

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

SOUTH BUILDING

TENTATIVE RULINGS - March 11, 2021

EVENT DATE: 03/12/2021

EVENT TIME: 01:30:00 PM

DEPT.: N-27

JUDICIAL OFFICER: Cynthia A. Freeland

CASE NO.: 37-2020-00031568-CU-HR-NC

CASE TITLE: SCHUMACHER VS BONA [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Harassment

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED:

Respondent Lawrence Posner ("Respondent")'s motion for attorney's fees is **granted**.

Respondent's argument that he is entitled to attorney's fees as a matter of right under California Code of Civil Procedure ("CCP") § 1032(a)(4) is unavailing. CCP § 1032 provides that the prevailing party in any action or proceeding is entitled to recover costs as a matter of right, except as otherwise expressly provided by statute. See Cal. Code Civ. P. § 1032(b). CCP § 527.6(s) vests the court with discretion to award court costs and attorney's fees in a civil harassment proceeding. See Cal. Code Civ. P. § 527.6(s); *Krug v. Maschmeier* (2009) 172 Cal. App. 4th 796, 802. CCP § 527.6(s) thus is an express exception to CCP § 1032(b). CCP § 527.6 does not define the term "prevailing party" for subsection (s)'s purposes. The court therefore must determine the prevailing party on a practical level. See *Heather Farms Homeowners Assn. v. Robinson* (1994) 21 Cal. App. 4th 1568, 1573-1574; *Elster v. Friedman* (1989) 211 Cal. App. 3d 1439, 1444. Here, Respondent achieved his litigation objective when Petitioner Corinne L. Schumacher ("Petitioner") dismissed the petition against him with prejudice. See ROA No. 43. Accordingly, the court finds that Respondent is the prevailing party in this action under CCP § 527.6(s). See *Adler v. Vaicius* (1993) 21 Cal. App. 4th 1770, 1777.

CCP § 527.6(s) is a discretionary fee provision. Petitioner cites no authority for the proposition that the court must use the lodestar method in determining a reasonable fee award under CCP § 527.6(s). The court nevertheless finds that Respondent's fee request is unreasonable and excessive in light of: (1) the complexity of the issues presented; and (2) the court's knowledge of the services performed and its experience and knowledge of the reasonable value of those services (See *In re Marriage of Cueva* (1978) 86 Cal. App. 3d 290, 300).

In light of the foregoing, the court grants the motion and awards Respondent attorney's fees in the reduced amount of \$2,625.00 (\$375.00/hour x 7 hours). Petitioner shall pay this amount directly to Cage & Miles, LLP within thirty (30) days of this hearing.