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FILED
CLERK, U.S. DISTRICT COURT
JAN 22 2001
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PATRICIA HAYES,

Plaintiff,

v.

FEDERAL HOME LOAN MORTGAGE CORPORATION, a California Corporation; MISSION HILLS MORTGAGE CORPORATION, a California Corporation; and DOES 1 through 50, inclusive;

Defendants.

NO. CV 00-2960 (GAF)(BRQx)

ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEY'S FEES

ENTERED ON ICMS
JAN 22 2001
CV [Signature]

1.

INTRODUCTION

Defendants move this Court for an order granting them an award of attorneys fees. They contend that they are the prevailing parties in litigation involving the interpretation or enforcement of a contract which contains a clause granting fees to the winner in any such dispute. By this motion, the Court is asked to determine whether the defendants prevailed in this case, and if so, whether the case involved the interpretation or enforcement of the contract between the parties.

1 Defendants were obligated to cooperate with her in those efforts. Whether or not she
2 found a buyer, Plaintiff agreed to vacate her home at the end of the three month period
3 provided in the contract.

4 After two extensions of the three month deadline, Plaintiff failed to find a buyer,
5 but refused to vacate the property. To prevent losing the property, she filed this suit in
6 which she claimed that, in breach of their promise, Defendants failed to cooperate with
7 her efforts to sell the property. On Defendants' motion, this Court dismissed the
8 complaint and granted judgment in their favor. Defendants now seek their attorneys'
9 fees incurred in defense of this action. They base their application on the following
10 term of their agreement with Plaintiff:

11 In the event any party to this Agreement should be a party to any legal
12 proceeding or arbitration to enforce or interpret any of the terms of this
13 Agreement, the prevailing party in said legal or arbitration proceedings
14 shall be entitled to a reasonable sum as attorney's fees and costs as may
15 be allowed by the court or arbitrators. (See Motion, Ex. 1, p. 3).

16 Defendants contend that they won the case, that the case involved an interpretation or
17 enforcement of the agreement, and therefore they should be entitled to a fee award.
18 The Court agrees.

19 III.

20 DISCUSSION

21 The applicable California law authorizes a prevailing party to recover attorneys
22 fees pursuant to an agreement between the parties.

23 A. CALIFORNIA LAW PERMITS PARTIES, PURSUANT TO AGREEMENT, TO RECOVER 24 ATTORNEY'S FEES FOR BOTH TORT AND CONTRACT ACTIONS

25 Because Plaintiff's lawsuit sounded in both contract and tort, there are two
26 potentially applicable statutes which cover agreements to pay attorney's fees. One
27 statute applies to contract cases; the other to tort actions.

28

1 **1. Cal. Civ. Code § 1717 Permits Prevailing Parties to Recover Attorney's**
2 **Fees When the Parties Have Agreed on the Payment of Such Fees, and the**
3 **Fees are Incurred in Breach of Contract Actions**

4 Attorney's fees, which are provided for by an agreement between the parties,
5 and which are incurred by the prevailing party in a breach of contract action, are
6 covered by Cal. Civ. Code § 1717(a), which provides:

7 ...where the contract specifically provides that attorney's fees and costs
8 which are incurred to enforce that contract, shall be awarded either to one
9 of the parties or to the prevailing party, then the party who is determined
10 to be the prevailing party on the contract ... shall be entitled to reasonable
11 attorney's fees.

12
13 In cases where a prevailing party seeks attorney's fees under § 1717, based on a
14 contractual obligation, the California Supreme Court has held that courts are without
15 discretion, and must award such fees. See Hsu v. Abbara, 9 Cal.4th 863, 876 ("the trial
16 court had no discretion to deny [defendants] their attorney fees under Section 1717").
17 However, as both the language of § 1717 and the case law interpreting that section
18 make clear, attorney's fees are not recoverable under § 1717 for attorney's fees
19 incurred defending tort actions. See 3250 Wilshire Blvd. Building v. W.R. Grace & Co.,
20 990 F.2d 487, 489 (9th Cir. 1993).

21 **2. Cal. Code Civ. Proc. § 1021 Permits Prevailing Parties to Recover**
22 **Attorney's Fees When the Parties Have Agreed on the Payment of Such**
23 **Fees, Regardless of the Type of Lawsuit in Which the Fees Were Incurred**

24 Attorney's fees are also covered by Cal. Civ. Proc. Code § 1021, which provides:
25 "Except as attorney's fees are specifically provided for by statute, the measure and
26 mode of compensation of attorneys and counselors at law is left to the agreement,
27 express or implied, of the parties..." Because the broad language of § 1021 does not
28 limit the type of actions for which attorney's fees may be recovered, courts have

1 consistently relied on this statute to award attorney's fees to prevailing parties in tort
2 actions, when the parties have entered into an agreement for the payment of such fees.
3 See Wilshire, 990 F.2d at 489 (9th Cir. 1993)("This statute permits attorney's fees
4 agreements, but contains no restriction as to the nature of the lawsuits for which such
5 fees may be recovered."); Xuereb v. Marcus & Millichap, Inc., 3 Cal. App. 4th 1338,
6 1341 (1992)("It is quite clear from the case law interpreting Code of Civil Procedure
7 section 1021 that parties may validly agree that the prevailing party will be awarded
8 attorney's fees...whether such litigation sounds in tort or in contract").

9 In sum, under Cal. Civ. Code § 1717(a), and Cal. Civ. Code § 1021, it is proper
10 for the Court to award Defendants the attorney's fees they incurred in defending both
11 Plaintiff's contract and tort causes of action, if the attorney's fees provision applies to
12 Plaintiff's lawsuit.

13 **B. THE SCOPE OF THE ATTORNEY'S FEES PROVISION**

14 The attorney's fees provision is contained in paragraph 11 of the Agreement,
15 which provides:

16 In the event any party to this Agreement should be a party to any legal
17 proceeding or arbitration to enforce or interpret any of the terms of this
18 Agreement, the prevailing party in said legal or arbitration proceedings
19 shall be entitled to a reasonable sum as attorney's fees and costs as may
20 be allowed by the court or arbitrators. (See Motion, Ex. 1, p. 3).

21 The language of this provision can be broken down as requiring four elements
22 prior to the Court awarding attorney's fees: (1) there must be a legal proceeding or
23 arbitration; (2) the legal proceeding must seek to enforce or interpret the Agreement; (3)
24 there must be a prevailing party; and (4) the fees must be reasonable.

25 That the first three elements are present in this case is so clearly indisputable
26 that Plaintiff does not contest them. Though Plaintiff presented a variety of legal
27 theories in her suit against Defendants, the key issue in this case was whether or not
28 Defendants honored their promise to cooperate with Plaintiff in her attempts to sell the

1 property. By itself, that is enough to demonstrate that an attorney fee award is
2 appropriate. But Defendants present a number of other compelling arguments that
3 support such a conclusion.

4 First, Plaintiff sought enforcement of the Agreement by requesting injunctive
5 relief. Plaintiff asserted that she had been locked out of the property where she
6 continued to live and pay rent based on the Defendants' promises that they would not
7 interfere "and in fact would cooperate with the sale of the property, so that Plaintiff
8 could protect her equitable interest in the property." (Compl. ¶¶ 66). Plaintiff requested
9 "that the Court order the Defendants to permit Plaintiff to return to the property and to
10 permit Plaintiff to sell the Property without any interference from Defendants." (Id. at ¶
11 67). Thus, Plaintiff explicitly refers to the Defendants' duty to cooperate and to permit
12 her to live in the house pending sale. Because there is no basis to order Defendants to
13 cooperate and allow Plaintiff to live in the house absent the Agreement, she is seeking
14 enforcement of rights created by the Agreement.

15 Second, in her declaratory relief claim, Plaintiff expressly asks the Court to
16 interpret the Agreement. In that claim Plaintiff told the Court that she wanted a judicial
17 determination of: (1) the rights and duties of the parties; (2) a declaration of the right of
18 Plaintiff to be allowed to sell the property without any interference from the Defendants;
19 and (3) a declaration that Plaintiff is allowed to remain in the Property pending sale.
20 (Compl. ¶¶ 61-64). Because Defendants had already foreclosed on the house, Plaintiff
21 had no rights to live in and attempt to sell the house unless she could show some such
22 right under the Agreement. Therefore, Plaintiff's request for declaratory relief sought
23 interpretation of the rights and obligations created by the Agreement.

24 Finally, as Defendants correctly point out, Plaintiff requests, "on all causes of
25 action ... reasonable attorney's fees according to contract...." (See Compl. p. 15, ¶ 18).
26 It appears that Plaintiff relies on the Agreement to support her request for attorney's
27 fees, as there is no other basis for awarding attorney's fees in this case. Because the
28 Agreement requires the proceeding be brought to enforce or interpret the Agreement,

1 Plaintiff's request indicates that she intended to bring her lawsuit enforce or interpret
2 the Agreement.

3 **C. DEFENDANTS' FEE REQUEST IS REASONABLE**

4 Determination of what constitutes reasonable attorney fees is committed to the
5 discretion of the trial courts. PLCM Group v. Drexler, 95 Cal.Rptr.2d 198 (2000);
6 Newbauer v. Newbauer, 95 Cal.App.2d 36, 40 (1949)("Considerable leeway must be
7 allowed to judicial discretion in fixing attorney's fees since it is common knowledge that
8 legal charges are far from being standardized."). California courts use the lodestar
9 method in determining whether the attorney's fees are reasonable. See PLCM Group,
10 95 Cal.Rptr.2d at 206 ("the fee setting inquiry in California ordinarily begins with the
11 'lodestar'").

12 Lodestar is determined by the number of hours reasonably expended multiplied
13 by the reasonable hourly rate. Id.; see also Margolin v. Regional Planning Comm., 134
14 Cal. App. 3d 999, 1004-05 (1982)("California courts have consistently held that a
15 computation of time spent on a case and the reasonable value of that time is
16 fundamental to a determination of an appropriate attorneys' fee award."). Reasonable
17 rates are to be calculated according to the prevailing market rates in the relevant
18 community. Blum v. Stenson, 465 U.S. 886, 895 n. 11 (1984). The accepted standard
19 is the "rate prevailing in the community for similar work performed by attorneys of
20 comparable skill, experience and reputation. Davis v. City and County of San
21 Francisco, 976 F.2d 1536, 1545-46 (9th Cir. 1992).

22 Although Defendants do not provide the Court with any evidence regarding the
23 accepted rate prevailing in the community, the Court has sufficient information to
24 assess the reasonableness of the fee request. (See Houser Dec.). Defendants advise
25 that two lawyers, a partner who has practiced for 13 years in California and his
26 associate, performed the work in defense of Plaintiff's claims. (Houser Dec. ¶ 3). The
27 partner billed his time at the rate of \$175.00 an hour; the associate billed at \$140.00 per
28 hour. (Id.) From the Court's own experience with attorney's fees, these billable rates

1 are reasonable according to prevailing market rates in Los Angeles, California. More
2 often than not, attorneys seeking a fee award charge billable rates close to double that
3 of Defendants' counsel, in many instances for work of lesser quality.

4 In addition, the amount of time spent by Defense Counsel on this matter was not
5 excessive. Defendants' Counsel have billed 101.80 hours defending against Plaintiff's
6 lawsuit. (See Houser Dec. ¶ 3). During this time, Defendants' counsel successfully
7 removed Plaintiff's case from Orange County Superior Court, conducted early
8 disclosures, propounded written discovery, deposed Hayes, attended the status
9 conference, and successfully moved for summary judgment. (Id.) Considering both the
10 amount and quality of work performed by Counsel for Defendants, their request for
11 \$11,314.00 is thoroughly reasonable.

12 IV.

13 CONCLUSION

14 For the reasons set forth above, Defendants are entitled to the requested
15 attorney's fee award of \$11,314.00. The motion is **GRANTED**.

16
17 IT IS SO ORDERED.

18
19 Dated: January 19, 2001

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23 Gary Allen Feess

24 United States District Judge
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