# POKER FLAT PROPERTY OWNERS ASSOCIATION, INC. v ROLON

# 22CV46309

# DEFENDANT'S MOTION TO TAX COSTS

Plaintiff Poker Flat Property Owners Association, Inc, ("Plaintiff") brought this suit against Defendant Mike Rolon ("Defendant") for Defendant's various violations of the Association's Covenants, Conditions and Restrictions ("CC&Rs").

At the trial readiness conference on September 17, 2024, the parties settled their dispute. The Court accepted the oral settlement and issued a minute order, which provided that Plaintiff's counsel Plaintiff would prepare a formal settlement agreement ("Agreement") and could "file memorandum of costs and fees by 3:00 p.m. on 10/1/24." Defendant could file a statutorily-compliant motion to tax.

Plaintiff drafted the Agreement which Defendant's counsel refused to have Defendant sign, stating that the Court had previously stated no formal order was required. (Epstein Decl. ¶ 11, Ex. D.) This is in direct contradiction to the minute order which directed Plaintiff to prepare a formal settlement agreement.

As part of the Settlement Agreement ("Agreement"), Plaintiff would not recover any monetary damages but Defendant would be required to remediate and care for the property as set forth in the Agreement. Further, the Agreement provided:

> Within two (2) weeks of the date of the last signature to this Agreement the Association shall submit to the court a memorandum of costs, including attorney's fees, that the Association has incurred in the Lawsuit. Rolon may timely file a motion with the court to tax the costs, including the attorney's fees.

Plaintiff subsequently filed a memorandum of costs, seeking $4,178.35 in costs and $31,315.00 in attorney's fees.

Defendant now moves to tax costs and fees.

## I. Legal Standard

Generally, the "prevailing party" is entitled as a matter of right to recover costs for suit in any action or proceeding. (CCP § 1032(b).) The losing party may dispute any or all of the items in the prevailing party's memorandum of costs by a motion to strike or tax costs. (CRC, Rule 3.1700(b).) A motion to strike challenges the entire costs bill whereas

a motion to tax challenges particular items or amounts. Verification of the memorandum of costs by the prevailing party's attorney establishes a prima facie showing that the claimed costs are proper. (*Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1267.) To overcome that prima facie showing, the objecting party must introduce evidence to support its claim that the claimed costs were not reasonably necessary to carry out the litigation. (*Rappenecker v. Sea-Land Service, Inc.* (1979) 93 Cal.App.3d 256, 266.)

In situations other than those specifically addressed by section 1032, the trial court has discretion to determine whether there is a prevailing party and to allow costs or not. (Code Civ. Proc., § 1032(a)(4.)

## II. Legal Analysis

Code of Civil Procedure section 1032(a)(4) defines a prevailing party as:

> [T]he party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against the defendant.

In its Motion, Defendant argues that there are no prevailing parties in this action because there was no monetary damages award against Defendant and in favor of Plaintiff.

Defendant's argument is meritless. Plaintiff is a prevailing party because it has obtained relief pursuant to the lawsuit and attendant Agreement. Prior to the lawsuit and Agreement, Defendant was violating numerous provisions of the CC&Rs and was refusing to acknowledge the Plaintiff's concerns, take steps to remediate, or to even engage in discussions with Plaintiff. (Complaint ¶ ¶ 9, 11.) After the lawsuit and Agreement, Defendant was obligated to take specific steps to remediate the problems with his property and to pay Plaintiff's costs and fees. Clearly, Plaintiff has obtained relief so as to be considered a prevailing party. Additionally, an element of the settlement was plaintiff's filing of a memorandum of costs subject to a motion to tax (specifically, as distinguished above from a motion to strike) so both sides understood plaintiff would ultimately obtain a net monetary recovery.

Having determined that **Plaintiff is the "prevailing party" for purposes of the request for costs**, the Court now must consider Defendant's alternative motion to tax (reduce) certain costs and fees.

**Plaintiff's Costs**

Plaintiff seeks the following costs:

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| • Filing Fees and CMCs | $ 575.03 |
| • Jury Fees | $ 150.00 |
| • Service of Process | $ 193.57 |
| • Deposition Costs | $3,259.75 |
| | Total: $4,178.35 |

Defendant objects to the jury fees because some of the claims made in the Complaint would require a Court trial, not a jury trial, and Plaintiff never should have paid those fees. However, Plaintiff's complaint alleged additional causes of action for which a jury could have been used; although the matter settled prior to actual commencement of trial, the jury fee deposit of $150 is nonrefundable. Accordingly, **Plaintiff is entitled to collect the entire $4,178.35 in claimed costs and defendant's motion to tax is DENIED as to costs**.

**Attorney's Fees**

Pursuant to Civil Code section 5975(c), Plaintiff, as the prevailing party, is entitled to recover attorney's fees in this case because the lawsuit was related to the enforcement of the CC&Rs which provides a contractual basis for the recovery by the prevailing party of attorney's fees.

Statutory attorney fees are ordinarily determined by the court pursuant to the lodestar method. Under this approach, a base amount is calculated from a compilation of time reasonably spent and reasonable hourly compensation of each attorney and may be adjusted in light of various factors. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 394-395.) The attorney's fees must be reasonable and the court has broad discretion to determine the amount of a reasonable fee. (*Syers Properties III, Inc. v. Rankin*, (2014), 226 Cal.App.4th 691, 703.)

Courts begin with an independent review of the evidence to determine the reasonableness of the hours actually spent litigating the matter and to assess whether there was "padding, over-conferencing, attorney stacking, and excessive research" or some other marked inefficiency. (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 272.) Other factors courts consider include the development of the case, the complexity of the issues, and how long the court estimates it should have taken to perform the services. (*Maughan v. Google Technology, Inc.* (2006) 143 Cal.App.4th 1242, 1249.) After the court's determination of the number of hours reasonably necessary to the conduct of litigation, the final step is to determine an appropriate hourly rate for the work

performed, based on market trends in the particular region for that kind of work. (*Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 619.)

At the outset, the Court disagrees with Defendant's meritless argument that the Plaintiff has failed to provide sufficient evidence of the attorney's fees incurred. Plaintiff has provided an itemized attorney's fee statement setting forth the name of the person who provided the work, the specific work provided, the amount of time spent, and that person's hourly rate.

**Hours Expended**

Plaintiff submitted, with the Memorandum of Costs, a document detailing that the firm spent 80.7 hours on this matter. Mr. Epstein also offered a declaration attached to which he provides evidence of the fee agreement between his firm and Plaintiff, and invoiced billing statements. Mr. Epstein states that he has been an attorney for 29 years and that his practice focuses almost exclusively on representing associations like Plaintiff. (Epstein Decl. ¶ 29.) Mr. Epstein proffers an hourly rate for two attorneys and one paralegal between $250 and $450 per hour. In addition, Plaintiff offers the declaration of attorney John D. Hansen who practices in the same specialized area of law and states that for similar work he billed between $440 to $485 per hour between 2022 and 2023. (Declaration of John D. Hansen ¶ 8); the Court finds this declaration at best marginally relevant as the standard is not what other attorneys in the same practice area charge but, rather, the prevailing rate for such work *in this market area*.

Defendant does not specify any issue with the Plaintiff's expended hours or fees spent but only with the fact that there is no way of knowing if those fees were actually charged and paid by the Plaintiff. As noted above, the is a prima facie presumption as to the appropriateness of fees claimed by a prevailing party. Additionally, review of the billing statement attached to the Memorandum of Costs shows that the work expended was generally reasonable and related to the prosecution of the Plaintiff's case. Accordingly, the compensable hours reasonably spent are 80.7 hours, comprised of 59.4 hours of attorney time and 21.3 hours of paralegal time.

**Reasonable fee and award amount**

Plaintiff seeks attorney's fees in the amount of $425 and $450 per hour and paralegal fees in the amount of $225-$250. The Court finds that the prevailing hourly rate for attorneys in Calaveras County is $300.00 and for paralegals is $125.00. Therefore, the Court finds reasonable fees to equal $17,820 in attorney's fees for 59.4 hours of attorney time and $2,662.50 in paralegal fees for 21.3 hours, for a total fees award of $20,482.50.

## III. Conclusion

The Court **partially grants defendant's motion to tax** with regard to fees, and **awards a total to plaintiff of $24, 660.85**, consisting of costs in the amount of $4,178.35 and attorney's fees in the amount of $20,482.50.

The Clerk shall provide notice of the Ruling forthwith. Plaintiff to submit a formal Order Pursuant to CRC 3.1312 in conformity with this Ruling.

# TRIPLETT v LAGUNA GOLD MORTGAGE, INC.

# 23CV47133

# DEFENDANT'S MOTION TO SET ASIDE DEFAULT & QUASH SERVICE

On December 27, 2023 James Triplett ("Plaintiff") filed his complaint for conversion, breach of contract, and negligence against multiple defendants including Tulare Industrial Center, Inc. ("TCI"). Now before the Court is TCI's motion to set aside default and quash service of process.

## I. Background and Procedural History

On or around May 4, 2021, Plaintiff entered into a contract ("Agreement") to purchase an unbuilt steel building ("Product") from Laguna Gold Mortgage, Inc. ("LGM") for $49,000.00. Pursuant to the Agreement, the Product was to be delivered by LGM to a jobsite located at 124 Pine St. in West Point, California 95255 ("Jobsite") on approximately November 30, 2021..

LGM purchased the Product from Bluescope. According to Plaintiff, LGM and/or Bluescope hired defendant Feijo Trucking to transport Product and TCI to store Product while it was in transit. Product was never delivered. On May 1, 2023, Plaintiff was informed by an investigator for Great Western Casualty that Product had been stolen from a yard. The Product had been specifically targeted, because a different item was stolen first, then returned, and Product subsequently stolen. Plaintiff alleges that TCI did not take the steps necessary to secure the yard where Product was stored after the first theft occurred.

Plaintiff filed his complaint on December 27, 2023. On or about January 10, 2024, Plaintiff served a Summons and Complaint upon Cynthia Gregory, the agent for service of process and a director of TIC. (Declaration of Cynthia Gregory ("Gregory Decl." ¶¶ 1, 4.) In the "Notice to the Person Served" portion of the Summons, it indicates that service is on behalf of "Terry Feijo Trucking, LLC, a California Limited Liability Company." (Gregory Decl. ¶ 4, Ex. 1.) At the bottom of the Summons, it indicated that TIC was a co-defendant in the lawsuit.

Plaintiff filed a proof of service on TIC on or about January 11, 2024. The proof of service states that Cynthia Gregory had been served on behalf of TIC. Gregory

acknowledges that she received the Summons. (Gregory Decl. ¶ 4.) However, Gregory did nothing with the Summons until it was presented to, and discussed with, the TIC Board of Directors on March 12, 2024. (*Id*. ¶ ¶ 5-6.)

On March 1, 2024, the clerk entered default against TIC. The instant motion to quash and to set aside default followed.

## II. Legal Standard and Analysis

TCI's request to set aside the entry of default is necessarily bound up with its argument to quash service. TCI moves for relief on three grounds: (1) service of summons was defective under Code of Civil Procedure section 412.30; (2) the default was not valid because the service of summons was defective; and (3) the default should be set aside due to excusable neglect pursuant to Code of Civil Procedures section 473(b).

### A. Defective Service of Summons / Invalid Default

TCI first argues that the summons was defective (and thereby the default was also defective) because while it was served upon TCI's agent at the agent's address of record, the summons indicated that it was for Feijo Trucking, LLC rather than TCI.

California Code of Civil Procedure Section 412.30 requires that service of a summons on a corporate defendant contain a notice that the person served is being served on behalf of the corporation. Here, this requirement was substantially met and the summons was not defective. (*MJS Enterprises, Inc. v. Superior Court*, (1984) 153 Cal.App.3d 555, 557 [substantial compliance is all that is required].) Although the summons listed Feijo Trucking, it stated that Ms. Gregory was being served on behalf of a corporation, and that corporation (TCI) is clearly listed as a co-defendant.

Second, the Court finds that there was substantial compliance because TCI was placed on notice of the lawsuit against it. Service of process statutes are "liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by the defendant." (*Pasadena Medi-Center Associates v. Superior Court* (1973) 9 Cal.3d 773, 778.) Here there is no doubt that TCI was placed on notice by the summons that a lawsuit was being brought against it. Their agent recognized the need to present it to the Board, and the Board recognized the need to obtain counsel. The Court finds that the summons complied with the statute because it gave notice to Ms. Gregory that she was being served on behalf of a corporation and had actual notice of the lawsuit against TCI. (Code Civ. Proc. § 473.5.)

Accordingly the **motion to quash service is DENIED**.

### B. **Motion to Vacate Based Excusable Neglect.**

TCI also argues that if the Court finds service was proper, then it should be relieved from the entry of default pursuant to Code of Civil Procedure section 473(b), which authorizes the court to set aside a default upon a showing that the default resulted from mistake, inadvertence, surprise, or excusable neglect.

Here, the agent for service of process is also a director of the board for TCI. Thus, when she had actual notice of the lawsuit against TCI as the agent, she had concurrent notice as a member of the board. Ms. Gregory does not argue that she did not understand the importance of the summons, but simply states that she waited to bring them to the TCI offices until after she had finished caring for a loved one who was dealing with medical problems. (Gregory Decl. ¶ 5.) This was nearly a month after she first received notice of the lawsuit involving TCI. Thereafter, neither Gregory nor any other Board member seems to have taken any action on the summons until nearly two months later at the March 12, 2024 board meeting. (*Id*. ¶ 6.)

However, TCI argues that the board is comprised of volunteers who meet infrequently. (Declaration of President Keith Reynolds ("Reynolds Decl." ¶ 3.) Mr. Reynolds, was aware that Ms. Gregory had received some sort of legal documents, but was unaware that there was any deadline related to those documents. (*Id.* ¶ 2.) Accordingly, no board meeting was held until March 12, 2024, when the members immediately decided there was a need to consult an attorney. (*Id.* ¶ 4Only after belatedly obtaining counsel, did the board of TCI become aware that there was a default that had been entered against TCI.

The Court is cognizant of the fact that courts favor determination of cases on the merits, and to that end any doubts about granting 473(b) motions should be resolved in favor of the party seeking relief. (*Maynard v. Brandon* (2005), 36 Cal.4th 364, 372.) Given that, and the circumstances herein, the Court finds there was mistake and/or excusable neglect on the part of TCI in not responding to the summons sooner. Accordingly, the **motion to set aside default is GRANTED**. TCI is ordered to file a responsive pleading within fourteen (14) calendar days of this order.

The Clerk shall provide notice of the Ruling forthwith. Defendant TCI to prepare a formal Order conforming to this Ruling pursuant to Rule 3.1312.