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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

UPHOLD OUR HERITAGE, Plaintiff and Respondent, v. TOWN OF WOODSIDE, Defendant and Appellant; STEVE JOBS, Real Party in Interest and Appellant.	A120749, A120757 (San Mateo County Super. Ct. No. 444270)

Following a successful mandamus action in which Uphold our Heritage (Heritage) challenged Town of Woodside's (Town) decision to authorize the demolition of a historic house by real party in interest Steve Jobs, Heritage moved for an award of attorney fees under Code of Civil Procedure section 1021.5.[1] Appellants Town and Jobs contend that the trial court abused its discretion in finding that the litigation conferred a significant benefit on the general public and that the burden of private enforcement was disproportionate to the personal interest in the litigation of the president of Heritage. They also contend that the $403,548 award is excessive. Although the award is indeed substantial, we see no basis for concluding that the trial court abused its discretion and thus shall affirm the award.

[1] All statutory references are to the Code of Civil Procedure unless otherwise noted.

Factual and Procedural Background

The following evidence, facts, and procedural history are taken from our prior opinion (*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587) and the subsequent proceedings on remand.

In 1984, Jobs purchased a single family home, known as the Jackling House, in Woodside. The two-story house is 17,250 square feet, has 30 rooms, 14 bedrooms and 13.5 bathrooms, and is situated on a site of approximately six acres on a rolling, forested landscape. The house is not accessible to the public and is difficult to see from any publicly accessible land. The mansion was built in 1925 for Daniel Jackling, who was a key figure in the American copper industry. The house was designed by George Washington Smith, a leading architect in the Spanish Colonial Revival style in the United States and contains many unique copper fixtures reflective of Jackling's work in the mining industry.

In February 2001, Jobs applied to the Town for a permit to demolish the house. The Town consulted an expert who determined that the building qualifies as an "historical resource" under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) so that the preparation of an Environmental Impact Report (EIR) was required before a permit could be issued. The EIR concludes that demolition of the house would result in significant impact to the cultural resources of the state. While mitigation measures were discussed in the EIR, the EIR concludes that the implementation of these mitigation measures "would retain only a small portion of the house's architectural significance" and for that reason, the measures "would not reduce the impact of demolition to less than significant on the historic resource." The EIR considered five alternatives to demolition of the house, including the "no project" option and four options for rehabilitating the house at that or a different location.

Ultimately, the Town council adopted a resolution certifying the EIR and authorizing the demolition permit subject to certain conditions. The council found that "none of the Alternatives identified in the Final EIR are feasible" and issued a statement of overriding considerations pursuant to Public Resources Code section 21081,

subdivision (b) finding that "as conditioned, the project will provide a public benefit in implementing the Town's General Plan."[2]

Heritage filed a petition for writ of mandate challenging the Town's decision, and in the prior appeal this court affirmed the lower court's decision to issue a writ of mandate directing the Town to set aside its approval of the demolition permit. Like the trial court, we found that the Town's feasibility findings were not supported by substantial evidence. Specifically, we held that in the absence of evidence of the likely cost of constructing a proposed replacement home, evidence that the rehabilitation alternatives in the EIR would cost between $4.9 million and $10 million was not substantial evidence that these alternatives were not economically feasible. (*Uphold Our Heritage v. Town of Woodside*, *supra*, 147 Cal.App.4th at p. 599.) We also held that the project proponent's unwillingness to accept alternatives was not relevant to the feasibility of the alternatives, and that the Town's inability to compel the property owner to accept the proposed alternatives did not support the finding that the alternatives were not legally feasible. (*Id* at p. 601.)

On remand, Heritage filed a motion for attorney fees pursuant to section 1021.5. The trial court granted the motion, finding that the litigation resulted in the enforcement of an important public right by stopping the demolition of the historic residence. The court also found that the action conferred a significant benefit on the general public by adding "to the jurisprudence of California on legal issues of public interest." The court awarded Heritage a total of $403,548 in fees, based on a lodestar figure of $221,774 and a multiplier of 2.0. Both the Town and Jobs filed timely notices of appeal.

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[2] Subdivision (b) of section 21081, which "codifies an 'override' requirement and comes into play where the lead agency has issued an infeasibility finding under section 21081(a)(3)" (*County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 100), allows the lead agency to approve the project if it "finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment" (§ 21081).

Discussion

Section 1021.5[3] "codifies the 'private attorney general' doctrine of attorney fees articulated in *Serrano v. Priest* (1977) 20 Cal.3d 25 . . . and other judicial decisions." (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 634.) "The statute gives the trial court discretion to award fees to a successful party if (1) its action has resulted in the enforcement of an important public right, (2) the general public or a large class of persons has received a significant benefit, (3) the burden of private enforcement is disproportionate to the litigant's personal interest, and (4) it is unfair to make a successful plaintiff pay the fees out of any recovery." (*Concerned Citizens of La Habra v. City of La Habra* (2005) 131 Cal.App.4th 329, 334.) "The award of fees under section 1021.5 is an equitable function, and the trial court must realistically and pragmatically evaluate the impact of the litigation to determine if the statutory requirements have been met. [Citation.] This determination is 'best decided by the trial court, and the trial court's judgment on this issue must not be disturbed on appeal "unless the appellate court is convinced that it is clearly wrong and constitutes an abuse of discretion." ' " (*Ibid*.)

Appellants do not dispute that the action has resulted in the enforcement of an important public right and that Heritage has not obtained any financial recovery in the proceedings. They argue, however, that the action has not conferred a significant benefit on the public and that the burden of private enforcement is not disproportionate to the personal interest in the litigation of Heritage's founder. Appellants also argue that the award, if proper, was grossly excessive.

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[3] Section 1021.5 reads: "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. . . ."

Significant Public Benefit

Appellants argue that the "temporary 'preservation' of one private, single-family home, inaccessible to the general public and subject to inevitable deterioration and potential collapse" did not confer a significant benefit on the general public or a large class of persons. Relying on the analysis of the "no project" alternative in the EIR, they argue that if Jobs opts not to maintain Jackling House, "[e]ventually the house would be beyond repair and rehabilitation and would lose its value as an historic resource." (Italics omitted.) However, while Jobs may choose to let the house deteriorate, Heritage has prevented the Town from sanctioning the demolition of the property, thus preserving the historic site for the immediate future. The fact that the public does not presently have access to the property does not necessarily eliminate the existence of a public benefit. The future of the historic home is still undecided, but there are several potential scenarios under which the historic value of the property will be permanently preserved. Demolition of the home would have eliminated these possibilities and ensured that the public would have forever lost its historic value.

In addition, as the trial court noted, this action "added to the jurisprudence of California on legal issues of public interest, i.e., CEQA." We agree with the trial court that the action "raised issues of law, specifically regarding (i) the issue of 'economic infeasibility' under CEQA, as to which there is limited case law in California, and its application where (as here) there is a lack of comparative data; and (ii) the issue of legal infeasibility, as to which the Court of Appeal distinguished existing cases and found that refusal of an applicant to proceed with alternatives is not a 'legal infeasibility' under CEQA." While appellants are correct that the writ proceedings were grounded in the specific facts of this case, that is true of most litigation and does not diminish the significance of the legal issues that were decided in the course of resolving this case. "Whether a published opinion clarifies and/or expands the law is probative of whether [plaintiff] has satisfied the substantial benefit concept underlying the private attorney general rule. [Citation.] Similarly, if that opinion is published because it satisfies the criteria for publication under rule [8.1105] of the California Rules of Court, such status is

also probative of whether the decision clearly vindicates a right where the reason for publication was to announce a rule not found in previously published opinions." (*Leiserson v. City of San Diego* (1988) 202 Cal.App.3d 725, 737.) Both factors weigh in support of the trial court's finding here.

Concerned Citizens of La Habra, relied on by appellants, is not to the contrary. In that case the court recognized that "CEQA involves important rights affecting the people of this state and that section 1021.5 was enacted to encourage the enforcement of such legislation by public interest litigation," but concluded that mere enforcement efforts alone do not justify an attorney fee award. (*Concerned Citizens of La Habra v. City of La Habra, supra*, 131 Cal.App.4th at pp. 335-336.) Rather, the benefit gained must be significant and widespread. (*Id.* at p. 336.) The trial court did not abuse its discretion in denying an attorney fee award in that action because the plaintiff "did not establish a precedent that applied statewide; rather, it successfully asserted a defect in CEQA's process, the correction of which was not likely to change the project." (*Id.* at p. 335.) In contrast, this lawsuit has had a significant impact on the outcome of the project in question and Heritage has established a precedent with implications on other projects throughout the state. We discern no abuse of discretion in the determination that the benefit conferred here is sufficiently significant to warrant an award under section 1021.5.

Disproportionate Financial Burden

" 'An award on the "private attorney general" theory is appropriate when the cost of the claimant's legal victory transcends his personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff "out of proportion to his individual stake in the matter." ' " (*Marini v. Municipal Court* (1979) 99 Cal.App.3d 829, 836.) "While the traditional focus of personal interest . . . is on financial interest, personal interest can also include specific, concrete, nonfinancial interests, including environmental or aesthetic interests." (*Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (2000) 79 Cal.App.4th 505, 511-512.)

Appellants do not dispute that Heritage does not have a financial interest in the outcome of this litigation. They argue, however, that Heritage's "interest in this litigation was fueled by its President and founding member, Ms. Clotilde Luce, and her personal attachment to the house." They explain, "Ms. Luce lived in the residence for almost ten years and has testified extensively on her fond memories there." They argue that Heritage "is solely dedicated to the Jackling House case."

While Ms. Luce's personal connection to the home may have motivated her to organize Heritage, the organization includes many interested people other than herself, including "several architects and authors on architecture" from around the world. Contrary to appellants' characterization, Heritage is not an "organizational guise" or a "conduit for Ms. Luce's litigation by proxy." Significant opposition to the demolition of the property existed before Ms. Luce's participation in the process. As she explained, "I learned of the proposal for demolition through old family friends in Los Altos who forwarded us local press clippings. Soon after I learned of ongoing local efforts to save the historic mansion. . . . I joined two Woodside residents in appealing a Planning Board decision allowing demolition . . . . During this process I became aware of numerous individuals already making legal and historic arguments against the demolition, in addition to State Historic Resources authorities, whose letters were already in the record. . . . [¶] I helped organize Uphold our Heritage to challenge the Town of Woodside's flawed decision of December 2004 . . . ." As an incorporated organization, Heritage gained supporters and received donations to support the litigation. Heritage obtained legal representation on a partially contingent fee basis, but agreed to pay up to $10,000 for representation in the trial court and up to $30,000 for representation on appeal. Ms. Luce's sentimental connection to the house does not preclude a finding that the financial burden of the litigation on Heritage was out of proportion to her personal stake in the controversy. (See *Mejia v. City of Los Angeles* (2007) 156 Cal.App.4th 151, 159.)

Contrary to respondent's suggestion, Ms. Luce's interests are not at all similar to those of the plaintiff in *Williams v. San Francisco Bd. of Permit Appeals* (1999) 74 Cal.App.4th 961, 964.) In that case, the court found that plaintiff's "strong personal *and*

property" interests in preventing construction of an apartment building next to his home weighed against the awarding of fees under section 1021.5. (*Id*. at p. 970.) Those interests included the loss of light, views, air, privacy, and parking, and "the significant aesthetic loss which would result from the intrusion of something so completely out of architectural context as the proposed new structure." (*Id*. at p. 971.) While Ms. Luce may be motivated by fond memories of the home, she did not seek its preservation for her own continued enjoyment, as she now lives in Florida. Thus, the trial court did not abuse its discretion in finding that the burden of private enforcement was disproportionate to the litigant's personal interest in the action.

Lodestar Analysis for "Reasonable" Attorney Fees

When a party is entitled to attorney fees under section 1021.5, the trial court must first determine a "lodestar" figure based on "a careful compilation of the time spent and reasonable hourly compensation for each attorney . . . involved in the presentation of the case." (*Serrano v. Priest*, *supra*, 20 Cal.3d at p. 48.) After making this calculation, the court may consider other factors and assign a multiplier that may augment or diminish the lodestar amount. Factors to consider in utilizing a multiplier include: "(1) the novelty and difficulty of the questions involved . . . ; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; (3) the contingent nature of the fee award, both from the point of view of eventual victory on the merits and the point of view of establishing eligibility for an award . . . ." (*Id.* at p. 49.)

The trial court awarded Heritage $403,548 in attorney fees. The court found that Heritage's attorneys collectively devoted 581.8 hours to the proceedings in the trial court and in the Court of Appeal. The court explained that it "calculated the lodestar at a rate of $500.00 for Chatten-Brown, $400.00 for Carstens, $300.00 for Minter, $300.00 for Dewey, and $110.00 for paralegal and law clerk services. The court then subtracted $40,000 as the noncontingent fees paid, and calculated a multiplier of two on the contingent fee services, then added the $40,000 noncontingent fee plus the multiplier lodestar." Appellants challenge the court's award in four respects.

First, appellants contend that the court awarded "a patently unreasonable fee for work performed by attorney Scott Dewey" by awarding $50 per hour more than the $250 hourly rate that Heritage had requested. The record reflects that $250 per hour was the standard rate billed by first year associates specializing in land use issues. As noted by Heritage in the trial court, "Mr. Dewey had more than two years of experience when working in this matter . . . ." The reasonable market value of an attorney's services is the measure of a reasonable hourly rate. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1139.) The determination of market rate is generally based on the rates prevalent in the community where the services are rendered, i.e., where the court is located. (*Davis v. Mason County* (9th Cir. 1991) 927 F.2d 1473, 1488, overruled on other grounds by *Davis v. City and County of San Francisco* (9th Cir. 1992) 976 F.2d 1536, 1556.) In assessing a reasonable hourly rate, the trial court is allowed to consider the attorney's skill as reflected in the quality of the work, as well as the attorney's reputation and status. (*Ketchum v. Moses, supra*, at p. 1139.) Here, the court both reduced and increased the hourly rates requested by Heritage for specific attorneys. The court reduced the rates applicable to the more senior attorneys from $600 per hour to $500 per hour and from $425 per hour to $400 per hour, and increased Dewey's rate to $300 per hour. The $50 hourly increase for Dewey's time increased the lodestar by $3,100, while the decreases in the hourly rates of more senior attorneys reduced the lodestar by $15,452.50. The court did not abuse its discretion in increasing Dewey's hourly rate by $50.

Next, appellants contend that the court erred by allowing Heritage to "bill the performance of purely secretarial tasks at grossly excessive 'paralegal' rates." They argue that "time sheets attached to [Heritage's] motion referred to tasks such as scanning papers, preparing mail envelopes, faxing documents and making travel arrangements" that the law firm billed at the $110 per hour rate. Based on our review of the record, we believe appellants are parsing the billing entries too narrowly. For example, the records show .77 hours in paralegal time was billed for the following activity: "Phone call with Swift Attorney Service to arrange for filing tomorrow; prepare checks and cover letter to same; send same via federal express; prepare civil case cover sheet for filing tomorrow;

edit and finalize petition." A subsequent entry shows that .47 hours in paralegal time was billed for the following activity: "Confer with D. Carstens regarding stipulation; review email from D. Carstens and F. Fossan; phone call with F. Fossan; send signed cope of stipulation via federal express to F. Fossan." Appellants object to these entries on the ground that sending documents by Federal Express is purely secretarial and should be billed at a lower rate. It is clear, however, that these tasks were related to the employee's paralegal work. Appellants have not identified a single significant entry devoted solely to "purely secretarial" activities. In all events, the total amount of paralegal time included in the lodestar accounted for only $1,584, so that the amount of "secretarial" work within that total was, at most, miniscule.

Third, appellants argue that the trial court abused its discretion by failing to deduct from the award compensation for time spent communicating with the press. Appellants identify four billing entries that relate to press inquiries. The entries amount to less than two hours over the course of the litigation. Heritage explains that the time was spent "to return unsolicited calls from members of the media . . . to explain the case, educate them on the requirements of CEQA, and help spread the word about the possibility of promoting a preservation solution as an alternative to demolition of the historic house." In light of the complexities of CEQA litigation and the public interest in this case, the trial court did not abuse its discretion by including the very limited time spent communicating with the press in the lodestar figure. (See *Davis v. City and County of San Francisco*, *supra*, 976 F.2d at p. 1545, rehg. denied, judg. vacated in part and cause remanded (9th Cir. 1993) 984 F.2d 345 [public relations efforts that contribute "directly and substantially, to the attainment of [the plaintiffs'] litigation goals" may be compensable].)

Finally, appellants assert that the "application of a 2.0 multiplier resulted in a grossly excessive award." "A trial court has discretion to adjust the lodestar amount to take account of unique circumstances in the case. [Citations.] . . . 'The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or

required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services.' " (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1216.) Heritage requested a multiplier of 2.8. The court applied a multiplier of 2.0 to account for the contingency that Heritage would not prevail and the attorneys would receive no compensation for their services beyond the $40,000 their client had agreed to pay.

The issues in this case were relatively novel and problematic. The permit Heritage was challenging had been approved both by the planning commission and by the Town council. Heritage's challenge was not based on the disregard of objective procedural mandates of CEQA, but upon the manner in which relevant information had been analyzed, to which courts customarily grant greater deference to the local agency. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435 ["While we determine de novo whether the agency has employed the correct procedures, 'scrupulously enforc[ing] all legislatively mandated CEQA requirements' [citation], we accord greater deference to the agency's substantive factual conclusions. In reviewing for substantial evidence, the reviewing court 'may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,' for, on factual questions, our task 'is not to weigh conflicting evidence and determine who has the better argument.' "].) Both the Town and Jobs were represented by capable attorneys who argued forcefully that Heritage's contentions were entirely baseless. Appellants argued on appeal that "[t]he decision of the Town Council in this matter finds solid support in the record and the law" and "reflects the best compromise and balance of competing interests that could be achieved under the circumstances." They characterized Heritage's legal argument as carrying "within it the seeds of circularity" and asserted that the evidence in the record "directly and conclusively" refuted Heritage's position. Moreover, more than 75 percent of the fees were incurred in the appellate proceedings, defending the judgment against appellants' appeal, which their attorneys obviously felt had sufficient merit to justify pursuing. In short, viewing this case from the outset, its outcome was far from certain and

counsel took a substantial risk that they would not prevail and would be paid nothing for the major portion of their time and effort.

"Our courts have recognized that an enhanced fee award is necessary to compensate attorneys for taking such risks: ' "A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. . . ." [Citation.] "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." ' " (*Amaral v. Cintas Corp. No. 2, supra*, 163 Cal.App.4th at pp. 1217-1218.) While we consider the multiplier of 2.0 to be generous, it is well within the range of acceptability. (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 255 ["Multipliers can range from 2 to 4 or even higher"]; *Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 66 [2.5 multiplier not "so out of line with prevailing case law as to constitute an abuse of discretion"].) The award is neither grossly excessive nor inconsistent with the purposes of the private attorney general doctrine.

Disposition

The judgment is affirmed.

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Pollak, Acting P. J.

We concur:

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Siggins, J.

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Jenkins, J.