

FORD v GREENHORN GOLF, LLC

23CV47102

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

On December 6, 2023, Patricia Ford ("Plaintiff") filed a Complaint against Greenhorn Golf, LLC ("Defendant")¹ seeking damages for nuisance and requesting injunctive relief.

On May 28, 2024, Plaintiff filed a motion seeking a mandatory injunction ordering Defendant to "remove approximately eighteen (18) Poplar Trees located on Defendant's real property which is abutting to Plaintiff's Residence located at 138 Smith Road, Angels Camp, California."

Plaintiff's motion was originally on calendar for June 28, 2024. The Court granted a continuance to July 12, 2024, to allow Defendant to respond to new evidence of a Parcel Map submitted with Plaintiff's Reply. On July 12, 2024, the Court granted Defendant's request for a second continuance, giving the Defendant until August 30, 2024, to "obtain and analyze the relevant Parcel Map to determine if Plaintiff's claims in the Reply are correct."

Defendant has not filed any additional opposition.

I. Factual Background

Plaintiff is the owner of property located at 138 Smith Flat Road, Angels Camp, California ("Property"), within a golf course community owned and operated by Defendant. (Declaration of Patricia Ford ("Ford Decl.") ¶ 4.) The Property is also located next to an unimproved, wooded lot, owned by Defendant ("Tree Lot") (Ford Decl. ¶ 5). Plaintiff alleges that the roots from the trees located on the Tree Lot are encroaching upon Property and have caused damage to Plaintiff's sprinkler system, yard/garden, and a portion of her house. (Ford Decl. ¶ 6.)

Plaintiff has obtained an estimate of \$22,190.00 to remove and grind 22 tree stumps and treat the roots that are alleged to be encroaching the Property. (Ford Decl. ¶ 7.)

In its Opposition, Defendant took issue with whether it truly is the owner of the Tree Lot. Defendant provided the declaration of Miriam Cline, Regional Manager for Golf Clubs which owns Defendant. (Declaration of Miriam Cline ("Cline Decl.") ¶ 1.) Ms. Cline avers:

¹ Plaintiff has also sued Does 1-10.

While I have been as yet unable to obtain definitive documentation of the bounds of GREENHORN's property, the information I have obtained to date indicates that the trees are located on an open space that is owned and maintained by the City of Angels Camp, and not by GREENHORN. (Cline Decl. ¶ 4.)

Defendants further argued that they had filed a Cross-Complaint against parties who may have ownership rights to the Tree Lot and that:

Absent proper evidence as to ownership being brought before this Court, and until such time as GREENHORN can conduct a full investigation of the matter, FORD's request for an order compelling it to address the nuisance is premature.

On Reply, Plaintiff produced the Grant Deed recorded on April 12, 2021, establishing that Defendant owns the Tree Lot. (Declaration of Eurik O'Bryant ("O'Bryant Decl.") ¶¶ 4, 5, Ex. 1-2.)

II. Legal Standard and Analysis

When determining whether to issue a preliminary injunction, the court considers two interrelated questions: (1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief. (*White v. Davis* (2003) 30 Cal.4th 528, 554; see also *Robbins v. Sup. Ct.* (1985) 38 Cal.3d 199, 206; Code Civ. Proc., § 526.)

Here Plaintiff has shown that Defendant owns Tree Lot. Defendant was given two continuances in order to obtain evidence contradicting Plaintiff's title report and grant deed showing that Defendant owns Tree Lot. No such evidence has been produced.

Defendant further does not dispute Plaintiff's evidence that the stumps and roots coming from the Tree Lot onto her Property have caused significant damage. Defendant does not dispute that the continued presence of the stumps and roots will cause further damage and harm to Property.

Plaintiff has demonstrated that she is likely to prevail on her claim for nuisance. She has further demonstrated that she is likely to suffer greater harm by the continued presence of the stumps and roots than Defendant will suffer if ordered to abate the nuisance.

Based on the foregoing, Plaintiff's application for a preliminary injunction is **GRANTED**.

The clerk is to provide notice of this Ruling. Plaintiff to submit a formal Order pursuant to Rule of Court 3.1312 in conformity with this Ruling.

TRYON v ANGELS GUN CLUB, INC.

17CV42160

GUN CLUB'S MOTION TO STRIKE OR TAX COSTS

This case involves a lengthy land dispute. Plaintiff Thomas Tryon ("Tryon") owns property in Calaveras County, California, identified as Assessor's Parcel Number ("AFN") 064—005-007 ("Tryon Property"). Defendant Angels Gun Club, Inc. ("Gun Club") is California non-profit corporation that owns real property in Calaveras County identified as APN 064-006-008; 064-006-007; and 064-005-031 ("Gun Club Property"). Defendant uses the Gun Club Property to operate a target and shooting range.

Tryon filed a complaint against Gun Club alleging that the operation of the facility was resulting in overshooting on his land and lead contamination on his property.

On January 15, 2019, Gun Club filed its own Cross-Complaint. Sometime after, on August 7, 2022, Tryon filed a notice of dismissal of his causes of action against Gun Club. At that time the trial date was vacated.

On January 19, 2024, the Court granted Gun Club's request to file a Fourth Amended Cross Complaint in which it alleges causes of action for Prescriptive Easement, Declaratory and Injunctive Relief, Breach of Contract and Unjust Enrichment. The Fourth Amended Cross-Complaint ("FACC") echoed much of the earlier Cross-Complaints but sought to add additional Cross-Defendants.

On June 28, 2024, the Court denied Gun Club's motion to set the cross-action for trial before expiration of the 5-year statute under Code of Civil Procedure 583.310.

On July 18, 2024, Gun Club filed a Request for Dismissal without prejudice in which it dismissed the entire cross-action against Tryon. Tryon then filed a Memorandum seeking \$7,600.97 in costs.

Now before the Court is Gun Club's Motion to Strike or Tax Costs.

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 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, Gun Club argues that there are no prevailing parties in this action because both the Complaint and Cross-Complaint were voluntarily dismissed, without prejudice, by the complaining parties and neither party obtained any relief. More importantly, argues Gun Club, is the fact that the underlying land dispute issue has not been resolved and is the subject matter of a pending action in this Court. (*Angels Gun Club, Inc. v. Thomas Tryon, et al.*, Case No. 24CV47497.) Accordingly, Gun Club moves to strike Tryon's entire memorandum of costs.

The costs statute does not differentiate between dismissal with prejudice and without. Accordingly, "the practical definition of 'prevailing party'" applies to a case such as this involving a dismissal without prejudice. (*Donner Management Co. v. Schaffer*, 142 Cal.App.4th 1296 (Cal. Ct. App. 2006).)

Having determined that Tryon is the "prevailing party" for purposes of his request for costs, the Court now must consider Gun Club's alternative motion to tax certain costs.

California Code of Civil Procedure section 1035.5 sets forth the items which are recoverable as costs and states that the allowable costs "shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation." (Code Civ. Proc. § 1035.5(c)(2).)

Costs Incurred By Tryon

At the outset, Tryon cannot recover the costs associated with filing his own Complaint in this matter nor costs associated with that Complaint only. As the Plaintiff in the original action, Tryon cannot possibly be considered a defendant "in whose favor a dismissal is entered." (Code Civ. Proc. §1032(a)(4).)

Accordingly, the following costs, incurred before the cross-complaint was filed on January 30, 2019, are **not allowable**:

• Filing Fee	\$ 435.00
• Service of Process	\$ 133.60
• Fax Filing Fees before 1/30/2019 ²	\$ 191.16
• Deposition costs (incurred before 1/30/2019)	\$2,335.25
• Request for Dismissal of Complaint	\$ 20.22
• Notice of Entry of Dismissal, 8/27/22	<u>\$ 20.22</u>

Total: \$3,135.45

In addition, Tryon may not seek costs which are not authorized by statute, including:

• Federal Express ³	\$ 738.60
• "Court Calls" ⁴	<u>\$1,025.00</u>

Total: \$1,763.60

Finally, Tryon may not recover for filing fees for stipulations and orders that either did not require a fee or that were related solely to the underlying Complaint. As Tryon does not identify which stipulations actually required fees and which are related solely to the cross-complaint, the Court declines to award any of those costs (\$80.00). Additionally, the Court declines to award "electronic filing/service fees" which the Court considers a convenience which was opted for, but not a necessarily incurred cost (\$511.92).

Accordingly, Gun Club's **motion to strike** is **DENIED**; but the **motion to tax** allowable costs is **GRANTED**. Tryon is awarded costs as set forth below:

Initial Appearance Fees	\$ 1,740.00
Court Filing Fees	<u>\$ 200.00</u>

Total: \$ 1,940.00

The clerk is to provide notice of this Ruling. Tryon to submit a formal Order pursuant to Rule of Court 3.1312 in conformity with this Ruling.

² This is the date on which the Cross-Complaint was filed.

³ In addition to several costs having been incurred prior to the Cross-Complaint being filed, CCP section 1035.5(b)(3) expressly states that postage and photocopying costs are not allowed.

⁴ Nothing in CCP section 1035.5 authorizes the cost or fees associated with "court calls". The other authorizing section cited by Tryon, CCP section 367.6, has been repealed.