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# Mind Your Attorney's Fees In Calif. CEQA Litigation

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In Save Our Uniquely Rural Community Environment v. County of San Bernardino, __ Cal.App.4th ___(4th Dist., Div. 2, 2015), the Fourth District Court of Appeal affirmed the trial court's decision to significantly reduce plaintiff Save Our Rural Community Environment's (SOURCE) claim for attorney fees[1] from $231,098 to $19,176. The Fourth District found that the court's failure to provide an explicit analysis of its decision was not enough to indicate an abuse of discretion by the trial court. The court determined reversal of the attorney fees award would require that the record contain some indication that the trial court had considered improper factors, or some evidence that the award had been snatched from "thin air."

The respondent, Al-Nur Islamic Center, a nonprofit religious organization, planned to erect a 7,512 square-foot mosque in the county of San Bernardino. SOURCE opposed the construction based on the environmental impacts SOURCE believed the project would cause and filed a petition for writ of mandate and complaint for injunctive relief alleging multiple violations of the California Environmental Quality Act. The trial court agreed with one of SOURCE's contentions — that the administrative record did not support the determination that the project would have a less than significant impact to the environment due to impacts to wastewater disposal — and overturned the approval of the mitigated negative declaration and conditional use permit for the mosque.

SOURCE filed a motion for attorney fees seeking a total of $221,198 for work on the administrative proceedings and the writ petition and $9,900 for the attorney fee motion. The trial court granted the motion for attorney fees but found the amount requested to be "outrageous" and reduced the fees awarded to $19,176. SOURCE appealed.

The Fourth District held that it would need to determine that the trial court exercised its discretion in an "arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice" in order to overturn the trial court's determination. In other words, according to the court, the trial court's ruling had to fall outside the bounds of reason under the applicable law and relevant facts.

The Fourth District rejected each of SOURCE's arguments on the grounds that, while its contentions

were valid reasons why a court might award the fees that SOURCE sought, those contentions were not sufficient to demonstrate that the trial court's reduction of the attorney fees was an abuse of its discretion. The trial court rested its decision on several factors: the limited success that SOURCE had at trial (the trial court rejected five of SOURCE's six contentions); the trial court's finding that the time and charges for preparation of work product were excessive and inflated; that the case was not overly complicated; and the trial court's finding that SOURCE had failed to provide justification for not seeking a lower priced CEQA attorney in the San Bernardino-Riverside market.

Finally, the Fourth District undertook considerable analysis of SOURCE's contention that the amount awarded by the trial court must "have some discernible mathematical basis." However, the court relied on Gorman v. Tassajara Development Corp., 178 Cal.App.4th 44 (2009), for the proposition that courts are not required to engage in any explicit analysis of attorney fees on the record, that "all intendment and presumptions are indulged to support the judgment on matters as to which the record is silent" and that error must be affirmatively shown. Therefore, lack of explanation by the trial court alone was not enough to reverse an attorney fee award; there had to be some indication that improper factors were considered or the award was snatched "from thin air." The trial court made it clear that it intended to substantially reduce the legal fees and provided legitimate justification. Because the record showed that the trial court acted for legitimate reasons, the Fourth District could not find an abuse of discretion simply because the trial court "failed to make its arithmetic transparent."

As in SOURCE, the Fourth District recently affirmed a reduced attorney fees award in Otay Ranch LP v. County of San Diego, 230 Cal.App.4th 60 (2014). In Otay Ranch LP, the trial court awarded the county $37,528 when it originally sought a total of $66,638 in fees, which included the attorney and paralegal fees charged by outside counsel to prepare the administrative record. While the Fourth District held that a public agency's recoverable record preparation costs may reasonably include the fees charged by outside counsel to prepare the record where the agency lacks the resources or personnel to prepare the administrative record needed for mandate proceedings, the court also found that it is within the trial court's discretion to determine what fees are "reasonable" and "necessary."

Given the line of cases that have recently led to SOURCE and Otay Ranch LP,[2] it may behoove prevailing parties to include substantial arguments in their motions demonstrating the reasonableness and necessity of attorney fees, including those related to preparation of the administrative record, in order to survive heightened scrutiny at the trial court level. At a bare minimum, SOURCE reaffirms that trial courts have broad discretion to determine whether such attorney fees and administrative record preparation cost awards are reasonable under the circumstances of the case. Further the case is just the latest among several recent cases where courts have reduced administrative record cost awards, which may encourage prevailing parties to better explain the steps utilized to minimize expenses incurred during record preparation and the proceeding.

For project proponents, who as a practical matter are required to indemnify,[3] hold harmless and defend lead agencies as a condition of approval, SOURCE represents an elevated level of motion pleading to substantiate cost and fee claims. This case may also encourage project opponents to be more selective in the CEQA cases they choose to litigate.

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[1] The opinion uses the term "attorney fees" throughout instead of "attorneys' fees."

[2] St. Vincent's School for Boys, Catholic Charites CYO v. City of San Rafael, 161 Cal.App.4th 989 (2008) ("Where necessary to preserve the statutory purposes of cost containment and expediting CEQA litigation, the prevailing party in a CEQA action may recover 'reasonable costs or fees imposed for the preparation' of the record, even if the nonprevailing party elected to prepare the record."); Cal. Oak Found. v. Regents of Univ. of Cal., 188 Cal.App.4th 227, 295 (2010) (respondent demonstrated that, given the history and complex nature of the proceedings, it is not surprising that its counsel "spent a great deal of time and expense ensuring the entire administrative record was prepared and copied in an appropriate manner." )

[3] In Otay Ranch LP, the Fourth District awarded costs associated to record preparation in a scenario that involved an indemnity agreement but punted the discreet issue of fees and costs awarded under an indemnity provision. (230 Cal.App.4th 60.) In an unpublished part of its opinion, the court dodged petitioner's argument against the cost award based on an indemnity agreement between the county and the real party-in-interest.

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