

# CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

ERNEST A. LONG

## Alternative Dispute Resolution

❖ Resolution Arts Building ❖

2630 J Street, Sacramento, CA 95816

ph: (916) 442-6739 • fx: (916) 442-4107

elong@ernestalongadr.com • www.ernestalongadr.com

## *Almanor Lakeside Villas Owners Association v Carson* 4/19/16

### Challenge to Magnitude and Reasonableness of Fees of Attorney's Fees and Costs; Davis-Stirling Act

The Almanor Lakeside Villas Owners Association (Almanor) is the homeowner's association for the common interest development where appellants James and Kimberly Carson own properties.

The Kokanee Lodge and Carson Chalets are located within the Almanor Lakeside Villa development on Lake Almanor in Plumas County. Almanor is a homeowners association operating under the Davis-Stirling Common Interest Development Act (Davis-Stirling Act), codified at sections 4000–6150 of the Civil Code. The lodge and two chalets (the properties) are among only a few lots in the Almanor development that accommodate commercial use; the development otherwise is strictly residential. The properties' commercial designation stems from the historic use of the lodge, which pre-existed the subdivision and operated as a hunting, fishing, and vacation lodge.

The Carsons purchased the properties in 2001 and 2005 for use as short term vacation rentals. The properties are subject to the CC&Rs of the Almanor development. As relevant to this appeal, section 4.01 of the CC&Rs designated certain lots, including the properties, that could be utilized for commercial or

residential purposes. Section 4.09 prohibited owners from using their lots “for transient or hotel purposes” or renting for “any period less than 30 days.” Section 4.09 also required owners to report any tenants to Almanor’s board of directors by notifying the board of the name and address of any tenant and the duration of the lease.

In approximately 2009, the Almanor board changed composition and began to develop regulations to enforce the CC&Rs. By way of example, the 2010 rules sought to enforce section 4.09 of the CC&Rs to limit rentals to a minimum of 30 days. The 2011 and 2012 rules exempted the commercial lots from the 30-day rental restriction but maintained the requirement to provide a copy of any rental agreement to the association seven days before the rental period. The rules also purported to regulate other aspects of association life affecting the properties, such as parking, trash storage, use of common areas, and issuing decals for any boats using Almanor boat slips. And they set a schedule of fines for violations.

The Carsons believed their properties were exempt from the use restrictions of the CC&Rs, including the Section 4.09 restriction on short term rentals and the related reporting requirements. Several historic factors supported this belief, including that the Carsons had operated the properties as a short term vacation rental business for many years. The Carsons similarly did not believe that the rules adopted by the board in 2010, 2011, and 2012 applied to their properties.

Although the Carsons initially tried to comply with the renter reporting requirements, they continued to insist that section 4.01 of the CC&Rs and the long-established commercial status of the properties exempted them from the

use restrictions and related rules. The board issued its first fines against the Carsons in September 2010, and continued to fine the Carsons throughout 2011 and 2012 for a wide range of purported violations, which the Carsons disputed. The Carsons had stopped paying homeowner's association dues on the properties for about two years, for reasons unrelated to the dispute over fines, eventually making only partial payments.

In its trial brief, Almanor estimated that the Carsons owed about \$54,000 in dues, fees, fines and interest. Having cross-complained for damages and equitable relief based on breach of contract, private nuisance, and intentional interference with prospective economic advantage, the Carsons sought to establish that Almanor's imposition of fines was "totally unlawful," arbitrary and unfair, and reflected an effort to try to "fine the Carsons business out of existence." They argued that the "CC&Rs clearly do not contemplate the commercial businesses that sit on the subdivision's land. In fact, these commercial lots are exempt by contract, based on principles of waiver, and by public policy." The Carsons asserted that they "have been nearly put out of business and, even if Cross-Defendant's conduct halts now, they will have immense lost income for the next 5-10 years."

After a bench trial, the court issued its tentative decision. It concluded that the 30-day minimum rental restriction imposed by section 4.09 of the CC&Rs presented an "obvious conflict" with section 4.01, which "expressly allowed the Carsons to use their lots for commercial purposes (presumably including lodging, since the properties are, in fact, lodges)." Citing *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 386, the trial court determined that it would be unreasonable to strictly enforce the absolute use restrictions against the Carsons. It explained: "Given the conflict between Section 4.01 and

4.09, the general rule espoused in *Nahrstedt*, that a use restriction in an association's recorded CC&Rs is presumed to be reasonable and 'will be enforced uniformly against all residents of the common interest development,' should not apply." The court noted, however, that it did "not accept the Carsons' argument that the conflict completely eliminates Almanor's ability to impose reasonable use restrictions on the Carsons' lots, consistent with the Carsons' right to use their lots for commercial lodging purposes."

Of the fines imposed in 2010, 2011, and 2012, the court concluded only the fines pertaining to the non-use of Almanor's boat decals were reasonable. Those fines amounted to \$6,620, including late charges and interest. The court did not find adequate support for Almanor's claim that the Carsons continued to owe unpaid dues. As to the Carsons' cross-complaint, the court found they had not proven by competent evidence that Almanor's alleged breaches of the CC&Rs caused damages or resulted in discernible lost profits.

The Carsons requested a statement of decision, asking whether they had suffered damages based on a former renter's decision not to return to the properties after alleged mistreatment by Almanor board members, and whether violations relating to boat slips and decals had been properly imposed. The court issued a final statement of decision regarding the applicability of reasonable use restrictions to the Carsons' properties. On the cross-complaint, the court concluded that even assuming Almanor had breached the CC&Rs, the Carsons had not proven damages. The Carsons were ordered to pay \$6,620.00 in damages to Almanor, and they received nothing on their cross-complaint.

The parties moved for **attorney's fees and costs pursuant to the fees provision of the Davis-Stirling Act, Civil Code section 5975** (formerly Civ.

Code, § 1354). Civil Code section 5975 awards attorney's fees and costs to the prevailing party in an action to enforce the CC&Rs of a common interest development.

**Each side argued it was the prevailing party under the statute.** Because the statement of decision confirmed that the properties' commercial zoning did not preclude reasonable use restrictions in the CC&Rs, Almanor argued that it had achieved one of its main litigation objectives. Almanor also argued that having prevailed on a portion of the fines claimed, an attorney's fees award was mandatory under the Davis-Stirling Act.

The Carsons asserted that they had achieved their main objective, which was to deny Almanor the financial windfall it sought and to establish that the fines were unreasonable and imposed a severe and unfair burden on their lawful, commercial use of the properties. They also argued that monetarily, Almanor had prevailed as to only \$6,620 out of \$54,000. The Carsons asserted that this net monetary recovery was insufficient because they had largely prevailed on the pivotal issue at stake. Both sides challenged the other's request for fees as unreasonable and excessive.

The trial court held a hearing and took the motions under submission. In a brief written order, it deemed Almanor the prevailing party. The court granted Almanor's motion for \$98,535.50 in attorney's fees and \$3,267.65 in costs and denied the Carsons' motion. The court annotated the final judgment to reflect the \$101,803.15 in attorney's fees and costs, in addition to the \$6,620 in damages.

The Carsons' appeal presents several issues, including the parties' competing claims for attorney's fees and whether the trial court erred in deeming

Almanor the prevailing party. The final issue is whether the trial court abused its discretion in awarding Almanor its full attorney's fees. The Carsons and Almanor both claim to be the prevailing party, triggering an attendant award of fees and costs. The Carsons also contend that public policy and fairness require a reversal of the attorney's fees award.

The Davis-Stirling Act governs an action to enforce the recorded covenants and restrictions of a common interest development. **Civil Code section 5975 provides that the CC&Rs may be enforced as "equitable servitudes" and that "in an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs."** (Civ. Code, § 5975, subds. (a), (c).) Reviewing courts have found that **this provision of the Davis-Stirling Act "reflects a legislative intent that the prevailing party receive attorney fees as a matter of right (and that the trial court is therefore obligated to award attorney fees) whenever the statutory conditions have been satisfied."** (*Salehi v. Surfside III Condominium Owners Assn.* (2011) 200 Cal.App.4th 1146, 1152)

The Davis-Stirling Act does not define "prevailing party" or provide a rubric for that determination. In the absence of statutory guidance, California courts have analyzed analogous fee provisions and concluded that **the test for prevailing party is a pragmatic one, namely whether a party prevailed on a practical level by achieving its main litigation objectives.** (*Heather Farms Homeowners Assn. v. Robinson* (1994) 21 Cal.App.4th 1568, 1574)

The California Supreme Court implicitly has confirmed this test. In *Villa De Las Palmas Homeowners Assn. v. Terifaj* (2004) 33 Cal.4th 73, 94, the court affirmed the award of attorney's fees in an action to enforce a restrictive covenant under the Davis-Stirling Act, stating: "We conclude the trial court did

not abuse its discretion in determining that the Association was the prevailing party . . . . On a 'practical level' the Association 'achieved its main litigation objective.' "

As the California Supreme Court has explained in the related context of determining the prevailing party on a contract under Civil Code section 1717, **the trial court should "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 ... by 'a comparison of the extent to which each party has succeeded and failed to succeed in its contentions.'** " (*Hsu v Abbara* (1995) 9 Cal.4<sup>th</sup> 863, 876.)

The Carsons urge that they, not Almanor, attained their litigation objectives. They argue that but for their success in defeating most of the fines imposed by Almanor, they would have continued to face additional fines, making it impossible to continue to operate their business. They also argue that the trial court erred by focusing on net monetary recovery in determining who was the prevailing party.

The pivotal issue here was whether Almanor's fines were enforceable under the CC&Rs and governing body of California law. It is true that the Carsons prevailed to the extent of the fines that the court disallowed. Out of 88 fines that Almanor sought to enforce at trial, the trial court upheld only eight. Almanor admits that it did not attain all of its litigation objectives and that a total victory would have resulted in a higher monetary recovery had the court found that all of the fines imposed were reasonable and enforceable

That partial success substantially lowered the Carsons' liability for damages and supported their position that the CC&Rs and associated rules could not impose an unreasonable burden on the properties. Yet by upholding a subset of the fines, **the court ruled more broadly** that Almanor could impose reasonable use restrictions on the Carsons' properties, despite their authorized commercial use. That ruling echoed Almanor's **stated objective at trial** that the association sought to counter the Carsons' position that "because their lot is zoned 'Commercial,' they are not bound by the CC&R's or the Rules."

The Sixth DCA noted that where both sides achieved some positive net effect (mixed results) as a result of the court's rulings, it is appropriate to compare the practical effect of the relief attained by each. (*Hsu*, at p. 876.) Here, the trial court's findings eliminated many of the alleged rule violations that depended on the Carsons being in arrears on dues and rejected those fines by which Almanor tried to strictly enforce the absolute use restrictions on the Carsons' lots. Insofar as the court found that some of the fines were enforceable, Almanor met its objective and satisfied the first part of the statutory criteria under the Davis-Stirling Act "to enforce the governing documents." (Civ. Code, § 5975, subd. (c).) **The fractional damages award does not negate the broader, practical effect of the court's ruling, which on the one hand narrowed the universe of restrictions that Almanor could impose on the properties, but on the other hand cemented Almanor's authority to promulgate and enforce rules pursuant to the CC&Rs so long as not unreasonable under *Nahrstedt*.** Thus the trial court rejected the Carsons' position that the ambiguity in the CC&Rs "completely eliminated Almanor's ability to impose reasonable use restrictions on the Carsons' lots, consistent with the Carsons' right to use their lots for commercial lodging purposes." The court also ruled entirely in favor of



Almanor on the Carsons' cross-complaint by finding that the Carsons' alleged damages were unsupported by competent evidence and too speculative.

Taken together and viewed in relation to the parties' objectives as reflected in the pleadings and trial record, the Justices conclude that these outcomes were adequate to support the trial court's ruling. (*Goodman v. Lozano* (2010) 47 Cal.4th at p. 1339.)

The Sixth DCA does not find support in the record for the Carsons' contention that until the motion for attorney's fees, Almanor's sole litigation objective had been to collect a monetary award. From the inception of the litigation, Almanor's ability to collect a monetary award depended on the court finding that it was authorized to impose those rules and to fine for violations. Throughout the trial record, including in Almanor's trial brief, opening and closing remarks, and supplemental closing argument, Almanor emphasized that it sought to enforce the CC&Rs and disabuse the Carsons of their belief that the commercial zoning of their property immunized them from the use restrictions.

The Carsons argue that the fee award flouts public policy because it: (1) creates disincentive for homeowners to defend against unlawful fines levied by the association, and (2) rewards the association for acting in an egregious manner by imposing fines that were, for the most part, unlawful. The Carsons suggest that by granting attorney's fees to Almanor, "the Court is stating that the Carsons should have paid the \$54,000.00 that Respondent claimed was owed ..., even though only \$6,620.00 was actually owed, because they would be

penalized for defending themselves and, in the end, owe an additional \$101,803.15 in attorney's fees for defending themselves." The Carsons offer no direct authority to support their position but contend that this outcome contradicts California public policy which seeks to ensure that creditors do not overcharge debtors for amounts not owed.

This argument runs contrary to the statutory scheme governing the fee award in this case. As the trial court correctly noted at the hearing on the competing motions for attorney's fees, **the Davis-Stirling Act mandates the award of attorney's fees to the prevailing party.** (Civ. Code, § 5975; *Salehi*, at p. 1152 ) After resolving the threshold issue of the prevailing party, the trial court had no discretion to deny attorney's fees. Any argument concerning the magnitude of the fees award, especially in comparison to the damages awarded or originally sought, is **better directed at challenging the reasonableness of the award amount. The amount to be awarded is distinct from whether an award is justified, and the factors relating to each must not be intertwined or merged.** (*Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 153)

The remaining question is whether the attorney's fees award of \$98,535.50 was reasonable. What constitutes reasonable attorney's fees is committed to the discretion of the trial court. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095–1096 ) "An appellate court will interfere with the trial court's determination of the amount of reasonable attorney fees only where there has been a manifest abuse of discretion." (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1004 )

The Carsons argue that the trial court abused its discretion by awarding fees which are “grossly disproportionate” to the monetary award and scale of success on the claims litigated. The Carsons point to section 1033, subdivision (a) for the proposition that the court, in its discretion, can disallow attorney’s fees and costs if a party obtains less than the statutory minimum to be classified as an unlimited civil matter. Yet their briefs on appeal offer no case or other authority to support the proposed application of section 1033, subdivision (a) to a mandatory fees award under Civil Code section 5975.

The Carsons also argue that the trial court should have apportioned the award to reflect the court’s rejection of all but a single category of fines imposed, representing eight out of eighty-eight fines. Again, the Carsons fail to cite any authority to support a reduction based on the degree of success in a Davis-Stirling Act case. Almanor does not respond to these arguments on appeal, though it argued in its attorney’s fees motion that when an owner’s association seeks to enforce CC&Rs and attains its litigation objective, based on the mandatory nature of the fee award, “it is irrelevant that the verdict/judgment amount is below \$25,000.”

The Carsons also contend that the trial court could have and should have apportioned the award to those attorney’s fees that Almanor incurred in proving the eight fines on which it succeeded. It is well settled that the trial court has broad authority in determining the reasonableness of an attorney’s fee award. (*PLCM Group*, p. 1095.) This determination may, at times, include a reduction or apportionment of fees in order to arrive at a reasonable result. “After the trial court has performed the calculations of the lodestar, it shall consider whether the total award so calculated under all of the circumstances of the case is more than a

reasonable amount and, if so, shall reduce the award so that it is a reasonable figure.”

The Court then looked at a few cases that address the justifications for reducing a fee award. In a case involving a mandatory fee-shifting statute similar to that under the Davis-Stirling Act, the appellate court upheld an attorney’s fees award of \$89,489.60 for the defendant borrower and cross-complainant even though she recovered only a nominal \$1.00 in statutory damages on her consumer debt-collection based claims. (*Monroy*, at p. 986) The court deemed the borrower the prevailing party and found she was entitled to her full attorney’s fees relating to her successful cross-complaint based on the Fair Debt Collection Practices Act (FDCPA), as well as to her defense of the plaintiff’s complaint. The *Monroy* court rejected the financial institution’s argument that the award should have been reduced to reflect the borrower’s limited degree of success.

Citing U.S. Supreme Court and California precedent in various statutory fee-shifting contexts for the proposition that “the degree or extent of the plaintiff’s success must be considered when determining reasonable attorney fees,” the *Monroy* court concluded that the circumstances of the case did not warrant a reversal of the fee award for abuse of discretion. The court based its decision on factors including the borrower’s position as defendant and cross-complainant, her choice not to allege actual damages but to request only statutory damages under the FDCPA, the fact that the nominal award still represented a complete success and could prompt the financial institution “to cease unlawful conduct against other consumers.”

Reductions to the award of attorney's fees also arise in cases applying California's private attorney general statute. One such case, *Sokolow v County of San Mateo* (1989) 213 Cal.App.3d 231, involved alleged sex discrimination by a county sheriff's department and a closely-affiliated, private mounted patrol that maintained a male-only policy. On cross-motions for summary judgment, the court ruled for the plaintiffs as to certain equal protection violations and imposed permanent injunctions on the patrol and the sheriff's department directed at terminating their working relationship and any appearance of partnership. Yet the court denied the plaintiffs' request for attorney's fees under the applicable federal and state statutory fee provisions.

The court of appeal reversed the attorney's fees decision because the plaintiffs were the prevailing parties, but remanded to the trial court for a determination of the amount of reasonable fees. With respect to the fees under section 1021.5, the court noted that "a reduced fee award is appropriate when a claimant achieves only limited success." The court offered specific examples of results that the plaintiffs had sought and failed to obtain through the injunction, such as "obtaining admission for women into the Patrol" or "entirely eliminating the County's training and use of the Patrol for search and rescue missions. The court indicated that these "were important goals of appellants' lawsuit which they failed to obtain." Thus, in arriving at an award of reasonable attorney's fees, the court directed the trial court to "take into consideration the limited success achieved by appellants."

Similarly, in *Environmental Protection Information Center v. Department of Forestry and Fire Protection* (2010) 190 Cal.App.4th 217, 222–224, the court addressed attorney's fees after the plaintiff environmental and labor groups had succeeded in part in challenging the validity of regulatory approvals related to a

logging plan affecting California old growth forest. With regard to the defendants' arguments that any fee award should be reduced based on the plaintiffs' limited success on the merits, the appellate court conducted a two-part inquiry. It first determined that the environmental group plaintiffs' unsuccessful claims were related to the successful claims, such that attorney's work spent on both sets of claims were not practicably divisible. The court explained that because the successful and unsuccessful claims were related, the trial court on remand would need to assess the level of success or significance of the overall relief obtained by the plaintiffs in relation to the hours reasonably expended on the litigation.

The Justices draw a few general conclusions from these cases. As noted earlier, it is within the province and expertise of the trial court to assess reasonableness of attorney's fees. Especially in certain contexts, such as in litigation seeking to enforce "an important right affecting the public interest," there is no question that degree of success is a "crucial factor" for that determination. Indeed, the Court finds no indication that "degree of success" may not be considered, alongside other appropriate factors, in determining reasonable attorney's fees in other contexts, including under Civil Code section 5975.

It does not follow from these generalizations, or from the record the Carsons have provided, that the trial court committed a manifest abuse of discretion by awarding the full attorney's fees sought. Though the order granting Almanor's motion for attorney's fees is silent as to the court's reasoning, the moving papers and declarations of each side, as well as the hearing transcript, reflect that the court thoroughly considered the briefing and argument of the parties.

Although the court in its discretion could have reduced the amount of the award to reflect the incomplete success of Almanor's action, as in *Monroy*, at pp. 1005–1006, there are ample factors to support the trial court's decision. Almanor prevailed on only a minor subset of the fines that formed the basis for the monetary award requested, but that subset was sufficient to satisfy the statutory criteria of an action to enforce the governing documents. (Civ. Code, § 5975(c).) In practical effect, Almanor's limited success established a baseline from which it can continue to adopt and enforce reasonable use restrictions under the CC&Rs. Unlike the important goals of the sex discrimination civil rights lawsuit that the appellants failed to obtain in *Sokolow* the objectives that Almanor failed to attain were primarily monetary. With respect to the time spent on the successful and unsuccessful aspects of Almanor's suit, it is noted that the various fines do not represent different causes of action or legal theories dependent on different facts, but different instances of attempted enforcement based on the CC&Rs and a shared set of facts. Almanor's fees, as established in their moving papers and supporting declarations, also accounted for its defense against the Carsons' cross-complaint, which included the Carsons' use of testifying expert witnesses. For these reasons, the Justices do not find that the award of attorney's fees, compared to the "overall relief obtained" by Almanor, was so disproportionate as to constitute an abuse of discretion.

The judgment on the Carsons' cross-complaint, and the award of attorney's fees and costs to Almanor, are affirmed. Almanor is also entitled to its costs on appeal.

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