



Successful CEQA Petitioners May Recover Attorneys' Fees For Administrative Proceedings And Are Not Disqualified By Nonpecuniary Stake

By Arthur F. Coon on November 7th, 2011

Potential recovery – or payment – of plaintiffs' attorneys fees is always a factor to be considered in prosecuting and defending CEQA suits. The stakes in this calculus just got a little higher with a recent decision making it easier for CEQA plaintiffs to recover fees and expanding the scope of proceedings for which fees can be recovered. In a pithy opinion (typical of Presiding Justice Gilbert), the Second District Court of Appeal reversed a trial court's order partially denying successful CEQA petitioners' motion for attorneys' fees under Code of Civil Procedure section 1021.5, the private attorney general statute. (*Edna Valley Watch v. County of San Luis Obispo* (2011) 197 Cal.App.4th 1312.) In so doing, it held the trial court *erred* in finding (1) that fees incurred in *administrative* proceedings were not recoverable under the statute, and (2) that a *nonpecuniary* "personal stake" of petitioner in the outcome of the litigation could preclude a fee recovery.

Section 1021.5 provides in part:

Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.

In *Edna Valley Watch*, the petitioners, an individual owning property adjacent to a planned church facility and a nonprofit group, appealed the County Planning Commission's grant of a conditional use permit for the church project to the County Board, which denied the administrative appeal. They then brought a CEQA mandate action in Superior Court, which ultimately caused the church to abandon and County to rescind the project approval before the case was heard on the merits. The trial court found the writ action was the "catalyst" for this action, but denied attorneys' fees for the administrative proceedings as a matter of law, and denied the individual's fees because of his "personal stake" in owning a 1903 Victorian residence worth over \$1 million immediately adjacent to the proposed project.

The Court of Appeal held that the term "action" in CCP § 1021.5 encompassed antecedent administrative proceedings "useful and necessary to the public interest litigation," reasoning that "exhaustion of administrative remedies is a prerequisite to a lawsuit challenging a CEQA determination" and that any other construction "would defeat the purpose of the statute and could discourage many lawsuits in the public interest." (*Id.* at 1318-1321.) The Court did *not* decide the issue whether CCP § 1021.5 would allow recovery of attorneys' fees for administrative proceedings where no subsequent judicial action is filed.

The Court of Appeal further observed that the trial court's denial of fees based on a *nonpecuniary* personal stake in the matter relied on a line of cases – including *Williams v. San Francisco Bd. of*



Permit Appeals (1999) 74 Cal.App.4th 961 – that was disapproved by the recent Supreme Court decision in *Conservatorship of Whitley* (2010) 50 Cal.4th 1206. *Conservatorship of Whitley* “holds that a litigant’s personal nonpecuniary interests may not be used to disqualify the litigant from obtaining fees under section 1021.5.” (*Edna Valley Watch*, at 1320, citing *Whitley* at 1211.) The trial court was thus required to undertake a more sophisticated and detailed calculation of the monetary value of the fruits of a successful litigant’s victory under the methodology established by the relevant case law.

However, the Court of Appeal also rejected the individual petitioner’s argument that this inquiry must be limited to the relief sought within the “four corners” of the verified Petition. As it aptly noted: “Nothing in section 1021.5 requires the court to confine its analysis to the relief sought on the face of the pleadings and to feign naiveté as to the plaintiff’s true purpose in bringing an action. Abandonment of a project is hardly a unique result in a CEQA action. There is very little doubt the permanent termination of the project was the result [petitioner] hoped for this case. Nor is there doubt [petitioner] obtained a pecuniary benefit from the termination of the project.” (*Id.* at 1321.)

Noting that petitioner had both financial and nonpecuniary interests in stopping the church project, the Court observed that the trial court had apparently relied on both in denying fees under CCP § 1021.5, and remanded with direction to reconsider the issue without regard to the nonpecuniary interests.