No. B341189

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION 5

DOUGLAS KRUSCHEN

Respondent-Plaintiff

v.

ANNANDALE TOWNHOUSE ASSOCIATION, INC., *et al.*

Appellant-Defendants

APPEAL FROM ORDER AWARDING ATTORNEY FEES

SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES
CASE NO. 23VECV05191
THE HON. ERIC P. HARMON, JUDGE PRESIDING

RESPONDENT'S BRIEF

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CERTIFICATE OF INTERESTED PARTIES

(Cal. Rules of Court, Rule 8.208)

There are no interested entities or persons that must be listed in this certificate under Rule 8.208.

Respectfully submitted,

MYERS, WIDDERS, GIBSON,
JONES & FEINGOLD, LLP

Dated: April 28, 2025 By: /s/ James E. Perero

James E. Perero, Esq.

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INTRODUCTION

Respondent Douglas Kruschen ("Respondent") achieved unequivocal success in the trial court on his claim to invalidate the October 2023 director election for Appellant Annandale Townhouse Association, Inc. ("Appellant"). (See generally Clerk's Transcript ["CT"] 12 [minute order].) Thereafter, he was awarded attorney fees. (Clerk's Transcript at p. ["CT"] 67.) Because the trial court's judgment voiding the election is sound and should be affirmed, the award of attorney fees must likewise be affirmed.

Appellant cannot overcome the "abuse of discretion" standard governing this appeal.

Appellant's opening brief offers a scattershot array of contentions, but its principal arguments appear to be that i) there should be no prevailing party (Appellant's Opening Brief at p. ["AOB"] 18), and ii) if Respondent did prevail, the awarded fees should be further reduced (AOB 22).

Appellant's position is not only unsupported, but also contrary to statute, precedent, and the actual result obtained below.

On this record, the law supports the fees awarded. The trial court properly determined that Respondent prevailed. It did not abuse its discretion as to the reduced amount of the award. The Court should affirm the trial court's ruling and confirm Respondent's entitlement to recover attorney fees on appeal.

This appeal implicates recurring legal questions concerning the scope of attorney fee recovery in HOA election litigation under Civil Code section 5145, the interaction of such claims with Corporations Code section 7616, and the appropriate forum for enforcement. These issues are of continuing public interest and importance to the governance of common interest developments. To the extent this Court's opinion clarifies these questions, it will contribute materially to the development of the law in this area.

/ / /

FACTUAL AND PROCEDURAL HISTORY

On November 20, 2023, Respondent, initially *in propria persona*, filed his complaint against Appellant (and others) challenging Appellant's October 2023 director election. (CT 14–15.) The complaint sought relief pursuant to Corporations Code section 7616 (which affirmatively obligated Respondent to name then-sitting directors) and Civil Code section 5145. (*Id.*) By stipulation of the parties, the matter was initially set for hearing on January 4, 2024, and subsequently continued to February 27, 2024. (*Id.*)

After a three-day evidentiary hearing which featured the testimony of five witnesses and the introduction of fifty-four exhibits, the court prepared a thirteen-page ruling. (CT 15, 18, 26.) On March 20, 2024, the trial court issued a thoroughly considered Minute Order directing entry of "judgment in favor of Plaintiff and against Defendants, and each of them." (CT 24.) It voided the election and stated that "the Association's October 2023 election of Directors is invalid[.]" (CT 24.) The Court reserved the question of attorney fees for hearing on a separate motion. (CT 25.)

On May 24, 2024, Respondent filed its Motion for Attorney's Fees and Costs ("Motion"). (CT 29.) The Motion was supported by declarations and detailed time records. (CT 36–51.) Timely opposition and reply followed. (CT 55; Motion to Augment ["MTA"] Exhibit A at MTA Exhibit Page 002 ["Ex. A at 2"] [filed concurrently herewith].)

The Motion was heard on August 29, 2024. (MTA Ex. B at 13.) The trial court issued a thorough and well-considered Minute Order explaining the basis for its decision to award attorney fees. (*Id.*) In granting the Motion, the trial court reduced Respondent's attorney fee claim and awarded $52,130.00. (CT 78.) On September 19, 2024, Appellant filed its Notice of Appeal in this matter, challenging only the "order after judgment." (CT 75.) Appellants offer nothing to disturb the trial court's ruling and this Court should affirm.

STANDARD OF REVIEW

"[A] determination of the legal basis for an attorney fee award is a question of law to be reviewed de novo." (*Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 Cal.5th 744, 751 [citing *Carver v. Chevron U.S.A., Inc.* (2002) 97 Cal.App.4th 132, 142].) The amount of an attorney fee award is reviewed for abuse of discretion. (See *PLCM Group Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094–95.)

DISCUSSION

A. Civil Code Section 5145 Authorizes Recovery of Attorney Fees in a Superior Court Action

Appellant finds itself in the difficult position of arguing against the express language of Civil Code section 5145. It asserts without authority that because Respondent's claim was not based on governing documents or a contract, he is (somehow) precluded from recovering attorney fees. (AOB 8.) The argument is specious.

Civil Code section 5145 provides in pertinent part:

> "(a) A member of an association may bring a civil action for declaratory or equitable relief for a violation of this article by the association, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date that the inspector or inspectors of elections notifies the board and membership of the election results or the cause of action accrues, whichever is later. If a member establishes, by a preponderance of the evidence, that the election procedures of this article, or the adoption of and adherence to rules provided by Article 5 (commencing with Section 4340) of Chapter 3, were not followed, a court *shall void any results of the election* unless the association establishes, by a preponderance of the evidence, that the association's noncompliance with this article or the election operating rules did not affect the results of the election. The findings of the court shall be stated in writing as part of the record.

> "(b) A member who prevails in a civil action to enforce the member's rights pursuant to this article shall be entitled to reasonable attorney's fees and court costs[.] . . . If a member prevails in a civil action brought in small claims court, the member shall be awarded court costs and reasonable attorney's fees incurred for consulting an attorney in connection with this civil action.
>
> "(c) A cause of action under subdivision (a) may be brought in . . . the superior court[.]

(Italics added.)

Appellant asserts that Respondent should have brought his claim in small claims court. (AOB 12, 14 [citing *Artus v. Gramercy Towers Condominium Assn.* (2018) 19 Cal.App.5th 923 (a plaintiff who does not prevail is not entitled to recover fees)].) However, Civil Code section 5145 expressly authorizes an enforcement action in superior court. Appellant ignores that Respondent sought (and obtained) relief under Corporations Code section 7616, which vests exclusive jurisdiction in the superior court. That statute requires service of the complaint "upon the person whose purported election or appointment is questioned." (*Id.* at § 7616(c).) It also provides an accelerated adjudicatory process similar to the small claims action Appellant complains about. (See CT 15.) Small

claims court lacked jurisdiction and Appellant fails to establish otherwise. Appellant's jurisdictional challenge is meritless.

Civil Code section 5145 plainly provides for recovery of reasonable attorney fees and costs to a prevailing plaintiff. It encourages meritorious homeowner claims by design. From the express language of the statute, Appellant is hard-pressed to assert that the legislature did not intend for Respondent to obtain an award of attorney fees given the outcome at trial. (See also *Beverly Hills Properties v. Marcolino* (1990) 221 Cal.App.3d Supp. 7, 10 ["A party is entitled to an award of attorney fees if there is a specific authorization therefor by statute or private agreement."])

B. Respondent's Successful Claim Entitles Him to Recover Attorney Fees

The trial court determined that Respondent prevailed. (CT 72 ["As the prevailing party, Plaintiff Kruschen is entitled . . ."].) "The prevailing party is the party in whose favor final judgment is rendered." (*Smith v. Rae-Venter Law Group* (2002) 29 Cal.4th 345, 365 [superseded by statute on other grounds as stated in *Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1183, fn. 6 (J. Chin, concur. and dissent. opn.]) In determining prevailing party status for an award of attorney fees, a court should analyze which party "prevailed on a practical level." (*Heather Farms Homeowners Assn. v. Robinson* (1994) 21 Cal.App.4th 1568, 1574.)

As the California Supreme Court held in *Hsu v. Abbara* (1995) 9 Cal.4th 863, 877, a litigant is deemed to prevail when they

achieve their "primary litigation objective." Here, that objective, voiding the 2023 board election, was fully realized. Appellant's effort to parse allegations and alternate theories found lacking in the trial court does nothing to undermine the award of attorney fees.

Respondent brought his action to invalidate Appellant's 2023 election and succeeded. (CT 14ff.) Appellant concedes an "adverse judgment." (AOB 21.) The trial court appropriately determined that Respondent was the prevailing party for purposes of an attorney fee award. This Court should affirm.

C. The Court Should Ignore Uncited Factual Allegations and Boilerplate from An Unrelated Filing

Appellant's unsupported factual assertions without citation to the record should be ignored. California Rules of Court, Rule 8.204(a)(i)(C) provides that "[e]ach brief must . . . support any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." Appellant repeatedly offers uncited allegations: Respondent lost in a "landslide" (AOB 9); time spent litigating "the one violation upon which Kruschen prevailed" (AOB 9); effort to obtain "bogus" civil penalties (AOB 11); "fraudulent veneer" (AOB 11); alleged delay (AOB 14 [see also MTA Ex. A at 3 (addressing and disposing of Appellant's same mischaracterization in trial court); "maliciously sued" (AOB 19); "overwhelmingly elected" (AOB 19); attendance at meeting (AOB 20); failure to keep polls open (AOB 20); defendants

incurred costs and fees (AOB 21); and "avoided any fiduciary obligation" (AOB 21). Appellant's repeated failure to cite the record not only violates Rule 8.204 but suggests an inability to do so. Assertions unsupported by the record warrant no appellate consideration.

Appellant's first apparently coordinated attack on the actual award of attorney fees arrives at AOB page 15 and continues to page 18. It starts with "The Davis Stirling Common Interest Development Act . . ." and goes to page 18, concluding with "[t]hey have not set forth a manner to expedite the appellate process and none exists." The material lacks any meaningful explanation or analysis. It also is a near verbatim transfer of text from Appellant's opposition to Respondent's Motion for Expedited Appeal in the related Second Appellate District Case No. B337889. (See opposition thereto at ps. 6–9.) As presented herein, the material is not only confusing, but it also offers no cognizable support to Appellant's presentation. It should be disregarded. This Court should affirm.

D. The Argument Against Any Prevailing Party Is Without Merit

Appellant musters weak, poorly supported arguments in a half-hearted attack on Respondent's status as prevailing party. The arguments fail.

Appellant relies on two cases to claim that there should be no prevailing party. (AOB 18–19.) With *Deane Gardenhome Assn.*

v. Denktas ("Deane"), Appellant suggests that "neither party prevail[ed]" or Respondent received "only a part of the relief sought." ((1993) 13 Cal.App.4th 1394, 1398.) But in truth, Respondent received *all* the relief sought. (CT 24–25.) Appellant ignores the next sentence in Deane, which provides that a finding of no prevailing party is appropriate when the judgment is "good news and bad news for each of the parties." (13 Cal.App.4th at 1398.) But here, the judgment was wholly favorable to Respondent and entirely adverse to Appellant. Appellant's reliance on *Hsu v. Abbarra* is likewise misplaced. ((1995) 9 Cal.4th 863, 874.) There is nothing equivocal about the Court's determination that Appellant's 2023 election was void and invalid. (CT 24.)

Appellant falsely claims that "[n]o judgment is made against" the individual defendants. (AOB 19.) However, the trial court specifically states that "the Court issues this judgment in favor of Plaintiff and against Defendants, and each of them." (CT 24.) Moreover, Appellant's attempt to defend persons seated as directors after the voided election entirely misses the point. Their status as directors relies on a voided election! Oddly, Appellant tacitly concedes the point, noting that their "election" arose from "the challenged ballots." (AOB 19.)

Appellant then proceeds to relitigate the underlying case without reference to the record. (AOB 20–21.) It argues without authority that a) delegating management of an election to an inspector and b) the credibility of lay witnesses should legally insulate it from the consequences of a failed election. (AOB 20.)

But this would turn Civil Code section 5145 on its head and deprive Respondent of the award provided for therein. As noted by the trial court in its ruling, "Section 5145 awards attorney's fees to the prevailing party, not to the party who did no wrongdoing." (MTA Ex. B at 20.) Appellant then blames Respondent—who was then one of numerous directors—for failing to keep the election from going off the rails. (AOB 20–21.) The argument found no traction at trial. Appellant's effort to rehash tired arguments that failed at trial does nothing to demonstrate that the trial court abused its discretion.

Appellant then has the audacity to insult the trial court, claiming it "blindly awarded Kruschen fees and costs as against the circumstances surrounding the election." (AOB 21.) To the contrary, Appellant put on a full case at trial and lost. (CT 15.) If there was a failure of the trial court to perceive relevant "circumstances," it was because Appellant failed to get them into evidence. The trial court prepared a thorough and carefully considered determination of facts presented—and ruled in favor of Respondent. (CT 14ff; MTA Ex. B at13ff.) This Court should affirm.

E. The Court Should Decline to Substitute Its Judgment for That of the Trial Court Regarding the Amount Awarded

"'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, Inc.*, 22 Cal.4th at 1095 [citing *Serrano v. Priest* (1977) 20 Cal.3d 25, 49; *Fed–Mart Corp. v. Pell Enterprises, Inc.* (1980) 111 Cal.App.3d 215, 228 [requiring "manifest abuse of discretion" to interfere with trial court determination as to reasonable attorney fees].) Under the "abuse of discretion" standard of review, appellate courts will disturb discretionary trial court rulings only upon a showing of "a clear case of abuse" and "a miscarriage of justice." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331; *Denham v. Sup.Ct. (Marsh & Kidder)* (1970) 2 Cal.3d 557, 566.)

The fee setting inquiry in California ordinarily begins with the "lodestar," *i.e.*, the number of hours reasonably expended multiplied by the reasonable hourly rate prevailing in the community for similar work. (*Margolin v. Regional Planning Comm.* (1982) 134 Cal.App.3d 999, 1004–5.) The lodestar figure may then be adjusted to fix the fee at the fair market value based on factors specific to the case including, among others, the nature and difficulty of the litigation, the amount involved, the skill and attention required and employed, and success or failure. (*Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 623–4; *Serrano*, 20 Cal.3d 25.) This approach avoids arbitrary awards by anchoring the trial court's analysis to an objective determination of the value of the attorney's services. (*Serrano*, 20 Cal.3d at 49.)

To make this determination, a court needs only declaratory evidence and general records. (*Padilla v. McClellan* (2001) 93 Cal.App.4th 1100, 1106–7; *Melnyk*, 64 Cal.App.3d at 623–4.)

Neither expert testimony, nor detailed records are required, nor does a court err in relying only on an attorney declaration including evidence of hours spent, tasks concluded, and billing rates. (*Id.*; *Steiny & Co., Inc. v. California Electric Supply Co.* (2000) 79 Cal.App.4th 285, 293 ["there is no legal requirement that [billing] statements be offered in evidence. An attorney's testimony as to the number of hours worked is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records"].) However, contemporaneous time records "facilitate accurate calculation of the lodestar and minimize possible inaccuracies." (*PLCM Group, Inc.,* 22 Cal.4th at 1096 fn. 4.) Moreover, "contemporaneous time records are the best evidence of lawyers' hourly work. They are not indispensable, but they eclipse other proofs." (*Taylor v. County of Los Angeles* (2020) 50 Cal.App.5th 205, 207.)

Respondents far exceeded the threshold required to adequately support the fee award. The declaration of James E. Perero presented detailed records showing services rendered and the time expended in connection therewith. (CT 36.) It presented properly authenticated business records. (See Evid. Code § 1271; see also Cal. Prac. Guide Civ. Trials & Ev. Ch. 17-E, 17:738 [citing *Horsford v. Bd. of Trustees of California State Univ.* (2005) 132 Cal.App.4th 359, 397 and noting "verified time records [are] entitled to credence absent clear indication they are erroneous"].)

"[A] reduced fee award is appropriate when a claimant achieves only limited success," but not when the claims are

"factually related and closely intertwined." (*Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 989, internal citations omitted.)

> "The critical fact is the impact of the action, not the precise grounds upon which the court placed its ruling. Where a lawsuit consists of related claims, and the plaintiff has won substantial relief, a trial court has discretion to award all or substantially all of the plaintiff's fees even if the court did not adopt each contention raised."

(*Downey Cares v. Downey Community Development Com.* (1987) 196 Cal.App.3d 983, 997.) "[A]ttorney fees need not be reduced for work on unsuccessful claims if the claims 'are so intertwined that it would be impracticable, if not impossible, to separate the attorney's time into compensable and noncompensable units.'" (*Mann v. Quality Old Time Service, Inc.* (2006) 139 Cal.App.4th 328, 342.)

Appellant claims the trial court's award should be reduced based on alleged violations that were not credited by the trial court. (AOB 25.) However, the trial court found that "the alleged violations that Plaintiff pursued in this action were 'factually related and closely intertwined' so that separating Plaintiff's attorneys' time into units allocated to each alleged violation is impractical." (MTA Ex. B at 19.) Relying on *Chavez*, 47 Cal.4th at 989, and *Mann*, 139 Cal.App.4th at 342, the trial court ruled that

even if Respondent achieved only "limited success" a reduced fee award was not appropriate. (*Id.*) Moreover, citing *Downey Cares*, 196 Cal.App.3d at 997, the trial court noted that Respondent's claims and alleged violations "are not only related and intertwined, but [Respondent] did obtain substantial relief." (*Id.*)

The critical fact is the impact of the action, not the precise grounds upon which the court ruled. Where a lawsuit consists of related claims, and the plaintiff has won substantial relief, a trial court has discretion to award all or substantially all of a plaintiff's fees even if the court did not adopt each contention raised.

Appellants offer nothing to show the trial court ruling was "clearly wrong." (See *PLCM Grp.,* 22 Cal.4th at 1095.) Moreover, the trial court reduced the fees requested on grounds that some work performed by Respondents' attorneys was not justified. (MTA Ex. B at 22.) This Court should affirm.

F. Respondents Are Entitled to Recover Attorney Fees on Appeal

Respondent requests this Court to confirm that Respondent is entitled to recover fees incurred in connection with a) defending the trial court's award of attorney fees on appeal, and b) bringing a motion in the trial court for their recovery. It is well established that "statutes authorizing attorney fee awards in lower tribunals include attorney fees incurred on appeals of decisions from those lower tribunals." (*Morcos v. Board of Retirement* (1990) 51 Cal.3d 924, 927; see also *Serrano v. Unruh* (1982) 32 Cal.3d 621, 637

["fees, if recoverable at all . . . are available for services at trial and on appeal."]) The Court should affirm the trial court's award of fees and also confirm Respondent's entitlement to recover his reasonable fees and costs incurred with respect to this appeal.

CONCLUSION

Respondent obtained complete (not partial) relief in the trail court, which was statutorily authorized under both Civil Code section 5145 and Corporations Code section 7616. No claim, theory, or factual distinction raised by Appellant diminishes Respondent's unmitigated success. The trial court's fee award was reasonable, grounded in substantial evidence, and consistent with controlling precedent. Appellant has failed to show any legal or factual error warranting reversal. This appeal is a transparent attempt to relitigate issues outside the scope of the attorney fee award.

This matter involves issues of continuing public interest and importance to the administration of justice in common interest developments across California. This Court should affirm the fee award and direct recovery of fees incurred on appeal.

Respectfully submitted,

MYERS, WIDDERS, GIBSON,
JONES & FEINGOLD, LLP

Dated: April 28, 2025 By: /s/ James E. Perero

James E. Perero, Esq.

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.204(c)(1))

The text of this brief consists of 4,044 words as counted by the Microsoft® Word for Microsoft 365 MSO (Version 2502 Build 16.0.18526.20286) 64-bit word-processing program used to generate this brief.

MYERS, WIDDERS, GIBSON, JONES & FEINGOLD, LLP

Dated: April 28, 2025

By: /s/ James E. Perero
James E. Perero, Esq.

PROOF OF SERVICE **Appeal Case No B341189**

STATE OF CALIFORNIA, COUNTY OF VENTURA

I am employed in the County of Ventura, State of California. I am over the age of eighteen (18) and not a party to the action; my business address is 39 N. California St., Ventura, California 93001.

On April 28, 2025, I served the foregoing document described as **RESPONDENT'S BRIEF** on the interested party(ies) in this action:

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[X] (BY ELECTRONIC SERVICE E-MAIL) As follows I transmitted a PDF version of this document by electronic mail to the party (s) identified on the above service list using the e-mail address (es) indicated.

Los Angeles Superior Court
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[X] **(**BY MAIL**)** I caused such envelope to be deposited in the mail at Ventura, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with my firm's practice of collecting and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

[x] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 28, 2025, at Ventura, California.

Sandra Puga

Sandra Puga