

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
Superior Court of California

CIVIL MINUTE ORDER

CASE NO. 1600368 DATE: 07/27/16 DEPT:
CASE NAME: CHEVELDAVE VS TRI PALMS UNIFIED
CASE CATEGORY: Other Real Property-Over \$25,000 (Palm Springs)

HEARING: Minute Order: Ruling on Matter Submitted 7/11/16

Honorable Judge Harold W Hopp, Presiding

Clerk: D. Mathieu

Court Reporter: None

Court subsequently rules on matter taken under submission on
07/19/16.

Motion for Attorney's Fees is granted in part.

The request for attorney's fees is granted in the reduced amount of
\$6750.00.

Court's ruling attached to Minute Order and incorporated herein by
reference.

The Court was under the impression that TPUOA would submit a proposed
order. It appears that none has been received - this order shall
constitute the order denying the motion and granting the attorney fee
request. No further order shall be prepared.

Notice to be given by clerk

Clerk's Certificate of Mailing

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUL 27 2016

D. Mathie

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

TITLE: Cheveldave et al.	v. Tri Palms Unified Owners Association et al.	DATE & DEPT. July 27, 2016 28, 2016 PS3	NUMBER PSC1600368
COUNSEL None	None	REPORTER None	

PROCEEDING

Ruling on Submitted Matter—Motion for Reconsideration of Order Granting Special Motion to Strike Complaint by defendant Tri Palms Unified Owners Association

The Court having considered the submitted matter, rules as follows:

After the Court granted the special motion to strike of defendant Tri Palm Unified Owners Association (“TPUOA”), plaintiffs Alex Cheveldave and Richard N. Davis filed a motion for reconsideration. One of the two grounds for the motion is essentially that the Court mistakenly concluded that the Davis-Stirling Act, *California Civil Code* sections 1350 to 1378, applies to the Tri Palms development. Because a motion for reconsideration requires new or different facts and because all of the facts on which the motion was based either could have been or were presented at the initial hearing, the Court denied the motion.

Plaintiffs also argued that there was new law, that while the Court had the matter under submission, the Court of Appeal decided a case that held that a case such as this did not arise from the right to petition the government. That case, *Crossroads Investors, L.P. v. Federal National Mortgage Association* (2016) 246 Cal App. 4th 529, involved a non-judicial foreclosure, including the defendant’s failure to respond to requests for an accounting. These requests were made in the form of an interrogatory during the plaintiff’s bankruptcy proceeding and orally apart from the bankruptcy. The Court of Appeal found that the action arose from both protected activity (the interrogatory response) and non-protected activity (defendant’s failure to respond to other requests for accounting). The Court concluded that under one test—the “principal thrust” or “gravamen” of the action--the anti-SLAPP statute did not apply because the action was to recover for defendant’s failure to comply with state non-judicial foreclosure statutes and for fraud, not for the interrogatory response in the bankruptcy action. Further, applying the other test, the Court held that the protected activity was not merely incidental but that plaintiff had shown a probability of prevailing on some part of its claim and therefore, regardless of which test was used, the motion was properly denied.

This case is significantly different from *Crossroads*. Here, the action clearly arises from protected activity: TPUOA’s assertion of claims in both the state and federal court and the settlement of those claims. If anything, the *Crossroads* opinion supports this Court’s decision that the case arises from protected

activity. Therefore, even considering the *Crossroads* decision, the Court correctly granted the special motion to strike and the motion for reconsideration is denied.

The Court took under submission TPUOA's request for attorney fees. As discussed at the hearing, the attorney fee request includes not only a collective 21.6 hours of attorney time to review the motion, discuss it with TPUOA, research and prepare an opposition, but 14 hours for two attorneys to attend the hearing on the motion in person. One attorney could have handled the appearance and the appearance *could easily have been made telephonically, which would have saved a day's worth of travel between San Diego and Palm Springs.* Accordingly, the request for attorney's fees is granted, but the amount awarded is reduced from the \$10,300 requested to \$6,750.

The Court was under the impression that TPUOA would submit a proposed order, but it appears that none has been received. Accordingly, this order shall constitute the order denying the motion and granting the attorney fee request. No further order shall be prepared.

Clerk to give notice.

Harold W. Hopp, Judge
(da), Clerk

A handwritten signature in black ink, appearing to read "Harold W. Hopp", written over the printed name and title.