

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 62

30-2015-00801675

**THE KENNEDY COMMISSION, ET AL V CITY OF
HUNTINGTON BEACH**

July 8, 2021

12:00 PM

Judge: Honorable Michael L. Stern
Judicial Assistant: M. Alaniz
Courtroom Assistant: P. Figueroa

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 05/03/2021, now rules as follows:

I. Plaintiff's Motion for Attorneys' Fees: General Background.

Plaintiff The Kennedy Commission ("Kennedy Commission") moves for attorneys' fees pursuant to Code of Civil Procedure section 1021.5. The Court has reviewed the motion, opposition by defendant City of Huntington Beach ("City"), reply, supplemental briefing by the parties, and now rules as follows:

This case concerns an action by the Kennedy Commission against the City for violation of California's Housing Element Law, Government Code section 65580 et seq. for passage of a general plan and subsequent amendment thereto that plaintiff alleged to failed to comply with the state's requirement of affordable housing by not meeting and by reducing the number of housing units that could be developed in the City.

Plaintiff filed a writ of mandate for an order ceasing enforcement, administration and implementation of the amendment to the City's specific plan. The trial court granted the writ. On appeal, the District Court of Appeal reversed the trial court's order, agreeing with the City that it could amend its housing element to comply with the governing Government Code sections, leaving the specific plan in place while allowing the City more time to amend its housing element. The Kennedy Com. v. City of Huntington Beach, 16 Cal.App.5th 841 (2017). The case was remanded to the trial court for resolution of the remaining causes of action alleged in the complaint.

A main contention in the City's appeal was whether, as a charter city, it was exempt from a consistency requirement pursuant to Government Code section 65700. The Court of Appeal

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found that, as a charter city, the City was exempted from requirements of Government Code section 65454 that specific plans be consistent with a general plan and it was entitled, “at this point in time, the leeway granted [by the Legislature to charter cities],” to have time in which “to have the housing element comply with state law.” *Id.* at 859.

II. Plaintiff’s Catalyst Theory for Attorneys’ Fees.

Plaintiff relies on the “catalyst theory” for the recovery of attorneys’ fees by a prevailing party set forth by the California Supreme Court in *Graham v. DaimlerChrysler Corp.*, 34 Cal.4th 553 (2004), as the basis for its motion for attorneys’ fees. In *Graham*, the Supreme Court held that to recover attorneys’ fees under a catalyst theory, the trial court must find, based on an abbreviated review, that the lawsuit under consideration has sufficient merit to demonstrate that it was not a nuisance action (i.e., that it was not “frivolous, unreasonable or groundless”), either legally or factually. 34 Cal. 4th at 575. The Supreme Court stated that this “showing may generally be established during the attorney fee proceeding by declarations, or, at the discretion of the trial court, by an abbreviated evidentiary showing.” 34 Cal.4th at 576. The object of the review is not to determine if the fee-claimant would have won the case, but to “screen out nuisance suits.” *Id.*; See also, *Tipton-Whittingham v. City of Los Angeles*, 34 Cal.4th 604, 609 (2004) (in catalyst lawsuits against governmental entities, the plaintiff must prove both that the lawsuit was the catalyst for the governmental entity’s course of action and was not “frivolous, unreasonable or groundless”).

1. Prevailing Party Requirement for Attorneys’ Fees.

Graham and its progeny cases discuss various issues for a trial court to take into account in determining whether the catalyst approach is appropriate in awarding attorneys’ fees to a prevailing party.

A primary consideration in determining a prevailing party is the requirement that attorneys’ fees be awarded to the “successful” or “prevailing” party. Concluding that the catalyst theory is sound in concept, the Supreme Court in *Graham* found that “[t]he principle upon which the theory is based . . . we look to the impact of the action, not its manner of resolution [and that the lawsuit] is fully consistent with the purpose of section 1921.5 to financially reward attorneys who successfully prosecute cases in the public interest.” *Graham*, *supra*, 34 Cal.4th at 568 (citations omitted). A plaintiff can be the prevailing party even when no judicial relief is obtained and no formal settlement is made with the opposing party if the plaintiff’s action was a catalyst for voluntary corrective action taken by the defendant. *Id.* at 560.

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In ruling on a motion for attorneys' fees under the catalyst theory, the courts use the terms "successful party" and "prevailing party" synonymously. *Id.* at 570; *Tipton-Whitingham, supra*, 34 Cal.4th at 610; see, Code of Civil Procedure section 1021.5.

Thus, in applying for attorneys' fees under a catalyst theory, the moving party must show that: 1) that the lawsuit was a catalyst motivating the defendant to provide the primary relief sought; 2) the lawsuit had merit and achieved its catalytic effect by threat of succeeding, not by dint of nuisance and threat of expense; and 3) the moving party reasonably attempted to settle the litigation prior to filing the lawsuit. *Skinner v Ken's Foods, Inc.*, 53 Cal.App.3d 938, 946 (2020).

The party claiming attorneys' fees must have achieved its "primary objective" to be considered the successful party. *California Pub. Records Research, Inc. v. County of Yolo*, 4 Cal.App.5th 150, 191 (2016). In addition, in applying for attorneys' fees, is necessary to demonstrate that the "primary" relief sought is attained rather than "some relief." *Graham, supra*, 53 Cal.App.3d at 947.

If the primary relief is attained, nonprofit plaintiffs are entitled to recover attorneys' fees under the private attorney general doctrine and Code of Civil Procedure section 1021.5 even if their clients have incurred no obligation to pay attorneys' fees to bring an action. Code of Civil Procedure section 1021.5 "acts as an incentive for the pursuit of public interest-related litigation that might otherwise have been too costly to bring. *Center for Biological Diversity v. County of San Bernardino*, 188 Cal.App.4th 603, 611-612 (2010); *Rogel v. Lynwood Redev. Agency*, 194 Cal.App.4th 1319, 1332 (2011) (public interest law firms are entitled to the fair market value of the legal work that they perform).

2. Lawsuit Must Be Meritorious.

In order to to obtain an attorneys' fees award in a catalyst situation, the trial court must find that the lawsuit had sufficient merit to show that it had legal and factual merit and was not "frivolous, unreasonable or groundless." *Graham, supra*, 34 Cal.4th at 575. Whether a lawsuit is the catalyst that changed behavior or causes the result achieved is a factual issue determined by the trial court. *Wallace v. Consumers Cooperative of Berkeley, Inc.*, 170 Cal.App.3d 836, 843-844 (1985).

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3. Moving Party Must Have Made A Reasonable Effort to Settle.

In order to recover attorneys' fees under at catalyst theory, the moving party must make a reasonable effort to settle the matter before litigation is initiated. *Graham*, supra, 34 Cal.4th at 577. ("Lengthy prelitigation negotiations are not required, nor is it necessary that the settlement demand be made by counsel, but a plaintiff must at least notify the defendant of the grievances and proposed remedies and give the defendant the opportunity to meet its demands within a reasonable time."). See, *Cates v. Chang*, 213 Cal.App.4th 791, 817 (2013) (settlement demand requirement may be excused where such a demand would have been futile and moving party so demonstrates); *Vasquez v. State*, 45 Cal.4th 243, 259 (2008) (a claim that settlement efforts would have been futile is "logically relevant" to the issue of necessity for the lawsuit).

The consideration whether there has been an adequate attempt to resolve a case depends upon whether a court can conclude, from the chronology of events, that the litigation "substantially contributed to" or was "demonstrably influential" in setting the litigation in "motion the process" that ultimately resulted in the relief sought. 170 Cal.App.3d at 844-845; see also, *Bjornestad v. Hulse* 229 Cal.App. 3d 1568 (1991) (plaintiff entitled to attorneys' fee if the lawsuit caused the legislature to change challenged statute); Cf., *Westside Community for Indep. Living, Inc. v. Obledo*, 33 Cal.3d 348, 353 (1983) (an award of attorneys' fees is improper if a lawsuit is "completely superfluous" in changing the defendant's behavior).

III. Kennedy Commission is Entitled to Reasonable Attorneys' Fees under Code of Civil Procedure Section 1021.5.

A. Kennedy Commission Was the Prevailing Party.

Pursuant to Code of Civil Procedure section 1021.5, attorneys' fees may be awarded to a prevailing party when: 1) the plaintiff's action has resulted in the enforcement of an important right affecting the public interest; 2) a significant benefit significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public; or large class of persons; and 3) the necessary and financial burden of private enforcement are such as to make the award appropriate. *Woodland Hills Residents Assn., Inc. v. City Council*, 23 Cal.3d 917, 935 (1979). In deciding a motion for an award of such attorneys' fees, the court must consider whether private enforcement was necessary and if the financial burden of private enforcement warrants subsidizing the successful party's attorneys. *Lyons v. Chinese Hospital Assn.*, 136 Cal.App.4th 1331, 1348 (2006).

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The objective and primary relief sought by the nonprofit Kennedy Commission efforts, both informally and through litigation, were to increase the number of available low-income housing units in the City. The attempts by its representatives to secure affordable low-income housing within the City, Kennedy Commission was unsuccessful in persuading the City to revised its efforts in revising housing plans to comply with State law. Kennedy Commission, *supra*, 16 Cal.App.5th at 846-847. Failing to obtain the requested changes to the City’s revised housing element, Kennedy Commission filed its petition for a writ of mandate.

The lawsuit was considered meritorious by the trial court, which carefully analyzed both the procedural and substantive merits of the action. In granting the writ requested by Kennedy Commission, the trial court issued a writ of mandate commanding the City to cease enforcing, administering or implementing the housing plan enacted by the City, including the amendment objected by Kennedy Commission that significantly reduced the number of available low-cost housing units in the City. *Id.* at 850-851.

Thus, at the trial court level, Kennedy Commission initially achieved its primary objective of voiding the City’s actions. On appeal, this was reversed. The Court of Appeal found that, as a charter city, the City was exempted from the requirement of Government section 65454 that specific plans be consistent with the general plan and the City had discretion to amend its general housing plan. *Id.* at 859. The Court of Appeal remanded the case for determinations by the trial court regarding resolution of the remaining causes of action. *Id.* at 859-860.

In direct response to the reversal of of the trial court’s issuance of a writ of mandate against the City primarily based on its status as a charter city, the California Legislature passed legislation specifically referencing and reversing the Court of Appeal decision regarding the application of Government Code section 65700 et seq. to charter cities. Specifically referencing the present lawsuit and the decision of the Court of Appeal based on the City as an exempted charter city not subject to Government Code section 65700 et seq., the Legislature passed SB 1333. This legislation directly reversed the main contention relied upon by the City in Huntington Beach, *supra*, 16 Cal.App.5th at 859.

In enacting this legislation changing the applicable provisions of the Government Code principally relied upon by the Court of Appeal in this case. The Kennedy Commission, *supra*, 166 Cal.App.5th at 841 Legislature’s analyst summarized the intent of the legislation: “This bill requires charter cities to follow the same laws on local planning and zoning as general law cities . . . from complying with state development statutes.” Thus, in passing and implementing this bill, the Legislature’s passage SB 1333 responded to the dicta of the Court of Appeal in Kennedy

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Commission, supra, that “While one may question the legislative wisdom in continuing, at this point, the leeway granted in 1965 to charter cities, we believe that the trial judge was correct in saying that he could not substitute his will for that of the Legislature.” Citing Verdugo Woodlands Homeowners Assn. v. City of Glendale, 179 Cal.App.3d 696, 703-704 (1986).

In overturning the primary legal basis for the Court of Appeal decision in this case, the Legislature's main grounds on which the City had relied for its contention that it was exempt from designing sufficient sites to accommodate its share of the regional housing needs and implementing a housing program consistent with the City’s housing element.

The Kennedy lawsuit was the catalyst that changed longstanding California law. The statutory revision also mooted the City’s central defense to the lawsuit and enabled the Kennedy Commission to achieve objectives and become the prevailing party in this action. This was acknowledged in remarks by City officials when the City Council voted to amend the Housing Element in 2020 in which it was remarked the lawsuit was responsible for the City changing its low-income housing policies. Those comments underscore that Kennedy Commission was the “successful” and “prevailing party” in achieving its primary objective since its persistence in this lawsuit caused the City to change “it behavior substantially because of, and in the manner sought by, the litigation.” Graham, supra, 34 Cal.4th at 560.

Therefore, The Kennedy Commission accomplished its primary objective. California Public Records, supra, 4 Cal.App.5th at 191 (under a catalyst the for attorneys' fees pursuant to Code of Civil Procedure section 1021.5, it is not necessary for a plaintiff to achieve a favorable final judgment to obtain to qualify for attorney fees so long as the plaintiff's actions were the catalyst for the defendant's actions and there is some relief to which the plaintiff's actions are casually connected.).

B. The Kennedy Commission Lawsuit Was Meritorious.

The lawsuit was not “frivolous, unreasonable or groundless,” either legally or factually. Graham, supra, 34 Cal.4th at 575. The Kennedy Commission lawsuit was the causation that was “demonstrably influential” to “set in motion the process” that eventually resulted in the relief sought. Godinez v. Schwarzenegger, 132 Cal.App.4th 73, 91 (2005).

Viewed overall, the primary litigation objectives of the Kennedy Commission litigation expand low-income housing and minimized discrimination in housing against minority and

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disadvantaged persons and will benefit many low-income City residents who live in or otherwise might not been able to afford to live in the City.

C. Kennedy Commission Made Reasonable Attempts to Settle This Matter.

As stated, a plaintiff seeking attorneys' fees under a catalyst theory must "have engaged in a reasonable attempt to settle its dispute with the defendant prior to litigation." Graham, supra, 34 Cal.4th at 561, 577.

The record is replete with instances in which Kennedy Commission made repeated attempts to convince the City authorities to take actions in the amendment of its housing element that recognized the need to expand housing for low-income residents and not to discriminate against such persons in the City. The response by the City was to delay access to low-income housing and passage of policies antithetical to recognizing the need to accommodate low-income housing, protracted litigation and other procrastinations to taking action to deal with the severe demand for low-income housing in the City.

IV. Kennedy Commission's Entitlement to Reasonable Attorneys' Fees.

A. Kennedy Commission Enforced An Important Right and Conferred A Significant Benefit on the General Public.

In order to obtain an award of attorneys' fees under Code of Civil Procedure section 1021.5, a plaintiff's action must: 1) result in the enforcement of an important right affecting the public interest; 2) confer a significant benefit, whether pecuniary or nonpecuniary; and 3) bear the necessity and financial burden of private enforcement such as to make the award of attorneys' fees appropriate. Woodland Hills Residents Assn. v. Maldonado, 23 Cal.3d 917, 935 (1979).

In the present instance, the Kennedy Commission lawsuit resulted in the enforcement of an important right affecting the public interest. Contrary to the assertions by the City that the "lawsuit changed nothing," the City was prodded to and eventually enacted its general housing element in a manner that caused it to recognize how its prelitigation actions significantly impacted the availability of low-income housing, caused low-income persons to move out of the City and had discriminatory effects against residents and potential residents.

Contending that the Kennedy Commission lawsuit and other action by it had no effect or benefit, ignores the profound affect that legislation sparked by the Kennedy Commission had on the

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State-wide law applying to charter cities like Huntington Beach. Without the private enforcement action by Kennedy Commission, the future availability for low-income housing in the City and beyond would have been greatly different.

The efforts by the Kennedy Commission and its attorneys cannot be viewed as “a mere nuisance,” as characterized by the City. On the contrary, the Kennedy Commission lawsuit pushed the City to eventually take responsible action to address homelessness and low-cost housing availability.

B. Lodestar Method of Calculating Attorneys’ Fees.

The lodestar method of calculating reasonable attorneys’ fees to be awarded to a prevailing party is the applicable methodology for determining such fee awards. *Serrano v. Priest* (Serrano III), 20 Cal.3d 25, 48 (1977). The lodestar determination requires the court to consider the reasonable hourly rate of each attorney claims fees. *Graham, supra*, 34 Cal.4th 579 (“a 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.’”), quoting *Ketchum v. Moses*, 24 Cal.4th 1122, 1131 (2002). To determine the reasonable market value of an attorney’s services, the court must decide whether the requested rates are “within the range of reasonable rates charged by and judicially awarded comparable attorneys of comparable work.” *Children’s Hosp. & Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 783 (2003).

B. The Kennedy Commission Attorneys’ Fees Request is Reasonable.

Under the lodestar approach commonly used by courts in calculating attorneys’ fees, the Kennedy Commission request is \$2,522,286.50.

The court has reviewed, line-by-line, the declarations by Kennedy Commission attorneys in support of this attorneys’ fees request. The legal work set forth in these lengthy declarations and attached hourly time records are reasonable and not outside those often expended in such protracted litigation. Moreover, given the strenuous opposition by City authorities towards solving the dire homeless situation in and around the City and the defiant stance taken by the City in this litigation, the legal work by the Kennedy Commission took virtually every ounce of energy expended by its pro bono attorneys over a number of years to attain the result of finally forcing the City to take appropriate action to deal with the homelessness issue.

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C. A Multiplier is Proper.

A lodestar may be adjusted based on the “novelty and difficulty of the questions involved, and the skill displayed in presenting them. Serrano, *supra*, 20 Cal.3d at 49. Other considerations in adjusting a lodestar include the quality of representation, the contingent nature of the representation and the difficulty of a case that may require more hours than the routine case. Ketchum, *supra*, 24 Cal.4th at 1138. A multiplier is justified in some cases because the success achieved is “exceptional.” Graham, *supra*, 34 Cal.4th at 582. These factors may be interrelated in determining whether and to what extent a multiplier may be applied in determining an award of attorneys’ fees. See, e.g., *Edgerton v. State Personnel Bd.*, 83 Cal.App.4th 1350, 1363 (2000) (multiplier of 1.5 affirmed based on novelty and difficulty of issues and skill displayed in overcoming tenacity and intransigent opposition).

In the instant case, the legal struggle to prevail upon the City to enact measures to deal with the homelessness in and around its community required exceptional work by dedicated volunteer attorneys who employed their capabilities in the public interest over many years to finally attain a desired outcome. Therefore, an enhancement multiplier of 1.4 is fully justified. See, *Kern River Pacific Access Com. v. City of Bakersfield*, 170 Cal.App.3d 1205, 1228-1229 (1985) (lodestar amount increased where success uncertain and defendant fought the case on point).

For these reasons, the Court awards attorneys’ fees of \$3,531,201.10. Any further requests for attorneys’ fees or applicable costs are to be considered by motion or a timely-filed memorandum of costs.

Michael L. Stern
Judge of the Superior Court

Clerk is to give notice.

Certificate of Mailing is attached.