SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

23WM000080: CITRUS HEIGHTS WATER DISTRICT, et al. vs SAN JUAN WATER DISTRICT, et al.
04/22/2024 Hearing on Motion for Attorney Fees in Department 4

Tentative Ruling

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

<table>
<tr><td>DATE/TIME:
JUDGE:</td><td>April 22, 2024
HON. JENNIFER K. ROCKWELL</td><td>DEP. NO.:
CLERK:</td><td>4
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<tr><td colspan="2">CITRUS HEIGHTS WATER DISTRICT, et al.,
Petitioners,
v.
SAN JUAN WATER DISTRICT, et al.,
Respondent.</td><td colspan="2" rowspan="2">Case No.: 23WM000080</td></tr>
<tr><td colspan="2">SACRAMENTO SUBURBAN WATER DISTRICT, et al.
Real Parties in Interest.</td></tr>
<tr><td>Nature of Proceedings:</td><td colspan="3">Petitioners’ Motion for Attorneys’ Fees
Respondent’s Motion to Strike Memorandum of Costs</td></tr>
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TENTATIVE RULING

The following shall constitute the Court’s tentative ruling on the above matters, set for hearing in Department 4, on Monday, April 22, 2024, at 11:00 a.m. The tentative ruling shall become the ruling of the Court, unless a party desiring to be heard so advises the Clerk of Department 4 no later than 4:00 p.m. on the Court day preceding the hearing, and further advises the Clerk that such party has notified the other side of its intention to appear.

The Court strongly encourages parties to appear remotely for the hearing on the tentative ruling through the Court’s Zoom Application. However, any party wishing to

appear in person may do so, provided that party notifies the Court by 4:00 the Court day before the hearing.

The parties may join the Zoom session for the hearing by audio and/or video through the following link/telephone number:

https://saccourt-ca-gov.zoomgov.com/my/sscdept4	**(833) 568-8864 ID: 160 7584 1179**

Parties requesting services of a Court Reporter will need to arrange for private Court Reporter services at their own expense, pursuant to Government Code § 68086 and California Rules of Court, Rule 2.956. Requirements for requesting a Court Reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf. Parties may contact Court-Approved Official Reporters Pro Tempore by using the list of Court Approved Official Reporters Pro Tempore, available at https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf

If a Court Reporter from the Court's Approved Official Reporter Pro Tempore list is not used, aStipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) must be signed by each party, the private court reporter, and the Judge prior to the hearing. Once the form is signed, it must be filed with the Clerk of Department 4.

If a litigant has been granted a fee waiver and requests a Court Reporter, the party must submit a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211) and it must be filed with the Clerk of Department 4 at least 10 days prior to the hearing or at the time the proceeding is scheduled if less than 10 days away. Once approved, the Clerk of Department 4 will forward the form to the Court Reporter's Office and an official Court Reporter will be provided.

Introduction

In this ruling the Court addresses two motions: (1) Petitioners Citrus Heights Water District's and Fair Oaks Water District's (Petitioners) Motion for Attorneys' Fees and (2) Respondent San Juan Water District's (Respondent) Motion to Strike Memorandum of Costs.

Petitioners move for an award of attorneys' fees under Code of Civil Procedure section 1021.5 (hereafter, section 1021.5), under the "catalyst theory." Petitioners contend that

although the parties agreed to a stipulated dismissal of the instant action, Petitioners are nonetheless entitled to recover fees under section 1021.5 because Respondent rescinded the approval Petitioners challenged in this action. As a general matter, a "successful party" may be awarded fees under section 1021.5 where there is "a causal connection between the plaintiffs' lawsuit and the relief obtained." (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1291.)

Respondent opposes the motion for attorneys' fees and also moves to strike Petitioners' memorandum of costs. Respondent contends that Petitioners do not satisfy the required elements for a "catalyst theory" fee award under section 1021.5 and are not a prevailing party entitled to an award of costs.

Because both motions turn on whether Petitioners qualify as "successful parties" for purposes of section 1021.5 under the catalyst theory, the Court addresses them in a single ruling.

As discussed further below, the Petitioners' motion for attorney fees is denied, and Respondent's motion to strike memorandum of costs is granted, on the grounds that Petitioners did not make a reasonable attempt to settle the dispute before filing this lawsuit, a required element in order to recover section 1021.5 fees under the catalyst theory. (*Carian v. Dep't of Fish and Wildlife* (2015) 235 Cal.App.4th 806, 816-817 (*Carian)*.)

Petitioners' request for judicial notice of certain filings in this case and meeting agendas and minutes of Respondent is granted.

Background

Petitioners are public water districts that provide drinking water to customers within their service areas. (Pet. for Writ of Mandate [Pet.], ¶¶ 13-14.) Respondent San Juan Water District is a public community services district, established in 1951 by the directors of three neighboring water districts, including Petitioners, for the purpose of acquiring certain surface water rights and facilitating anticipated water supply from Folsom Lake, which was then under development. (Pet. ¶¶ 15, 34.) Respondent provides both retail and wholesale water service to customers within its service area. (Pet. ¶ 15.) Both Petitioners hold wholesale water service contracts with Respondent, pursuant to which they allege they are entitled to "first priority" on surface water that is available to Respondent. (Pet. ¶ 34.)

This action arises out of a proposal by Respondent San Juan Water District (Respondent) to authorize its general manager to enter into water transfer agreements with Real Party in Interest Sacramento Suburban Water District (Real Party). (Pet. for

Writ of Mandate [Pet.], ¶¶ 35-40.) Petitioners allege that on March 22, 2023, Respondent's Board of Directors voted to approve an agreement between Respondent and Real Party that would authorize Respondent's general manager to enter into "an unspecified number" of water supply agreements with Real Party for the purchase of up to 6,000 acre-feet of Respondent's water each year. (Pet. ¶¶ 38-40.) Petitioners allege that the staff report submitted in support of the request for board approval included no discussion of the California Environmental Quality Act (CEQA). (Pet. ¶ 39.) Petitioners further allege that the general manager of Petitioner Fair Oaks Water District objected on the grounds that the approval violated CEQA because the delegation of authority was a project for purposes of CEQA and "improperly piecemealed the Project to avoid CEQA review." (*Ibid*.) In response, Petitioners allege, Respondent stated that, "the Project was 'any such future transfer, and CEQA compliance will be addressed when those future transfers are conducted.'" (*Ibid*.)

On September 14, 2023, Petitioners filed a Verified Petition for Writ of Mandate, alleging that Respondent violated CEQA in connection with the March 22, 2023 approval. (Stipulation and Order to Dismiss Petition (Jan. 10, 2024), [Stip.] 3:8-13.)

On October 27, 2023, Respondent held a special noticed meeting where its board of directors voted to rescind the March 22, 2023 delegation of authority. (Stip. 3:14-15; Declaration of Tom Gray [Gray Decl.] ¶ 13.)

The parties subsequently entered into a "Stipulation and Proposed Order to Dismiss Petition and Request Retention of Jurisdiction for Issues Related to Costs and Attorneys' Fees" pursuant to which they agreed to "partially settle" the litigation and requested that the Court retain jurisdiction pursuant to Code of Civil Procedure section 664.6 for the purposes of determining Petitioners' entitlement to attorneys' fees and costs. (Stip. 3:22-26.)

Petitioners dismissed the action on January 26, 2024.

On March 8, 2024, Petitioners filed a memorandum of costs as well as the instant motion for attorneys' fees.

Respondent filed a motion to strike the memorandum of costs and opposes the motion for attorneys' fees.

Attorneys' Fees under CCP section 1021.5

Code of Civil Procedure section 1021.5 authorizes an award of attorneys' fees "to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest," where the

following conditions are met: "(a) a significant benefit whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any." (Code Civ. Proc. § 1021.5.)

"Successful party"

A threshold issue in determining a party's entitlement to a fee award is whether the moving party is a "successful party" for purposes of section 1021.5.

A party need not necessarily obtain a favorable judicial resolution in order to qualify as a "successful party" eligible for a fee award under section 1021.5 if "the defendant changes its behavior substantially because of, and in the manner sought by, the litigation." (*Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa* (2015) 238 Cal.App.4th 513, 521.) "It is not necessary for a plaintiff to achieve a favorable final judgment to qualify for attorneys' fees so long as the plaintiff's actions were the catalyst for the defendant's actions, but there must be some relief to which the plaintiff's actions are causally connected." (*Ibid*.)

In order to obtain a fee award under this "catalyst theory," "a plaintiff must establish that (1) the lawsuit was a catalyst motivating the defendants to provide the primary relief sought; (2) that the lawsuit had merit and achieved its catalytic effect by threat of victory, not by dint of nuisance and threat of expense….; and (3) that the plaintiffs reasonably attempted to settle the litigation prior to filing the lawsuit." (*Marine Forests Society v. California Coastal Com.* (2008) 160 Cal.App.4th 867, 877-878, quoting *Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608.)

Here, even though the Petitioners ultimately dismissed the Petition, they contend they are "successful" parties under section 1021.5. Petitioners assert they are entitled to fees under the catalyst theory because the Petition they filed in this case caused Respondent to rescind the March 22, 2024 delegation of authority, which was the result sought by the Petition. (Pets.' Opening Mem. 13:7-14:17.)

Petitioners argue that they satisfy each of the three required elements under the catalyst theory. First, they assert that the Petitioners' primary goal was "to have the Project approval rescinded," and that the filing of the Petition was a substantial factor motivating Respondent's decision to rescind the March 22, 2023 approval. (Pets.' Opening Mem. 14:15-26.) Petitioners note that Respondent voted to rescind the approval on October 27, 2023, 38 days after Petitioners served the Petition and on the

same day that the parties had scheduled the settlement conference that is required in CEQA challenges. (*Id.* at 14:20-22.) Petitioners contend that even though Respondent's agenda and meeting minutes are silent as to the reason for the rescission, "[g]iven this chronology, and the lack of a contemporaneous explanation for the rescission unrelated to Petitioners' lawsuit, the only reasonabl[e] inference is that Petitioners' litigation was a substantial factor motivating [Respondent] to rescind the Project approval." (*Id*. at 14:23-26.)

Second, Petitioners assert that the Petition has merit, and "asserts a strong cause of action for CEQA violation and raises numerous colorable arguments demonstrating that [Respondent's] approval of the Project violated CEQA in several ways." (Pets.' Opening Mem. 15:7-8.) Petitioners contend that the Petition alleges the following credible CEQA violations:

(i) erroneously concluding that the delegation of authority is not a "project" for CEQA purposes (*Id*. at 15:8-10);
(ii) improper piecemealing of a long-term water transfer project into smaller single year transfers in order to minimize the impacts of such transfers (*Id*. at 15:26-27);
(iii) failure to provide an accurate project description (*Id.* at 16:6-7);
(iv) improperly committing Respondent to a course of action as discussed in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 139. (*Id*. at 16:20-26);
(v) impermissibly delegating authority to Respondent's legal counsel to determine if future water supply agreements are categorically exempt from CEQA (*Id*. at 16:26-17:1); and,
(vi) failing to allow an appeal of legal counsel's determination in violation of Public Resources Code section 21151, subdivision (c). (*Id*. at 17:1-2.)

As for the third element, reasonable settlement attempts, Petitioners assert that the general manager of Fair Oaks Water District attended the March 22, 2023 public meeting and objected to the proposed approval on the grounds that it violated CEQA. (Pets.' Opening Mem. 17:15-18.) Thus, Petitioners assert Respondent "was informed that approving the Project would violate CEQA, but chose to proceed with the Project anyway." (*Id* at 17:21-22.)

Respondent disagrees that Petitioner qualifies as a "successful party" under the catalyst theory and argues that Petitioners do not satisfy any of the three required elements.

Respondent disputes that its decision to rescind the March 22, 2023 approval was motivated by the merits of Petitioners' lawsuit, and instead argues that it rescinded the

approval "because of the 'nuisance and threat of expense' that accompanied defending the lawsuit." (Opp'n 9:10-11, quoting *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 577 (*Graham)*.)

Respondent further disputes that any of the theories of violation alleged in the Petition have merit, arguing that the approval "was simply an administrative governmental function, which is clearly not a project under CEQA," and "did not authorize any transfer or conveyance of water and never would have resulted in [Respondent] transferring water without compliance with CEQA." (Opp'n 11:1-2, 10-12.)

Respondent also contends that Petitioners failed to reasonably attempt to settle the lawsuit before filing the Petition. Respondent argues that the comments offered at the March 22, 2023 Board meeting do not meet the standard for reasonable attempts at settlement for purposes of the catalyst theory. The Court agrees.

Reasonable Settlement Attempt

Establishing reasonable efforts at settlement is a requirement specific to cases in which fees are sought under the catalyst theory. (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 253 ["In [*Graham*] we did require prelitigation demands, but only *in catalyst cases*"].) A plaintiff seeking fees under the catalyst theory "must at least notify the defendant of its grievances and proposed remedies and give the defendant the opportunity to meet its demands within a reasonable time." (*Graham, supra,* 34 Cal.4th at p. 577.) However, courts applying the standard articulated in *Graham* have concluded that "the qualifying language 'at least' does not equate with 'at most,'" and the requirement that a plaintiff must, at minimum, give notice and an opportunity to respond is "a 'starting point' in [the] determination of whether [plaintiff] made a reasonable attempt to settle the dispute[.]" (*Carian, supra,* 235 Cal.App.4th at pp. 816-817, quoting *Graham, supra,* 34 Cal.4th at p. 577.) "In exercising its discretion whether to award a plaintiff section 1021.5 attorney fees, a trial court must consider not simply whether the plaintiff notified the defendant of the dispute before filing the lawsuit, but also must consider all of the relevant circumstances in the case in determining whether the plaintiff made a reasonable attempt to settle the dispute before filing the lawsuit." (*Id*. at p. 817.)

Here, the only evidence Petitioners cite in their moving papers to support their contention that they reasonably attempted settlement are the comments submitted by Fair Oaks General Manager Tom Gray at the March 22, 2023 meeting of Respondent's Board of Directors. (Petitioners' Request for Judicial Notice [Pet. RJN], Exh. 8 pp. 168, 221.) Of Mr. Gray's nine comments, four pertain to compliance with CEQA:

> 5. The water rights supporting the proposed 2023 transfer have not been identified and therefore it is unclear whether the proposed actions comply with the Water Code and CEQA;
>
> 6. The proposed authorization to the GM in Item 2 is a CEQA project in and of itself and the authorization proposes to unlawfully piecemeal the project in a manner that avoids adequate CEQA review;
>
> 7. Item 2 proposes that the Board take action constituting a project before the Board has completed CEQA, in violation of CEQA;
>
> 8. It seems like this action is getting around the 1-year CEQA and Water Code proscriptions for short term transfers;

(Pet. RJN Exh. 8, p. 221.) Mr. Gray's comments concluded with the following caveat: "These items are presented for SJWD Board consideration are [sic] based on best practices obtained from working in the water community and are not being presented as legally researched at this time." (*Ibid*.)

In the absence of other evidence, these comments do not demonstrate the Petitioners reasonably attempted to settle the litigation prior to filing the lawsuit. Nothing in the comments communicates that if Respondent approved the delegation of authority, either Petitioner intended to challenge the approval by filing a lawsuit. Instead, Mr. Gray qualified his comments by stating they were not "presented as legally researched at this time," giving the impression that legal action was not contemplated as of March 22, 2023. Nor does anything in the comments communicate any specific demand or request. Nevertheless, Respondent apparently did respond to Mr. Gray's comments, as Petitioner acknowledges. (Opening Mem. 17:18-19 ["[Respondent] flatly rejected Fair Oaks' objections"].) The March 22, 2023 Board Minutes reflect that in response to Mr. Gray's comments, Respondent's staff explained "that item 2 is only to give [the general manager] the authority to enter into future temporary agreements with [Real Party]" and "that one of the criteria to enter into future agreements with [Real Party] is that if any wholesale customer agency protests, then the agreement will need to be ground to the Board for approval." (Pet. RJN Exh. 8, p. 168; see also Declaration of Tom Gray iso Petitioners' Reply, Exh. A.) According to Respondent, Petitioners made no additional communications objecting to the approval after the March 22, 2023 board meeting until they filed their Petition approximately six months later (Opp'n 13:7-9.) In that intervening time, Respondent arguably had no way of knowing Petitioners were not satisfied with the response to Mr. Gray's comments or that they intended to bring a lawsuit.

On reply, Petitioners point to the fact that they complied with Public Resources Code section 21167.5, which requires a petitioner to file "proof of prior service by mail upon the public agency carrying out or approving the projected of a written notice of the commencement of any action or proceeding" under CEQA "concurrently with the initial pleading [.]" (Pet. Reply, 10:27-28.) Exhibit A to the Petition is a letter dated September 13, 2023, one day before the Petition was filed, providing the notice required by section 21167.5. (Pet., Exh. A.) Evidence that Petitioners sent the statutorily-required notice one day before they filed suit does not overcome the absence of evidence of actual settlement efforts.

In short, Petitioners never notified Respondent they intended to file a lawsuit challenging the March 22, 2023 approval until the day before they filed suit, never informed Respondent of the specific CEQA violations upon which they intended to challenge the approval in court, and never made a request or demand that Respondent rescind the approval. In the absence of any evidence of such conduct between the approval of the delegation of authority on March 22, 2023 and September 14, 2023, when Petitioners initiated this action, the Court cannot conclude that the comments at the March 22, 2023 meeting constitute reasonable settlement efforts.

Further, contrary to Petitioners' arguments on reply (Pets.' Reply, 11:2-24) there is nothing to indicate that settlement efforts would have been "futile." (See *Cates v. Chiang* (2013) 213 Cal.App.4th 791, 816-817.) There is no evidence that Petitioners ever presented Respondent with their allegations that the March 22, 2023 approval violated CEQA once they had been "legally researched." As noted, there is nothing in the evidence presented to indicate Petitioners communicated anything at all to notify Respondent of the dispute after the March 22, 2023 board meeting. Moreover, once Petitioners did file their lawsuit, Respondent promptly rescinded the approval, indicating that meaningful settlement efforts likely would not have been futile had Petitioners undertaken them prior to filing suit. The facts here are in stark contrast to *Cates v. Chiang*, where "the defendants continued to insist for several years after [plaintiff] filed the lawsuit that they were doing nothing wrong and that they were fully complying with their duties, [and] the court found defendants would not have agreed to change their procedures even if [plaintiff] had timely notified [defendant] about its failure to comply with its duties." (*Id*. at p. 814.)

Accordingly, the Court finds that Petitioners failed to demonstrate that they reasonably attempted to settle the litigation prior to filing the Petition, and are therefore not a "successful party" under the catalyst theory for purposes of section 1021.5. Having so determined, the Court need not address the two remaining elements under the catalyst theory, the other requirements of section 1021.5, or the reasonableness of the amount

of fees sought.

Petitioners' motion for attorneys' fees is denied.

Motion to Strike Memorandum of Costs

Under Code of Civil Procedure section 1032, "unless the context clearly requires otherwise…[e]xcept as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc., § 1032, subds. (a), (b).) "Prevailing party" is defined as including "the 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 that defendant." (*Id.* at subd. (a)(4).) The statute goes on to say: "If any party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed, may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034." (*Ibid*.)

Respondent moves to strike Petitioner Citrus Heights' memorandum of costs on the grounds that Petitioners voluntarily dismissed their lawsuit, and are therefore not entitled to recover their costs as a "prevailing party" under Code of Civil Procedure section 1032. (Mot. to Strike, 4:8-15.) Respondent argues that it, not Petitioner Citrus Heights, meets the definition of "prevailing party" because a dismissal was entered in Respondent's favor. (*Id*. at 4:13-15.)

Petitioners respond that "the catalyst theory provides an exception to Code of Civil Procedure section 1032's provision that a defendant in whose favor dismissal is entered is a prevailing party," and cites *City of San Clemente v. Dept. of Transportation* (2023) 92 Cal.App.5th 1131, 1151-1152 (*San Clemente*) for this proposition.[1] For the same reasons argued in support of their attorneys' fees motion, Petitioners contend that they qualify as a "successful party" for purposes of section 1021.5 under the catalyst theory. Therefore, they conclude, "[u]nder the catalyst theory, Citrus Heights thus recovered 'other than monetary relief' and the Court should therefore determine that Citrus Heights is the prevailing party and award the requested costs." (Opp. to Mot. to Strike, 4:17-19.)

As discussed above, however, the Court concludes that Petitioners are not a "successful party" under the catalyst theory because they did not reasonably attempt to settle the litigation prior to filing suit. Since the catalyst theory is the sole basis for Petitioners' assertion that they are the prevailing party under Code of Civil Procedure

section 1032 and therefore entitled to recover their costs, Respondent's motion to strike the memorandum of costs filed by Petitioner Citrus Heights is granted.

Counsel for Respondent shall prepare **two separate formal orders, one for each motion addressed herein, with each order incorporating this ruling as an exhibit**, submit it to opposing counsel for approval as to form, and thereafter submit it to the Court for signature in accordance with California Rules of Court, rule 3.1312.

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[1] The Court is not persuaded that *San Clemente* establishes a clear entitlement to costs under the catalyst theory through an exception to the definition of "prevailing party" under Code of Civil Procedure section 1032. (See *San Clemente, supra,* 92 Cal.App.5th at p. 1151-1152.) While the court in *San Clemente* acknowledged the argument made in that case that "a *defendant* who benefited from a dismissal *may not* be entitled to costs where a lawsuit was the catalyst motivating the defendants to modify their behavior or the plaintiff achieved the primary right sought," the court did not necessarily adopt that view, stating only that "[t]here may be an exception where context requires." (*Id.* at p. 1151, quotations and citations omitted, emphasis added.) More critically, even assuming an exception to the rule that a *defendant* in whose favor a dismissal is entered is the prevailing party for cost recovery purposes, it does not necessarily follow that a *petitioner* who prevails under the catalyst theory is automatically a prevailing party and entitled to recover costs under section 1032. (See e.g. *Mundy v. Neal* (2010) 186 Cal.App.4th 256, 260 ["for purposes of [Civil Code] section 55, a plaintiff who files a dismissal is not the prevailing party under the catalyst theory unless the plaintiff made a prelitigation demand for corrective action"].) The Court need not resolve this question, however, having found that Petitioners do not qualify for attorneys' fees under the catalyst theory.