

APPELLATE DIVISION
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
03/10/2015 at 09:13:02 AM
Clerk of the Superior Court
By eClerk, Deputy Clerk

HUNTINGTON CONTINENTAL TOWN
HOUSE ASSOCIATION, INC.,

Plaintiff and Respondent,

v.

JOSEPH A. MINER, individually and as
trustee of THE JM TRUST, DATED
JANUARY 1, 2005,

Defendant and Appellant.

CASE NO. 30-2013-00654256

(Super. Ct. No. 30-2011-00466754)

OPINION

Appeal from an amended judgment of the Superior Court of Orange County,
Central Justice Center, Jane D. Myers, Commissioner. Motion for summary reversal
granted.

* * *

Having lost at trial, Defendants / Appellants Joseph A. Miner, individually and as trustee of The JM Trust, Dated January 1, 2005 (collectively, "Miner"), appeal the portion of the amended judgment awarding attorney's fees and costs to Plaintiff / Respondent Huntington Continental Town House Association, Inc. ("Huntington"). The original judgment in favor of Huntington was rendered after a bench trial, awarding damages and foreclosure of the subject property. Miner appealed that judgment to this court. While the appeal was pending, Huntington moved for an award of attorney's fees and costs, which was granted, and the trial court amended the judgment with that award. Miner filed a separate appeal of the amended judgment challenging the trial court's award of attorney's fees and costs.

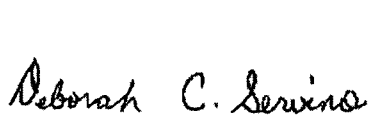


After we issued our opinion in the first appeal (*Huntington Continental Town House Assn., Inc. v. Miner* (2014) 222 Cal.App.4th Supp. 13) that reversed the original judgment, we certified the first appeal for transfer to the Court of Appeal. The Court of Appeal reversed the original judgment. (*Huntington Continental Townhouse Association, Inc. v. Miner* (2014) 230 Cal.App.4th 590.) We adopt and incorporate by reference the facts of the Court of Appeal’s opinion and will not repeat them here.

After the Court of Appeal’s opinion became final, Miner moved for summary reversal in this appeal. Huntington did not file an opposition to the motion. We grant Miner’s motion and reverse the portion of the amended judgment awarding Huntington attorney’s fees and costs after trial.

Where appropriate, an appellate court may consider a motion for reversal. (*People v. Browning* (1978) 79 Cal.App.3d 320, 323–324.) This is an appropriate case for summary consideration because reversal is mandated as a matter of law. (*Ibid.*) The original trial court judgment in favor of Huntington was reversed on appeal. (*Huntington Continental Townhouse Association, Inc. v. Miner, supra*, 230 Cal.App.4th at p. 607.) The amended judgment added Huntington’s attorney’s fees and costs awarded by the trial court. When a judgment that is the basis for a post-judgment order of attorney’s fees is reversed on appeal, the order must be reversed as well. (*Metropolitan Water Dist. of Southern California v. Imperial Irrigation Dist.* (2000) 80 Cal.App.4th 1403, 1436-1437.)

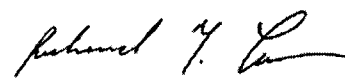
Miner’s motion is granted, and the portion of the amended judgment awarding fees and costs to Huntington is reversed. Appellants shall recover their costs on appeal. (Cal. Rules of Court, rule 8.891.)



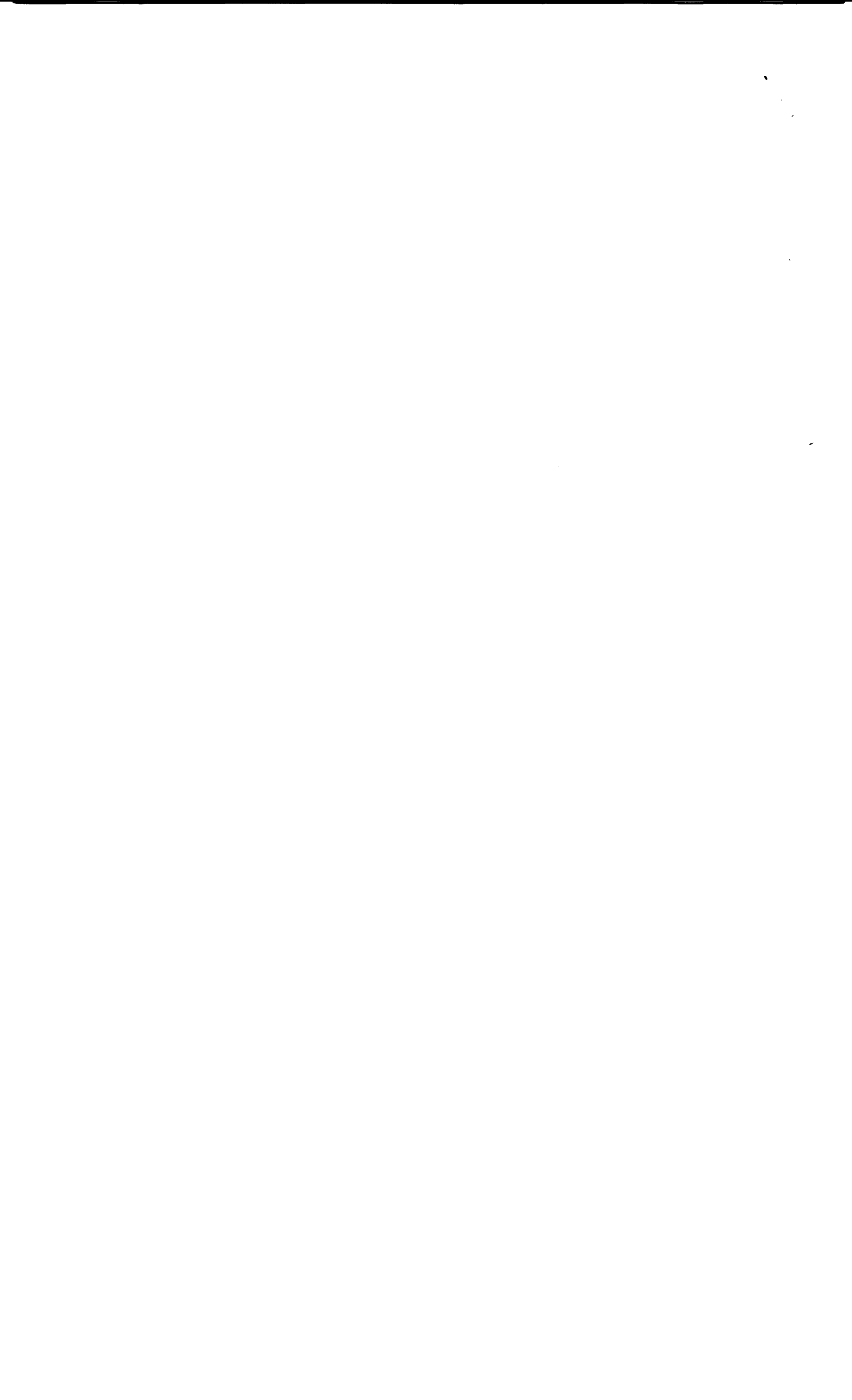
Deborah C. Servino
Presiding Judge



Glenn R. Salter
Judge



Richard Y. Lee
Judge



SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 03/10/2015 TIME: 10:06:00 AM DEPT: C63

JUDICIAL OFFICER PRESIDING: Corey S. Cramin

CLERK: A. Paiva

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **30-2011-00466754-CL-OR-CJC** CASE INIT.DATE: 04/13/2011

CASE TITLE: **Huntington Continental Town House Association, Inc. vs. The JM Trust, Dated January 1, 2005**

CASE CATEGORY: Civil - Limited

CASE TYPE: Other Real Property

EVENT ID/DOCUMENT ID: 72125772

EVENT TYPE: Under Submission Ruling

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 02/26/2015 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Motion for Attorney Fees is GRANTED in the sum of \$60,000.00 (\$300.00 per hour x 200 hours).

The court finds that Defendants Joseph A. Miner and the JM Trust dated 1/1/05 are prevailing parties. Code of Civil Procedure section 1032, subdivision (a) only defines '[p]revailing party' as the term is used 'in [that] section.' It does not purport to define the term for purposes of other statutes." Heather Farms Homeowners Assn. v. Robinson (1994) 21 Cal.App.4th 1568, 1572.

In Heather Farms, "court declined to adopt a rigid interpretation of the term 'prevailing party' and, instead, analyzed which party had prevailed on a practical level." Ibid, 1574. [Civil Code § 5975 (c) was previously § 1354 (c)].

In this case, the significant issue is whether Defendants could foreclose on Defendants' property. This issue involved more than a less hundred dollars. On a practical level, Defendants was the prevailing party. Because this case involved foreclosure on the property, this case was more significant than the few hundred dollars involved.

The uniqueness of the case can be viewed from another perspective. First, it is extremely rare for the Appellate Division of the Superior Court to publish a decision. That court noted "This case presents an

DATE: 03/10/2015

MINUTE ORDER

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issue on which this court has found little published authority." Huntington Continental Town House Assn., Inc. v. Miner (2014) 222 Cal.App.4th Supp. 13, 15. Second, it is even rarer for the Court of Appeal to review an Appellate Division case. Third, the Court of Appeal only publishes a small percentage of its cases. Finally, there were numerous amicus curie briefs filed on appeal. The billing rate of Defendants' counsel was \$400.00 per hour. "The reasonable hourly rate is that prevailing in the community for similar work." PLCM Group v. Drexler (2000) 22 Cal.4th 1084, 1095. This sum is somewhat high. The court will reduce it to \$300.00 per hour.

Defendants submitted detailed billing records for the time expended. Plaintiff did not cite any unreasonable billing practices, such as block billing, padding or inflated entries.

This case does not justify a multiplier. The prevailing party was entitled to recover attorney fees. This case was not on a contingency agreement.

The key issue of refusing to accept partial payments and potential foreclosure was litigated in each aspect of the case. There is no viable method to apportion attorney fees.

"A trial court 'assessing attorney fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case.' " Christian Research Institute v. Alnor (2008) 165 Cal.App.4th 1315, 1321. The court finds that \$60,000.00 is reasonable.

The Court directs Defense Counsel to prepare the judgment.

Court orders Clerk to give notice.

