

Dept. F-47  
Date: 1/28/15  
Case #PC048384

### **MOTION FOR ATTORNEYS' FEES**

MOVING PARTY: Ds CW Capital Asset Management LLC; CW Financial Services LLC; and Wells Fargo, N.A.

RESPONDING PARTY: Ps Mariam, Inc.; Kam-Ron Limited Liability Company; 8950 Memory Park I, L.P.; Kamran Mehdizadeh; and Mehran Mehdizadeh

RELIEF REQUESTED: An order awarding MPs attys fees incurred in this matter in the amount of \$488,883.90.

SUMMARY OF ACTION: This action arises out of foreclosure proceedings against RPs' property.

PROCEDURAL HISTORY: On 8/22/14, MPs' demurrer to the operative 4<sup>th</sup> Amended Complaint (4AC) was sustained w/o leave. On 9/11/4, the court entered an order and judgment of dismissal in favor of MPs.

RULING: The request for an award of attys' fees is granted. However, the court finds the amount of fees requested to be excessive. Therefore, the amount of fees awarded to MPs is reduced accordingly.

There is no dispute that MPs are the prevailing parties in this action. Therefore, MPs are entitled to recover their costs, including reasonable attys' fees, if such fees are included as an item of costs under a contract, statute or other law. See CCP 1032(a)(4), (b); CCP 1033.5(a)(10).

Section 5.17 of the Loan Agreement is a valid and enforceable attys' fee provision as it obligates the borrower to pay all reasonable attys' fees incurred by the lender in connection w/ the loan. (See 4AC, Ex.A §5.17). RPs have repeatedly asserted in their various verified complaints in this action that they are entitled to recover their attys' fees and costs in this action due to Ds' breach of written contract/loan agreement. (See Compl. ¶50; FAC ¶55; SAC ¶57; TAC ¶57; 4AC ¶58). These admissions preclude RPs from taking the contrary position that §5.17 is not an attys' fee provision.

The provision at issue is also broad enough to cover both the contract and tort claims alleged against MPs in this action as the provision covers fees incurred "in connection w/ the Loan" and in "the prosecuting or defending of any action or proceeding or other litigation." (4AC, Ex.A §5.17). Even though MPs are not signatories to the subject loan agreement, they are entitled to recover attys' fees pursuant to reciprocity provisions of CC 1717. See CC 1717(a); Reynolds Metals Co. (1979) 25 C3d 124, 128. RPs have asserted contract based claims against MPs throughout this litigation, including the 4AC which contained a C/A for declaratory relief. Such claims provide a contractual basis for an award of attys' fees under CC 1717. See Las Palmas Associates (1991) 235 CA3d 1220, 1259.

The Mehdizadehs are liable for attys' fees under the loan agreement and guaranty as they sought recovery of such fees against MPs in the original complaint, FAC, and SAC. CC 1717. Additionally, the guaranty signed by the Mehdizadehs may be deemed part of the loan agreement. See Ganey (1987) 191 CA3d 901.

MPs are entitled to recover fees related to both the contract and tort claims b/c the claims were so inextricably intertwined that it would be impracticable to apportion the fees among the different claims. See Maxim Crane Works, L.P. (2012) 208 CA4th 286, 298; Abdallah (1996) 43 CA4th 1101, 1111.

MPs are entitled to recover their attys' fees as the prevailing parties, the amount sought is not reasonable. Therefore, the court reduces the amount to \$ 221,817.00 based on the lodestar calculation of 739.39 as the reasonable number of hours worked on behalf of MPs multiplied by the reasonable hourly rate of \$300.00.