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MAY 17 2004

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11 Additional Counsel Listed on Next Page

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES

15
16 CITY OF SOUTH PASADENA; NATIONAL) Case No.: BS 080352
TRUST FOR HISTORIC PRESERVATION;)
17 SIERRA CLUB; CALIFORNIA)
PRESERVATION FOUNDATION; LOS) NOTICE OF MOTION AND MOTION TO
18 ANGELES CONSERVANCY; PASADENA) TAX COSTS; MEMORANDUM IN
HERITAGE; SOUTH PASADENA) SUPPORT OF MOTION; DECLARATION
19 PRESERVATION FOUNDATION; SOUTH) OF ANTONIO ROSSMANN
PASADENA UNIFIED SCHOOL DISTRICT,)
) DATE: June 10, 2004, 9:30 A.M.
) DEPT: 86
20)
Petitioners,)
21 v.)
) Assigned to Hon. David Yaffe, Judge
22 CALIFORNIA TRANSPORTATION)
COMMISSION; CALIFORNIA) Petition Filed: May 13, 1998
23 DEPARTMENT OF TRANSPORTATION,)
AND DOES 1 through 100, inclusive,) Trial Date: none scheduled
24)
Respondents.)
25)
)
)
)

1 Additional Counsel for Petitioners:

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Attorney for South Pasadena Unified School District

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:
2

3 Please take notice that on June 10, 2004, at 9:30 A.M. in Department 86 of the
4 above-captioned court located at 111 North Hill Street, Los Angeles, California,
5 petitioners City of South Pasadena, National Trust for Historic Preservation, Sierra Club,
6 California Preservation Foundation, Los Angeles Conservancy, Pasadena Heritage, South
7 Pasadena Preservation Foundation, and South Pasadena Unified School District will and
8 hereby do move the court to tax costs claimed by intervenors City of Alhambra et al. in
9 the amount of \$181.96. This motion is based on the attached memorandum and
10 declaration, on the files and pleadings in this proceeding, and on petitioners' anticipated
11 reply to any opposition submitted by intervenors.
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13 Dated: May 13, 2004

Respectfully submitted,

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16 Attorney for All Petitioners
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1 After this decision, both petitioners and respondents anticipated that a resolution
2 of the state case would follow. At the January 30 hearing on Alhambra's intervention
3 motion, both petitioners and respondents indicated to the Court their belief that a
4 withdrawal of the state approval and a resolution of this action would be forthcoming.
5 (Transcript at page 2 lines 9-10; id. at page 9 lines 6-17.)

6 On January 30, 2004, this Court granted Alhambra's second motion to intervene.
7 In its minute order, the Court stated that Alhambra would be allowed to represent its
8 "local... interests with respect to whether the freeway extension should or should not be
9 built." Shortly after entering the case, Alhambra moved for summary judgment against
10 petitioners.

11 On April 8, the CTC voted to withdraw its notice of determination for the 710
12 freeway extension. Both petitioners and respondents agreed that the NOD withdrawal
13 meant that the route adoption was nullified and respondents could not proceed with the
14 project without further environmental study. Petitioners thus had obtained, through
15 voluntary resolution, the relief they had sought in the judicial arena. Accordingly,
16 petitioners filed a voluntary dismissal, without prejudice, of the entire action.

17 Alhambra opposed petitioners' dismissal, and on April 30, the Court held a
18 hearing to determine whether the dismissal was properly entered. The Court rejected
19 Alhambra's arguments and allowed the voluntary dismissal to stand.

20 On April 29, while its opposition to the dismissal was pending, Alhambra filed a
21 memorandum of costs.² In response to that memorandum, petitioners sent a letter to
22

23 ² That memorandum seeks \$181.96, and petitioners do not oppose this cost request because of
24 the money involved. Instead, petitioners fear that Alhambra would use any judicial award of
25 costs as a foundation for an equally baseless request for attorneys fees or for some other
unknown purpose.

Petitioners also question, even if costs were otherwise allowable, how Alhambra, which
is exempt from filing fees, could incur costs in the amount claimed.

1 Alhambra's counsel explaining why the cost request was inappropriate and requesting
2 that it be withdrawn. A copy of the letter is attached through the declaration of Antonio
3 Rossmann. Petitioners received no response to that letter, and accordingly are filing this
4 motion to tax costs.

6 **II. LEGAL STANDARD**

7 Civil Procedure code section 1032 sets forth the relevant standard for recovery of
8 costs, and unequivocally indicates that a party may recover costs only if it prevails. It
9 states that

10 as used in this section, and unless the context clearly requires otherwise...
11 'Prevailing party' includes the party with a net monetary recovery, a
12 defendant in whose favor a dismissal is entered, a defendant where neither
13 plaintiff nor defendant obtains any relief, and a defendant as against those
14 plaintiffs who do not recover any relief against that defendant. When any
15 party recovers other than monetary relief and in situation other than as
16 specified, the 'prevailing party' shall be as determined by the court, and
17 under those circumstances, the court, in its discretion, may allow costs or
18 not....

16 **III. ARGUMENT**

17 Alhambra cannot recover costs because it does not fit within the statutory
18 definition of a "prevailing party." Dismissal was entered, but over Alhambra's objection
19 rather than in its favor. Moreover, petitioners' dismissal was not in response to any
20 motion brought or action taken by Alhambra, but instead occurred after petitioners
21 obtained their desired outcome in the underlying dispute and that dispute had become
22 moot. Indeed, both petitioners and respondents indicated that such a resolution was
23 imminent before Alhambra became a party. Therefore, Alhambra cannot contend that it
24 obtained the dismissal, or that dismissal was in any way in its favor.
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May 4, 2004

Daniel E. Wright
Stephen R. Onstot
Burke, Williams & Sorenson LLP
611 West Sixth Street, Suite 2500
Los Angeles, CA 90017

Dear Mr. Wright and Mr. Onstot:

Petitioners have received notice of your memorandum of costs in *City of South Pasadena et al. v. CTC et al.*, and note that you have indicated that the status of a request for attorneys' fees is "tbd." Alhambra has no basis to seek either costs or fees, however, and petitioners request that you withdraw the former request and refrain from filing the latter. Indeed, if any party should be seeking fees, it is petitioners, who were compelled to respond to Alhambra's frivolous opposition to a voluntary dismissal. Code Civ. Proc. § 128.7.

The cost request is inappropriate because your clients are not prevailing parties. This action was dismissed without prejudice only after the federal and state respondents suspended and withdrew, respectively, their environmental approvals of the freeway extension, and the Court has noted that those actions, not Alhambra's intervention, were the catalysts triggering mootness and subsequent dismissal of this case. Those decisions were directly contrary to Alhambra's purported interest in promoting the highway, and indeed Alhambra actively opposed the dismissal upon which it now apparently bases its claim of victory. Accordingly, the dismissal in no way resulted from Alhambra prevailing.

For the same reasons, Alhambra is not a "successful" party eligible for fee recovery under section 1021.5. To be eligible for fee recovery, Alhambra would need to have successfully enforced an important right affecting the public interest, and that enforcement would have to have provided an important public benefit. Alhambra, however, has not successfully enforced anything in this action. Its only substantive motion was not heard, and the action was dismissed after becoming mooted by events neither dictated nor precipitated by Alhambra. A section 1021.5 motion by Alhambra therefore would be without basis.

Filing or maintaining these requests will only further waste the resources of the parties and the Court, and petitioners request that Alhambra withdraw its request for costs and refrain from filing a request for fees. Please let us know by Monday, May 10 whether you will withdraw the request for costs.

Respectfully,

A handwritten signature in cursive script, appearing to read "Joseph B. Moore".

Attorney for all Petitioners

PROOF OF SERVICE BY FEDERAL EXPRESS

I, Batya Billinkoff, hereby declare as follows:


I am a U.S. citizen; am over the age of 18 years and am not a party to the within action. My business address is 380 Hayes Street, Suite One, San Francisco, California 94102.

On May 13, 2004 I served the attached NOTICE OF MOTION AND MOTION TO TAX COSTS; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF ANTONIO ROSSMANN in this action by mailing a true copy to each of the persons listed below:

Leland C. Dolley
City of Alhambra
Burke Williams & Sorenson, LLP
Stephen R. Onstot
Renee J. Laurentis
Daniel E. Wright
611 West Sixth Street, Suite 2500
Los Angeles, CA 90017

Glenn B. Mueller
State of California
Department of Transportation
610 West Ash Street, Suite 805
San Diego, CA 92101-3346

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this certificate of service was executed on May 13, 2004 at San Francisco, California

By: 
Batya Billinkoff