

Eric and Leona Wahl v. Christopher Thomas, 17LC-0500

Hearing: Plaintiffs' Motion for Attorneys' Fees

Date: November 8, 2017

Eric and Leona Wahl (Plaintiffs) brought this unlawful detainer action against Christopher Thomas (Defendant) to recover possession of commercial property located in Shell Beach. Plaintiffs allege that Defendant was in violation of certain provisions of the written commercial lease.

The matter proceeded to trial and the Court provided the parties with a tentative ruling in favor of Plaintiffs. The parties agreed to resolve the matter by Defendant agreeing to vacate the premises and to pay a portion of the rent. The question of the amount of attorneys' fees was left to the parties to resolve. Evidently, there was no agreement as to the attorneys' fees and now Plaintiffs bring this motion seeking an award of \$5,565 in attorneys' fees. Defendant has yet to oppose the motion.

In an action to enforce a contract authorizing the recovery of attorney's fees, the party "prevailing on the contract" is entitled to reasonable attorney's fees. (Civil Code §1717) An unlawful detainer action is an action on the contract which triggers Civil Code §1717 fees. (*Beverly Hills Properties v. Marcolino* (1990) 221 Cal.App.3d Supp 7, 10; *Strickland v. Becks* (1979) 95 Cal.App.3d Supp. 18, 21)

Here, the action did not result in a final judgment; rather, the parties agreed to a settlement. Even so, Plaintiffs, for purposes of Civil Code §1717 attorney's fees, are the "prevailing party" as they achieved the results of the litigation which was the eviction of Defendant from the commercial property. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 609)

Typically, when a contract action is voluntarily dismissed or dismissed pursuant to a settlement, there is no "prevailing party" entitled to Civil Code § 1717 attorney's fees. [Civil Code §1717(b)(2); see *Santisas v. Goodin, supra*, 17 Cal.4th 599, 617; *Glencoe v. Neue Sentimental Film AG* (2009) 168 Cal.App.4th 874, 877-878) But here, Plaintiffs are not barred from recovery of attorney's fees despite the settlement as the action has not yet been dismissed.

Resolution of a contract action by settlement does not itself trigger the § 1717(b)(2) bar. So long as there has been *no dismissal*, a settling party may move for CC § 1717 attorney fees unless the right was waived in the settlement agreement. [*Reveles v. Toyota by the Bay* (1997) 57 CA4th 1139, 1150, 67 CR2d 543, 549-550 (disapproved on other grounds in *Gavaldon v. DaimlerChrysler Corp.* (2004) 32 C4th 1246, 1259-1261, 13

CR3d 793, 802-803 and *Snukal v. Flightways Mfg., Inc.* (2000) 23 C4th 754, 775, 98 CR2d 1, 19, fn. 6); see *Wong v. Thrifty Corp.* (2002) 97 CA4th 261, 264, 118 CR2d 276, 278 (lessor prevailed by judgment entered on CCP § 998 settlement); *Jackson v. Homeowners Ass'n Monte Vista Estates-East* (2001) 93 CA4th 773, 782-786, 113 CR2d 363, 368-372—§ 1717(b)(2) bar inapplicable where parties' agreed settlement would not result in dismissal *until* court made prevailing party determination and awarded § 1717 fees accordingly] (Rutter Group, *California Practice Guide, Landlord-Tenant* §9:395.2)

In support of the motion, Plaintiffs provide a copy of the commercial lease agreement that contains the applicable attorney's fee provision. Additionally, Plaintiffs' counsel submits their billing records.

The unopposed motion for attorneys' fees is granted. Plaintiffs shall provide at the hearing the updated amount of attorneys' fees incurred in prosecuting the fee award.¹

¹ Under Civil Code §1717, the time spent litigating a fee claim based on a contract has been held to be compensable. (*MC&D Capital Corp. v. Gilmaker* (1988) 204 Cal.App.3d 671; CEB *California Practice Guide, Attorney Fee Awards* §9:17)