

9:00 AM      18CV43474      Motion by Petnr to Recover Costs Incurred in Connection w/ Petn for Inspection/Abatement Warrant

Ptff/Pet:      City of Angels Camp

Atty:      White Brenner LLP

Def/Res:      Ashlock, Carroll; Ashlock, Timothy

Atty:      Pro Se

TENTATIVE RULING: Petitioner City of Angel's Camp (hereinafter "City") moves, pursuant to Government Code section 38773.5 and Angels Camp Municipal Code (ACMC) sections 2.60.070 and 2.60.100, for an order awarding the City its costs incurred in abating the nuisance conditions alleged in the Petition for Inspection and Abatement Warrant (Petition).

City fails to identify any authority by which this Court may make such an order. The Court agrees with City's assertion that Government Code section 38773.5 authorizes City to adopt an ordinance establishing "a procedure for the abatement of a nuisance and make the cost of abatement of a nuisance upon a parcel of land a special assessment against that parcel." (Gov. Code, § 38773.5, subd. (a).) The Court further agrees that City has enacted such an ordinance. (See ACMC, § 2.60.070, subd. (F).) However, the Court finds nothing in either authority that requires or even contemplates or requires a Court order in connection with such procedure. Therefore, the Court finds no authority by which it may issue such an order.

Additionally, City fails to persuade the Court that it is entitled to recover attorneys' fees in this action. City cites *City of Santa Paula v. Narula* (2003) 114 Cal.App.4th 485 (Narula). (See Support Memo at 5:20-22.) That case involved an award of attorneys' fees as costs of suit pursuant to Code of Civil Procedure section 1033.5, subdivision (a)(10). (See Narula, supra, at p. 488.) However, City does not cite to or discuss the provisions of Section 1033.5 in either the Notice of Motion or support papers.

Even if City had properly brought the motion pursuant to Section 1033.5, the Court is unpersuaded that City would be entitled to recover attorneys' fees thereunder. The statute provides that attorneys' fees are allowable as costs, "when authorized by...Contract...Statute [or] Law." (Section 1033.5, subd. (a)(10).) While the Government Code does provide that "[a] city may, by ordinance, provide for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance" (Gov. Code, § 38773.5, subd. (b)), it also provides that "[i]f the ordinance provides for the recovery of attorneys' fees, it shall provide for recovery of attorneys' fees by the prevailing party, rather than limiting recovery of attorneys' fees to the city if it prevails." (Ibid.)

City does not directly assert that it has passed such an ordinance. Rather, City argues that "costs" of nuisance abatement as defined in the ACMC include "the costs of any other action required to enforce the ordinance codified in this chapter." (See Support Memo at 4:20-28, quoting ACMC, § 2.60.070, subd. (F).) City then asserts that, "[t]he 'action' when determining the total costs includes section 2.60.100 of the ACMC, which allows the City to bring a civil action to enforce the nuisance abatement chapter of the ACMC." (Support Memo at 4:28-5:2.)

Section 2.60.070, subdivision (F) does not, however, refer to attorneys' fees, but is limited to "costs." Thus, the plain language of the ACMC section does not clearly "provide for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance." (Gov. Code, § 3.8773.5, subd. (b).) Moreover, City's argument – that such fees are included in the term "costs" as used therein – is undermined by the fact that the ACMC section does not provide for the recovery of costs by the prevailing party in an action under ACMC section 2.60.100 (or section 2.60.090), but rather only by the City. For this reason, as applied to attorneys' fees, the ACMC section would be inconsistent with the Government Code's mandate that any such fee-shifting ordinance must "provide for recovery of attorneys' fees by the prevailing party, rather than limiting recovery of attorneys' fees to the city if it prevails." (Gov. Code § 3.8773.5, subd. (b).)

Based on the foregoing, the Court is unpersuaded that ACMC section 2.60.070, subdivision (F) is an enforceable fee-shifting ordinance enacted pursuant to the authority of Government Code section 3.8773.5 that would provide grounds for an award of attorneys' fees as costs of suit pursuant to Code of Civil Procedure section 1033.5.

For the reasons set forth herein above, the motion is DENIED.

The clerk shall provide notice of this ruling to the parties forthwith. Petitioner to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.