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March 19, 2020
California Land Use & Development Law Report

Fees Under Private Attorney General Doctrine Denied Where CEQA Lawsuit Neither Enforced Important Rights Nor Conferred Significant Public Benefits

Attorney's fees could not be recovered in a CEQA action in which the plaintiff obtained an initial stay of the project but the applicant later had the project approvals rescinded, citing inability to afford to litigate the case. *Canyon Crest Conservancy v. County of Los Angeles*, 46 Cal.App.5th 398 (2020). Doron Kuhn sought to build a single-family residence on an undeveloped lot in Los Angeles County. Because the property was located on a

al of a protected coastal oak tree, Kuhn obtained a minor he county. Plaintiff, Canyon Crest Conservancy, an allenged the approvals alleging violations of CEQA.

After the trial court issued a stay of the permit approvals to preserve the status quo, Kuhn (who had been self-represented throughout the litigation) asked the County to vacate the permit approvals, stating he could not afford to continue the litigation. The County complied and plaintiff dismissed the case. The plaintiff then filed a motion for attorney fees under the private attorney general statute, Code of Civil Procedure section 1021.5. The trial court denied the motion, concluding that plaintiff failed to establish any of the requirements for a right to fees under the statute. To obtain fees under section 1021.5, the moving party must establish that the action resulted in the enforcement of an important right affecting the public interest and that the action conferred a significant benefit on the public or a large class of persons. On appeal, the plaintiff argued it was successful "in ensuring that the project was not built without adequate CEQA review," and that its success was "sufficient to satisfy the 'important right' requirement." The appellate court disagreed, citing the lack of evidence that the County would conduct any additional review or change its approach should Kuhn reapply for the project. On the contrary, the evidence suggested that the County felt it properly evaluated and approved the project, and rescinded the approvals only because Kuhn requested it. The court rejected plaintiff's suggestion that bringing a "viable CEQA claim" alone was sufficient to satisfy the important-right component, noting the statutory requirement that a party not only allege an important right but actually vindicate that right through the litigation. The court also disagreed with the plaintiff's assertion that the granting of the stay resulted in a benefit to the general public — the second key statutory requirement. The court held that the stay ruling was not an adjudication on the merits and, although plaintiff raised a number of challenges to the environmental analysis, the lawsuit was dismissed without any agreement by the County that it would reconsider the project in a different manner, or issuance of any order requiring it to do so. There was no evidence that the lawsuit would cause the County to reconsider its CEQA review or change its conclusions regarding CEQA impacts in this or any other case. The court noted statements by various residents that they believed the action would cause the County to give more serious consideration to their concerns about the project and private development generally, but found these statements speculative and unsubstantiated. The court concluded that based on the limited nature of the project— development of a less than 1,500-square-foot single-family home on one lot— plaintiff had not shown that stopping the project conferred a benefit on either the general public or a large class of persons.

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