 and 583.360. Brancati filed a Notice of Appeal from this ruling on June 11, 2024. The case currently is on appeal.

On June 26, 2024, Cachuma Village filed its Memorandum of Costs in the amount of \$47,726.26. It is unchallenged. On August 21, 2024, defendant filed its motion for attorney's fees against Brancati in the amount of \$181,047.50 (which is the same amount sought in the 2022 motion) on the basis that the rental agreement between the parties permits the recovery of attorney's fees to the prevailing party in any action arising out of the agreement.² The motion was served by electronic mail that same date. Opposition was due on September 18, 2024. (Code Civ. Proc., § 1005, subd. (b).) None has been filed. The hearing was initially set for October 2, 2024. The matter was subsequently continued to October 23, 2024.

On September 13, 2024, the court ordered William Green to appear and furnish information in aid of enforcement of a money judgment against him. He appeared as ordered on October 23, 2024, and Judge Staffel continued the hearing to December 11, 2024. All parties were ordered to personally appear on December 11, 2024.

Continued Viability of August 25, 2022 Order

At the October 2, 2024 hearing, the court questioned the continued viability of the August 25, 2022 order establishing attorneys' fees, and whether the appellate court undermined a necessary factual predicate—a finding that defendant is the prevailing party—when it reversed the trial court's decision as to Brancati.

The order awarding fees as it pertains to Brancati was reversed when the Court of Appeal reversed the court's dismissal. (*Merced County Taxpayers' Ass'n v.*

¹ Filing a notice of appeal does not stay any proceedings to determine the matter of costs and does not prevent the trial court from determining a proper award of attorney fees claimed as costs. (*See Korchemny v. Piterman* (2021) 68 Cal.App.5th 1032, 1052.)

² As noted above, the filing a notice of appeal does not stay any proceedings to determine the matter of costs and does not prevent the trial court from determining a proper award of attorney fees claimed as costs. (*Korchemny v. Piterman* (2021) 68 Cal.App.5th 1032, 1052.) The matter is properly before the court.

Cardella (1990) 218 Cal.App.3d 396, 402—“An order awarding [attorney fees and costs] falls with a reversal of the judgment on which it is based.”) This is so even if the judgment does not so state. (*Ducoin Mgmt. Inc. v. Sup.Ct. (Winston & Assocs. Ins. Brokers, Inc.)* (2015) 234 Cal.App.4th 306, 314—“A disposition that reverses a judgment automatically vacates the costs award in the underlying judgment even without an express statement to this effect.”) Cachuma Village impliedly concedes this; indeed, it has requested that the court award attorney fees against Brancati in the companion motion in the very same amount that was fixed by Judge Staffel’s August 25, 2022 order.

Cachuma Village nevertheless argues that Brancati’s appeal had no effect on the fee award against Green. It points out that “[a]s a general rule, where only one of several parties appeals from a judgment, the appeal includes only that portion of the judgment adverse to the appealing party’s interest, and the judgment is considered final as to the nonappealing parties.” (*Estate of McDill* (1975) 14 Cal.3d 831, 840 [emphasis added] [citing *Lake v. Superior Court of California* (1921) 187 Cal. 116, 119 (quiet title judgment final as to nonappealing defendants, despite sharing undivided interest with appealing defendant); *Smith v. Anglo-California Trust Co.* (1928) 205 Cal. 496 (judgment final as to nonappealing lien claimants)] [disapproved on other grounds in *Lucas v. Hamm* (1961) 56 Cal.2d 583].) Cachuma Village further acknowledges an exception to this rule where “the part [of a judgment] appealed from is so interwoven and connected with the remainder, . . . that the appeal from a part of it . . . involves a consideration of the whole.” (*Estate of McDill, supra*, 14 Cal.3d at 840.) Cachuma Village argues that Brancati’s appeal was in no way interwoven and connected with the case as it pertains to Green because “Defendant’s entitlement to attorneys’ fees against Plaintiff Green is predicated on his dismissal of his portion of the case, not on any issue later decided in the appeal brought by Plaintiff Brancati.” (Supplemental Brief filed 10/15/24, p. 5, ll. 21-23.)

The court disagrees. As noted by Cachuma Village, an obligation imposed upon several persons is presumed to be joint, and not several, except in situations not applicable here. (Civ. Code, § 1431; see also *Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810, 838—finding the trial court did not err when it declined to apportion attorney fees between defendants awarded under Civil Code section 1021.5.) Thus, reversal of the portion of the judgment requiring Brancati to pay costs (including fees) is necessarily interwoven with the portion of the judgment requiring Green to pay those same costs (including fees). (See *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1221–1222—court reversed sanctions of \$20,000 awarded jointly against a lawyer and his client where only the lawyer appealed; see also *Eby v. Chaskin* (1996) 47 Cal.App.4th 1045, 1049—court determined that sanctions ordered against two attorneys to pay attorney fees jointly and severally sufficiently intertwined so that reversal as to one lawyer applied to

both.) The court finds that the exception applies here, and simply is unpersuaded by Cachuma Village's arguments to the contrary.

The consequence of this is that the debtor's exam of William Green is vacated. The objection to the order for appearance and motion to strike the objection are both moot.

Merits of Motion: Attorney's Fees and Costs

Civil Code section 1717 provides that in an action to enforce a contract authorizing an award of fees and costs to one party, the party "prevailing on the contract" is entitled to reasonable fees. (Civ. Code, § 1717.) Such fee awards are allowable as court costs under Code of Civil Procedure section 1032. (Code Civ. Proc. § 1033.5(a)(10)(A) & last para.) Except where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. (Civ. Code, § 1717, subd. (b)(1).) A procedural victory that finally disposes of the parties' contractual dispute, such as an involuntary dismissal with prejudice and without any likelihood of refileing the same litigation in another forum, may merit a prevailing party award of fees under section 1717. (*DisputeSuite.com, LLC v. Scoreinc.com* (2017) 2 Cal.5th 968, 981.) Here, the dismissal is dispositive. As there was no relief recovered from defendant, Cachuma Village is the prevailing party.

In addition to breach of contract claims, a litigant is entitled to recover attorney's fees for noncontract (e.g. tort) claims "arising out of" a contract if the fees provision is "broadly worded" enough to encompass those noncontract claims. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 608.) Here, the rental agreement states: "In any action or proceeding arising out of this Agreement, the prevailing party between landlord and Tenant shall be entitled to reasonable attorney fees and costs." (Gonzalez Decl., Exhibit A, ¶ 36.) This is sufficiently broad so as to encompass both contract claims and noncontract claims.

Defendant requests recovery of attorney's fees in the amount of \$181,047.50. Contractual attorney fees in California are ordinarily calculated using the lodestar method. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) "Under the lodestar method, attorney fees are calculated by first multiplying the number of hours *reasonably* expended on the litigation by a *reasonable* hourly rate of compensation." (*Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1259, italics added.) California courts do not require detailed time records for purposes of calculating the lodestar method, and a trial court have discretion to award fees based on declarations of counsel describing the work they have done and the court's own view of the number of hours reasonable spent. (See, e.g., *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698.) An attorney fees award should

include compensation for the work of legal assistants when the “prevailing practice ... is to bill separately for paralegal service time at a reasonable market value rate”—in other words, when the cost of paralegal work is not included as overhead in the rates charged for attorney work. (*Guinn v. Dotson* (1994) 23 Cal.App.4th 262, 269.)

On October 2, 2024, the court indicated it had insufficient information to make a determination of reasonableness. Attorney Gonzalez submitted his declaration in support of the motion describing the motions, hearings, discovery practice, and other key events for which his client incurred attorney’s fees. (Gonzalez Decl. ¶ 4.) The declaration, however, failed to detail how much time was spent performing each activity. The matter was continued.

On October 18, 2024, Gonzalez submitted a supplemental declaration in support of his fee request. In that supplement, he listed all the attorneys who worked on the case from 2016 – 2022, how many hours they spent, and their hourly rates, which range from \$190/hour through \$445/hour. (Gonzalez Supplemental Decl., ¶ 2.) Gonzalez represents these hours have been reduced to avoid duplicative fees. (Gonzalez Decl., ¶ 7.) Further services were performed by Mullen & Henzell L.L.P. paralegals and legal assistants for 44.6 hours at rates between \$200 and \$215 per hour. He also states: “The amount of time spent on each task varied greatly depending on the nature of the task. The work performed included drafting pleadings; completing extensive written discovery; engaging discovery disputes, which culminated in an award in favor of Defendant that included discovery and evidentiary sanctions against Plaintiff; extensive expert discovery of four separate experts; legal and scientific research regarding mold and mold-related authorities; preparing and conducting depositions of plaintiffs, four experts, and persons who performed testing and work on the on the subject property.” (Gonzalez Supplemental Decl., ¶ 4.)

The court determines that the hourly rates charged are reasonable. The blended hourly rate is \$298.30. Defendants reportedly spent 625.8 hours on this matter between 2016-2022 (or about 89 hours/year). The work performed is reasonable and, absent objection, the court presumes that the hours spent doing the individual tasks were likewise reasonable.

The court notes that a proposed order for this matter was submitted on August 21, 2024. That proposed order reflects an order that Cachuma Village is awarded attorneys’ fees in the amount of \$181,047.50 against Plaintiff Dana Brancati and costs in the amount of \$47,726.26 for a total award of \$228,773.76. It further includes the order that “Plaintiffs Dana Brancati and William Green are jointly and severally liable for the judgment of attorneys’ fees and costs awarded against Plaintiff Green on August 25, 2022.” (Proposed Order submitted on 8/21/24, ¶ 3.) As the court has determined that the August 25, 2022 order against Brancati

and Green has been reversed, a new proposed order must be submitted commensurate with this ruling.

On October 23, 2024, the court ordered personal appearances however the court strikes that order and will now permit Zoom appearances.