

**Tentative Rulings for March 30, 2022**  
**Department 403**

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**There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)**

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**The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.**

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**(Tentative Rulings begin at the next page)**

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## **Tentative Rulings for Department 403**

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(03)

**Tentative Ruling**

Re: **Wash v. Wash**  
Case No. 09CECG00933

Hearing Date: March 30, 2022 (Dept. 403)

Motion: Plaintiff Maria Wash's Motion to be Determined the Prevailing Party and to Fix Amount of Attorney's Fees

Defendant John Wash's Motion to Strike or Tax Plaintiff's Motion to be Determined the Prevailing Party and to Fix Attorney's Fees

**Tentative Ruling:**

To grant plaintiff Maria Wash's motion to be determined the prevailing party in the appeal, and to fix the amount to be awarded to her as attorney's fees. (Civil Code § 1717.) To deny defendant John Wash's motion to strike the entirety of plaintiff's motion. However, the court intends to reduce the amount of fees to be awarded to plaintiff to \$6,950. Defendant John Wash shall pay attorney's fees to plaintiff within 30 days of the date of service of this order.

**Explanation:**

Under Civil Code section 1717, subdivision (a), "In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs." (Civ. Code, § 1717, subd. (a).)

"The court, upon notice and motion by a party, shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2), the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section." (Civ. Code, § 1717, subd. (b)(1).)

"As one Court of Appeal has explained, '[t]ypically, a determination of no prevailing party results when both parties seek relief, but neither prevails, or when the ostensibly prevailing party receives only a part of the relief sought.' By contrast, when the results of the litigation on the contract claims are *not* mixed—that is, when the decision on the litigated contract claims is purely good news for one party and bad news for the other—the Courts of Appeal have recognized that a trial court has no discretion to deny attorney fees to the successful litigant. Thus, when a defendant defeats recovery by the plaintiff on the only contract claim in the action, the defendant is the party prevailing on the contract under section 1717 as a matter of law. Similarly, a plaintiff who

obtains all relief requested on the only contract claim in the action must be regarded as the party prevailing on the contract for purposes of attorney fees under section 1717." (*Hsu v. Abbata* (1995) 9 Cal.4th 863, 875-876, italics in original, internal citations omitted.)

"Accordingly, we hold that in deciding whether there is a 'party prevailing on the contract,' the trial court is to compare the relief awarded on the contract claim or claims with the parties' demands on those same claims and their litigation objectives as disclosed by the pleadings, trial briefs, opening statements, and similar sources. The prevailing party determination is to be made only upon final resolution of the contract claims and only by 'a comparison of the extent to which each party ha[s] succeeded and failed to succeed in its contentions.'" (*Hsu v. Abbata* (1995) 9 Cal.4th 863, 876, internal citation omitted.)

Here, the settlement agreement between the parties contained an attorney's fees clause which provided for an award of attorney's fees and costs to the prevailing party in any action to enforce the terms of the settlement. (Exhibit A to Request for Judicial Notice, Judgment, Exhibit A, p. 3 of 4, last paragraph. The court intends to take judicial notice of the documents attached to plaintiff's request for judicial notice as official court records under Evidence Code section 452, subd. (d).) Plaintiff Maria Wash was the prevailing party in the litigation to enforce the settlement, as well as in the appeal of the order imposing attorney's fees and costs on defendant John Wash. (Exhibits A and B to Request for Judicial Notice.) Thus, Maria is entitled to an award of her attorney's fees in defending against the appeal.

Defendant John Wash argues that section 1717, subdivision (b)(2) applies here because there was a settlement of the dispute and a dismissal of all claims, and thus there was no "prevailing party" in the action and no attorney's fees can be awarded. Under section 1717, subdivision (b)(2), "Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section." (Civ. Code, § 1717, subd. (b)(2).)

However, the Court of Appeal already rejected John's contention regarding section 1717(b)(2) in its decision affirming the trial court's last fee award. (*Wash v. Wash*, Court of Appeal case no. F077486, pp. 5-7.) The Court of Appeal found that there was nothing in the record to indicate that a dismissal had ever been filed in the case, so section 1717(b)(2) did not apply. (*Id.* at pp. 5-6.) The court also noted that John's interpretation of the statute to mean that a settlement is the equivalent of a voluntary dismissal was contrary to the plain meaning of the term "dismissal." (*Id.* at p. 6.)

In addition, the court held that, even if the action had been dismissed, the trial court's jurisdiction was revived when Maria filed her motion to enforce the settlement agreement. (*Ibid.*) The court reasoned that "an action cannot be characterized as 'dismissed pursuant to a settlement of the case' when the parties are back in court arguing over the meaning or application of their settlement." (*Id.* at p. 7.) Thus, since the Court of Appeal has already rejected John's contention that section 1717(b)(2) bars a finding that plaintiff is the prevailing party in the litigation, this court may not revisit the issue, which has become "law of the case."

John has also argued that Maria is not the “prevailing party” on the latest appeal because the Court of Appeal did not award her any new relief, and simply affirmed the trial court’s prior order awarding her attorney’s fees and costs. Yet Maria was successful in defending against John’s challenge to the earlier fee award, as the Court of Appeal affirmed the fee award in its entirety without modification and rejected all of John’s contentions. Given the issues raised in the appeal, Maria obtained all of the relief that she could have under the circumstances and John did not prevail on any of his arguments. Therefore, Maria was clearly the “prevailing party” in the appeal, as she obtained a simple, unqualified win and John obtained nothing.

John also notes that the Court of Appeal only stated that Maria was entitled to her “costs” and did not say anything about her right to receive fees. Yet, regardless of whether the Court of Appeal awarded fees in its order affirming the trial court’s earlier decision, this court can still award attorney’s fees pursuant to the fees clause in the settlement agreement, as Maria was the “prevailing party” in the appeal and thus is entitled to her fees. (*T.E.D. Bearing Co. v. Walter E. Heller & Co.* (1974) 38 Cal.App.3d 59, 64-65 [holding that the trial court after remittitur is issued has jurisdiction to award fees based on Civil Code section 1717 even if appellate court did not make an award of fees].)

Consequently, since Maria was the “prevailing party” on the appeal, she is entitled to her fees under section 1717 and the court intends to grant her motion for attorney’s fees. The court also intends to deny John’s motion to strike the entire request for attorney’s fees. However, the court will reduce or tax the amount of fees requested by Maria.

“Civil Code section 1717 provides that ‘[r]easonable attorney’s fees shall be fixed by the court.’ As discussed, this requirement reflects the legislative purpose ‘to establish uniform treatment of fee recoveries in actions on contracts containing attorney fee provisions.’ Consistent with that purpose, the trial court has broad authority to determine the amount of a reasonable fee. As we have explained: ‘The “experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong”—meaning that it abused its discretion.” (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1094–1095, internal citations omitted.)

“[T]he fee setting inquiry in California ordinarily begins with the ‘lodestar,’ i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. ‘California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys’ fee award.’ The reasonable hourly rate is that prevailing in the community for similar work. The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. Such an approach anchors the trial court’s analysis to an objective determination of the value of the attorney’s services, ensuring that the amount awarded is not arbitrary.” (*Id.* at p. 1095, internal citations omitted.)

Here, plaintiff’s counsel claims to have incurred \$11,375 in fees defending against the defendant’s appeal based on 61.1 hours of paralegal time billed at \$150 per hour

First of all, the appeal only sought to challenge the trial court's order determining Maria to be the prevailing party and awarding attorney's fees and costs to her. Thus, the appeal raised fairly narrow and simple issues. While defendant raised some novel and unusual arguments, it should not have taken over 50 hours of attorney and paralegal time to research and draft a respondent's brief to John's opening brief.

However, all of the other billings appear to be reasonable, so the court will not tax them. As a result, the court will award plaintiff total fees of \$6,950 related to the appeal.

## Tentative Ruling

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