Huntington v. Miner 30-2014-00719598

Defendant's Post Trial Brief

To clarify and simplify this issue for the Court, and because defendant was ambushed by plaintiff's professional "attorney prepared" trial brief, it's fair and reasonable defendant be allowed to submit this post trial brief for court's consideration. The brief provides simple clarification that attorney fees the plaintiff desires **CAN NOT** be awarded. See: Small Claims Act, Article 6: Judgment §116.610 (g)(1).

Plaintiff made it perfectly clear in plaintiff's trial brief: page 2, section B, that it argued an attorney fee award through civil code §5650. Plaintiff's analysis is simply not correct. A party must be prevailing, and the "chosen" court venue would to have legal authority to be able to award attorney fees to a "prevailing party." **The Small Claims Act does not authorize an attorney fees award to a prevailing party in this case.**

This is a dispute about the following: 1) Charges by an attorney resulting in un-audited legal, attorney or consultation fees, **2)** a "Small Claims" $85 prep fee charged to defendant in previous case where Plaintiff dropped it's claim at trial (defendant alleges it had no agreement or contract to pay such a fee), **3)** a $100 notice fee (defendant alleges notice is defective), **4)** a $250 lien fee (defendant alleges lien is defective). With this said the defendant believes he owes the association nothing.

The "attorney fees" the plaintiff is attempting to charge the defendant for, are the costs of doing business for the plaintiff. HOA manager should have kept her finger off attorney speed dial. Plaintiff failed ADR; "representation" possibly occurred during ADR emails. However, ADR is not required in Small Claims where case has ended. The remaining "tasks" the attorney performed, and questions answered for the management company were at request of the manager. These are "consultation" fees, and "legal fees" are the HOA or management company's business costs. Consulting an attorney is "private" assistance.

Defendant incorporates all points argued to the court at trial and in Defendant's trial brief. **Defendant contends that he argued Civil Code 1354 (c) [new] §5975(c) at trial**. This issued started and the lien was filed in 2013 which would have been the old Davis Stirling Act code. Prior to 2014.

The Simplicity of this fee award dispute

The Small Claims Act: **116.610 (g)(1). The prevailing party** is **entitled to the "costs" of the action**,

including the costs of serving the order for the appearance of the defendant. **Prevailing party attorney fee awards are absent in the Small Claims Act. Plaintiff entitled to costs; not attorney fees.**

The Davis Stirling Statute requires a "prevailing party" attorney fee award in the proper jurisdiction: **Civil Court**. Had the Legislature INTENDED to award attorney fees to a "prevailing party" in Small Claims, or specifically to HOA associations in Small Claims, it would be there, written in the ACT, in black and white. **This is a two prong requirement:** 1) **a statue must authorize it, 2) Small Claims Act must explicitly have authority to grant it. [History of Small Claims declaratory relief footnote]1**

Civil Code §5975 [Old: Civ. Code §1354]

(a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.
(b) A governing document other than the declaration may be enforced by the association against an owner of a separate interest or by an owner of a separate interest against the association.
(c) In an action to enforce the governing documents, the "prevailing party" shall be awarded reasonable attorney's fees and costs.

The simplicity of this case lies directly above; Civil Code §5975(c) [old1354 (c)] **IS the controlling civil code that allows an ENFORCEMENT ACTION** of the governing documents and awards "attorney fees" to a prevailing party. **Enforcement Action is collecting on lien.** In a small claims action, there are no "attorney fee awards" to a prevailing party. Therefore, if the association wished to obtain attorney fees it should have filed a civil action in Superior Court. Huntington chose the wrong venue.

Huntington's CC&Rs also known as the Declaration are the contract between the owner and the association. CC&Rs do allow for an action to be filed to enforce the governing documents. The Association is enforcing it's assessment lien authorized and created under the governing documents [CC&Rs]. There is NO attorney fee provision in the Huntington Continental CC&Rs

1 **Prior to 2009, various statutes granted a person the right to seek declaratory or injunctive relief in small claims court, but the Small Claims Act did not provide the explicit authority to order such relief.** After the passage of AB 712, which amended California Code of Civil Procedure section 116.220(a)(5), the small claims court now has equitable jurisdiction over an action for an injunction or other equitable relief to cases covered by a statute which expressly authorizes a small claims court to award that relief. Small Claims has no section dedicated to HOA awards.

therefore these attorney fee awards must come from statute; statute requires a "prevailing party."

The Court mentioned Attorneys suing for fees

An attorney suing a client for his/her own fees as an unpaid service is a contract non payment for contract issue. **That is not an award of attorney fees as a "prevailing party" issue.** Completely distinguishable from this matter. Attorneys, plumbers, gardeners are entitled to sue for unpaid work product. Not the issue before the court. Fee arbitration authorized by Small Claims Act 116.220 (a)(4)

Required Collection Policy, is just a policy

The "collection policy" is required by statue. The collection "policy" is just that, **a policy, not a contract between the association and a member. Civil Code §5730. Annual Statement of Collection Policy [Old: Civ. Code §1365.1]**

The Smoking Gun: See www.Davis-Stirling.com

Directly from page of website: Shortened URL: bit.ly/1qxSacJ

In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs. (Civ. Code §5975) However, attorneys' fee awards are uncertain and often less than the amount sought by the prevailing party. **The following statutes provide for attorneys' fees:**

ADR costs	Civil Code §5955
Anti-SLAPP motion	Code of Civil Procedure §425.16
Assessment collection	Civil Code §5650(b), §5740, §5650(a), §5705(a), §5715(a), §5720(a), §5685, §5658
CC&R enforcement	Civil Code §5975
Contract actions	Civil Code §1717
Disclosure violations	Civil Code §4540
Discriminatory CC&Rs	Civil Code §4225
Disputed charges	Civil Code §5658
Flags	Civil Code §4705(c)
Foreclosure	Civil Code §5730(a)
Inspection of records	Civil Code §5235
Managing agent	Civil Code §5380
Records inspection	Civil Code §5145
Satellite dishes	Civil Code §4725(d)
Small claims appeal*	Code of Civil Procedure §116.780
Solar energy	Civil Code §714

If the attorney fees award the plaintiff is claiming were available in a Small Claims "prevailing party"

award, the Court can be sure it would be fully vetted on the Davis Stirling website that serves 50,000 HOAs throughout California. **The only attorney fee award, for this action, available in the small claims jurisdiction, is by statute on appeal:** (1) attorney's fees actually and reasonably incurred in connection with the appeal, not exceeding one hundred fifty dollars ($150).

Plaintiff has barked up the wrong tree

Thou shall not bamboozle the court. Plaintiff's Small Claims brief, where formal pleadings are not the order of the day, is by clever attorney, who hates defendant, writing a less than honest, one-sided, self-serving, twisted, rhetorical, Harry Potter novel of wizardry. Example: defendant is a "homeowner" by law he is "entitled" to the association's documents and records. Just because HOA manager wishes to consult the attorney about every request these are not defendant's charges. Management Company should not be charging the association for it's agent not knowing her job as a professional manager. §1365.2. Plaintiff uses slanted minimally true brief to attempt to inflame the Court.

Question: If the defendant owes the plaintiff so damn much money and all plaintiffs' law and facts are 100% true and accurate, and there is a valid lien on defendant's property, why did plaintiff not sue in a jurisdiction where ALL costs and attorney fees would surely be awarded?

This "enforcement action" was not needed, no collection ever occurred. Defendant protected himself through mediation and by requesting ADR as law permits. Defendant started paying down all assessments immediately starting with meditation and association was well aware of his intent. Plaintiff's malicious ways caused these issues. See three letters sent regarding paying assessments [exhibit #1 of defendant's brief].

Defendant was prevented from due process and his Quiet Title remedy to remove lien to eliminate the defective lien all Plaintiff's alleged charges in total. No lien, no charges §1367.5.

In reality, defendant owes this association nothing; it's own agents have caused the issues. Plaintiff should take nothing so defendant is not required to waste additional valuable court resources.

Respectfully submitted,

_____ Dated: July 14, 2014

Joseph A. Miner, Defendant