21CV45154 – Connolly vs Garamendi – 7/15/2024 @ 9:00 a.m.

Tentative Rulings

Plaintiffs' Motion for New Trial

Relevant case law is cited in defendant's memorandum of points and authorities. To the extent plaintiffs claim there is newly discovered evidence (CCP Sec. 657(4)), the proffered evidence is not of sufficient import (nor different enough from the evidence adduced at trial) to warrant a different judgment. In other words, even were that evidence to be considered at a retrial of the matter, the judgment would be the same.

With regard to Mr. Pitto, as defendant notes, he had the combination to the locks (at plaintiffs' general suggestion that invitees be given that) and he would have been able to enter even if the gates were locked. And there is some evidence in defendant's opposition that plaintiffs were able to have raised the incident with Mr. Pitto prior to the close of post-trial briefing, making this argument untimely. In addition, Mr. Pitto's behavior was not materially different from that of the other incidents of rude behavior by some of defendant's guests. The Court already considered the risk of that kind of incident (based on the evidence adduced at trial) and balanced the risk of that kind of incident with (among other things) the benefits, detriments, and risks to plaintiffs and the benefits, detriments, and risks to defendant. Thus, this additional incident would not have added material of weight to the balance; it would not have altered the judgment.

With regard to the additional incident of livestock escaping, the Court already considered the risk of that (based on the evidence adduced at trial) and balanced the risk of that kind of incident with (among other things) the benefits, detriments, and risks to plaintiffs and the benefits, detriments, and risks to defendant. This additional incident would not have added material weight to the balance; it would not have altered the judgment.

Regarding the claim that defendant has used the leach field in a manner inconsistent with her trial testimony, the Court finds plaintiffs have not sustained their burden of showing that is so. Based on the evidence in the declarations and its knowledge of the property (including based on its view of the property) the Court accepts defendant's description that she cleared additional land *adjacent* to the leach field and determines that her actions were not inconsistent with her trial testimony. Similarly, the fact that the walking trail was improved is not material to defendant's need to travel by vehicle from one of her properties to the other as discussed in the Court's prior rulings. Nor have plaintiffs sustained the burden of showing facts regarding the need for a twenty-foot-wide opening in the gate. Nothing they have shown warrants a finding different from that which is found in the Court's prior rulings on which the judgment is based.

To the extent that plaintiffs claim insufficiency of the evidence to justify the verdict or other decision or that the decision is against the law (CCP Sec. 657(6)) and error in law (CCP Sec. 657(7) their arguments are simply re-arguments of points already raised (and rejected) in several contexts, including in briefing before and after trial. They are rejected again.

Plaintiffs' motion for a new trial is denied.

Motions to Tax Costs

The parties each move to tax costs.

The parties agree that the Court has discretion to determine the prevailing party since none of the circumstances described in Code of Civil Procedure Sec. 1032(a)(4) apply.

> "Under the circumstances presented by this case, the prevailing party determination is properly a matter for the trial court's discretion. (See, e.g., *Lincoln v. Schurgin* (1995) 39 Cal.App.4th 100, 104–105 [45 Cal. Rptr. 2d 874] [when plaintiff wins net monetary recovery but defendant prevails in its cross-action for declaratory relief, case presents circumstance not otherwise specified; in that case, determination of prevailing party is matter within court's discretion].)" *Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1142.

In addition, the court may "apportion [costs] as appropriate." *Id.* at 1143.

As plaintiffs note, neither party is challenging a *type* or *category* of costs. The principal questions here are which party has prevailed and whether costs should be apportioned. There is also a separate question regarding the costs of the court reporter at trial.

Plaintiffs acknowledge in their "Memorandum of Points and Authorities Supporting Motion to Tax Costs" (filed June 5, 2024) that defendant prevailed on virtually all the issues tried. Plaintiffs' success was limited to an award of $2,564.01 for the cost of the fencing. They claim there was a "mixed result" as to the right of dogs and children being allowed off the easements. And they assert they prevailed on the issue regarding the removal of the security cameras from the property. They also successfully resisted defendant's request that they remove the barbed wire along the driveway for Parcel D-1.

As to the $2,564.01, the issue tried was *defendant's* request for a determination that she did not owe the full amount of the $11,477.15 which plaintiffs told her she must pay. Thus, defendant prevailed as to approximately 80% of her request. (Plaintiffs had a cause of action for damages, but that was not included in the trial. As noted below, that is now dismissed.)

Nor did defendant claim that she was entitled to have children or dogs be present on plaintiffs' property other than on the easements. Plaintiffs cannot credibly claim they prevailed on that. But even were it otherwise, it would be the smallest of victories.

The Court permitted plaintiffs to maintain the security cameras. To that extent, they prevailed. But that is not the full extent of the issue. Defendant was principally concerned

with her privacy and that of her invitees. Since the Court ruled that plaintiffs are not permitted to retain photographs of lawful use of the easements, defendant prevailed to that extent.

Moreover, plaintiffs brought seven additional causes of action. After trial, they dismissed all seven claims. As to those, defendant is the prevailing party.

In these situations,

> "the trial court in its discretion determines the prevailing party, comparing the relief sought with that obtained, along with the parties' litigation objectives as disclosed by their pleadings, briefs, and other such sources." (*On-Line Power, Inc. v. Mazur* (2007) 149 Cal.App.4th 1079, 1087 [57 Cal. Rptr. 3d 698].) Thus, the trial court determines whether the party succeeded at a practical level by realizing its litigation objectives (*Wohlgemuth v. Caterpillar Inc.* (2012) 207 Cal.App.4th 1252, 1264 [144 Cal. Rptr. 3d 545]) and the action yielded the primary relief sought in the case (*City of Santa Maria v. Adam* (2016) 248 Cal.App.4th 504, 516 [203 Cal. Rptr. 3d 758])." *Friends of Spring Street v. Nevada City* (2019) 33 Cal.App.5th 1092, 1104.

Here, it is clear, at a practical level, that defendant obtained almost all the relief she sought. She realized virtually all her litigation objections. As a practical matter, there were only very limited litigation objectives as to which she failed to obtain complete relief, viz., she did not obtain all the declaratory relief she sought regarding the cost of the fencing (although she obtained most of what she sought); she did not obtain the declaratory relief she sought with regard to the fencing along the driveway at Parcel D-1; and she did not obtain all of the relief she sought with respect to the security cameras (although she preserved her privacy). Thus, viewing the case in its entirety, the Court considers defendant to be the prevailing party, as a practical matter.

The Court has considered whether costs might be apportioned to account to for the very limited success plaintiffs had in the litigation. But nothing in the papers submitted for this hearing begin to enable the Court to determine what, if any, of plaintiffs' costs relate to the litigation of those limited issues. Although there is considerable detail attached to plaintiffs' bill of costs, it is not broken down in a way that apportions costs to the very few issues on which they prevailed. Given that, the Court denies plaintiffs' motion to tax costs (with one exception) and grants defendant's motion to tax costs.

That exception regards court reporter costs. Plaintiffs assert there was an agreement to share equally the cost of the court reporter at trial. Defendant agrees, but Mr. Tener's declaration says it was his "understanding" that the costs would be subject to reallocation following trial. Neither party has submitted a written agreement regarding this matter. Unless there was an express oral agreement that agreed-upon shared costs would be subject to reallocation, then the Court will enforce the parties' agreement to share court reporter trial costs.

Thus, the Court denies plaintiff's motion to tax costs with one exception. It grants plaintiffs' motion to tax defendant's costs in the amount of half the cost of the court reporter's services during trial. However, there is a question as to how much that really is.

According to the "Memorandum in Support of Mary Anne Garamendi's Motion to Tax Costs" filed June 14, 2024, the cost of the trial transcripts sought by plaintiffs is $9,817.77. However, defendant's bill of costs, filed May 28, 2024 seeks only $9,722.17, in total, for court reporter fees. It is not clear whether the $9,722.17 is solely for trial transcripts or for other reporting services as well. (The Court notes that plaintiffs' bill of costs seeks $13,082.45 in total court reporter fees. That includes fees for reporting other hearings in addition to the trial.) But in any event, defendant's $9,722.17 figure is less than plaintiff's $9,817.77.

Given the uncertainty regarding the cost of the court reporter's services during trial, the Court requests that the parties confer in advance of the hearing of this matter and seek to agree upon what that cost was.

As noted above, defendant's motion to tax costs is granted in its entirety.