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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

DIEM T. NGUYEN,

Plaintiff and Appellant,

v.

SUMMERGREEN HOMEOWNERS
ASSOCIATION et al.,

Defendants and Respondents.

G046770

(Super. Ct. No. 07CC00188)

O P I N I O N

DIEM T. NGUYEN

Plaintiff,

v.

HOANG HUY NGUYEN et al.,

Defendants.

(Super. Ct. No. 05CC08432)

Appeal from a judgment of the Superior Court of Orange County, Robert J. Moss, Judge. Affirmed.

Diem Trang Nguyen, in pro. per., for Plaintiff and Appellant.

Soltman, Levitt, Flaherty & Wattles, Stephen D. Flaherty, and Steven S. Nimoy for Defendants and Respondents.

* * *

In a prior opinion (*Nguyen v. Summergreen Homeowners Assn.* (Jan. 16, 2013, G046445) [nonpub. opn.] (*Nguyen I*)), we affirmed the trial court’s grant of summary judgment to defendants Summergreen Homeowners Association (Summergreen), Amber Property Management, Bill Hencke, Olga Marquez, Victor Enciso, Richard Leynes, and Libertad Torrico. In this appeal, plaintiff Diem T. Nguyen claims the court erred by awarding \$69,274.50 in attorney fees to defendant Summergreen. We affirm the judgment awarding attorney fees.

FACTS

Plaintiff, a disgruntled condominium resident, sued defendants for declaratory relief, damages, and an accounting based on allegations that defendants failed to maintain the common areas of the condominium complex. The court granted defendants’ motion for summary judgment on September 16, 2011. We have thoroughly described the factual and procedural history of the dispute between the parties, including the merits of the motion for summary judgment, in *Nguyen I*.

Defendants filed a motion for attorney fees and costs on October 12, 2011. The hearing was noticed for January 13, 2012. Defendants cited numerous grounds in support of an award of attorney fees: (1) Civil Code section 1354, subdivision (c); (2) Civil Code section 1717; (3) Code of Civil Procedure section 1021; and (4) Code of Civil Procedure section 998. An attorney for defendants declared that the “total attorney fees

are in the sum of \$69,274.50.” The attorney authenticated and submitted copies of computer-generated fee bills issued by his law firm.

The Summergreen declaration of covenants, conditions, and restrictions states that “[a]ny judgment rendered in any action or proceeding pursuant to this Declaration shall include a sum for attorneys’ fees in such amount as the Court may deem reasonable, in favor of the prevailing party” In May 2008, defendants each provided to plaintiff offers to compromise pursuant to Code of Civil Procedure section 998.

On January 11, 2012 (two days before the scheduled hearing), plaintiff filed an “objection” to the motion for attorney fees. The 10-page memorandum submitted therewith pertained mostly to the foreclosure process. Nothing in the “objection” specifically addressed the award of attorney fees at issue. Defendants objected to this untimely opposition to the motion.

The court granted the motion for attorney fees in the amount of \$69,274.50 and ultimately entered judgment in this amount in favor of Summergreen and against plaintiff.¹ The court classified the motion as having had “[n]o opposition.” The court did not specify the statutory ground upon which it awarded attorney fees. The court denied defendants’ request for costs for failure to file a memorandum of costs pursuant to California Rules of Court, rule 3.1700(a).

DISCUSSION

Much of plaintiff’s briefs pertain to the merits of the underlying case. We will not address these issues again, as *Nguyen I* has already done so. Through a request for judicial notice and her reply brief, plaintiff also attempts to claim Summergreen lacked the capacity to defend this action or bring its motion for attorney fees because it

¹ It is unclear whether the other defendants are proper parties to this appeal, as the judgment appears to award attorney fees solely to defendant Summergreen.

was a suspended corporation. We already rejected this argument as well.

(See *Nguyen I.*) Other portions of the brief attempt to implicate defendants in the allegedly wrongful foreclosure by plaintiff's mortgage lender, which apparently is the subject of another action brought by plaintiff. These arguments likewise have no pertinence to the issue before us.

The issue actually before us is the award of \$69,274.50 in attorney fees to Summergreen. The most straightforward basis for the court's award of attorney fees is Civil Code section 1354, subdivision (c), which states, "In an action to enforce the governing documents [of a common interest development like Summergreen], the prevailing party shall be awarded reasonable attorney's fees and costs." Clearly, as set forth in *Nguyen I.*, this was an action brought by plaintiff to enforce the governing documents of Summergreen. An attorney fee award under Civil Code section 1354 is ordinarily reviewed for an abuse of discretion. (*Rancho Santa Fe Assn. v. Dolan-King* (2004) 115 Cal.App.4th 28, 46.) Plaintiff does not argue the amount awarded was unreasonable under the circumstances or that the court did not apply the law.

Plaintiff contends, however, that Summergreen was not really the prevailing party in this action. In support of her argument, plaintiff claims the action was dismissed without prejudice. (See *Heather Farms Homeowners Assn. v. Robinson* (1994) 21 Cal.App.4th 1568, 1570 ["defendant dismissed without prejudice" not necessarily prevailing party under Civ. Code, § 1354].) Plaintiff's position is based on a misunderstanding of the record. Having granted defendants' motion for summary judgment and then defendants' motion for attorney fees, the court entered judgment in favor of defendants on February 16, 2012. It is true there is a minute order and a subsequent signed written order in the record dismissing a case without prejudice. But these orders of dismissal without prejudice pertain to Case No. 05CC08432, which was consolidated at the trial court level with the case before us (Case No. 07CC00188). The court cannot have meant to dismiss Case No. 07CC00188 without prejudice on March 7,

2012 (the date of the signed order), three weeks after having entered judgment on the merits against plaintiff in the same case. Judgment was entered in Summergreen's favor and Summergreen was clearly the prevailing party on the merits of the action.

In sum, we see nothing in the record or plaintiffs' briefs to suggest the court abused its discretion in awarding attorney fees.

DISPOSITION

The judgment awarding attorney fees is affirmed. Plaintiff's request for judicial notice of documents not presented to the trial court is denied. Defendants shall recover costs incurred on appeal.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

THOMPSON, J.