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FILE
FEB 26 2024
CLERK OF MENDOCINO
SUPERIOR COURT OF CALIF.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MENDOCINO—UKIAH BRANCH

WILLIAM MOORES and TONA
MOORES,

Plaintiffs,

v.

IRISH BEACH WATER DISTRICT, *et*
al.

Defendants.

UNLIMITED JURISDICTION
Case No.: SCUK-CVG-2009-54665

~~Proposed~~ JUDGMENT FOLLOWING
REMAND AND ACCEPTANCE OF OFFER
UNDER CODE OF CIVIL PROCEDURE
SECTION 998

This trifurcated action came before this Court regularly for trial on or about December 19, 2011 (Phase One), August 18, 2014 (Phase Two), and February 29, 2016 (Phase Three), before the Honorable Judge Ann C. Moorman, presiding. Each phase proceeded by bench trial. Phase One concerned the Moores' inverse condemnation liability claims against the District. Phase Two concerned the damages attributable to the finding of liability in Phase One. Phase Three concerned all remaining claims of the Moores, including *inter alia* issues as to Proposition 218, declaratory and injunctive relief, trespass, unjust enrichment, and breach of contract. Various attorney fee, cost, expert fee, and interest awards and orders were also entered prior to and after the issuance of a final appealable judgment in this matter. Appeals were filed in the First District Court of Appeal (No. A151867) that resulted in an opinion filed November 30, 2021, affirming in part and reversing in part the trial court's initial determinations.

FILED

FEB 08 2024

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SUPERIOR COURT OF CALIFORNIA



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1 Following remand to the trial court, on March 17, 2023, the Moores extended
2 an offer to the District under Code of Civil Procedure section 998. The District
3 accepted the CCP §998 offer on April 10, 2023. The CCP §998 offer and its
4 acceptance has been filed with in the trial court.

5 **BASED THEREON, WITH GOOD CAUSE APPEARING, IT IS ORDERED,**
6 **ADJUDGED, AND DECREED AS FOLLOWS:**

7 **I. Inverse Condemnation**

8 **A. Phase One.**

9 This Court finds that the District inversely condemned Moores' property, rights,
10 and interests, effective September 18, 2008, specifically by taking an additional well
11 easement on bare land within an existing easement, specifically the metes and
12 bounds of the Soderberg Tank site easement.

13 **B. Phase Two.**

14 The Moores are awarded twenty-five thousand dollars (\$25,000.00) as full
15 compensation/damages, as of March 4, 2015 to be paid by the District.

16 **C. Pre-Award Interest On Inverse Condemnation Award; and Additional**
17 **Interest on Inverse Condemnation Award**

18 The previous order that provided for pre-award interest and additional interest
19 on the inverse condemnation claim has been vacated by the Court of Appeal;
20 therefore, any entitlement the Moores' claim to (pre-award or otherwise) interest shall
21 be determined by noticed motion, application, or as otherwise permitted by law.

22 **D. Attorney's Fees, Costs & Expert Expenses for Phases One and Two**

23 The previous order awarding the Moores attorney's fees, costs & expert
24 expenses for Phases One and Two has been vacated by the Court of Appeal;
25 therefore, any claim by the Moores to entitlement to attorneys' fees, costs and/or
26 expert-related expenses arising from the inverse condemnation claim shall be
27 determined by noticed motion, application, or as otherwise permitted by law.

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2 **E. Attorney's Fees and Costs for Dismissed Appeal of Phases One and**
3 **Two Decision**

4 In accordance with this Court's Order Re Attorneys' Fees and Costs on Appeal,
5 filed February 22, 2016, the Moores are additionally awarded six thousand nine
6 hundred twenty-eight dollars and fifty-five cents (\$6,928.55), as of said date, against
7 the District for attorney's fees and costs incurred by Moores in the appeal of this
8 Court's decisions in phases 1 and 2, which appeal was dismissed by the Court of
9 Appeal. The Moores are awarded the additional amount of five hundred ninety-seven
10 dollars and seventeen cents (\$597.17) as post award/pre-judgment interest from
11 February 22, 2016 to May 10, 2017. The Moores may apply for further pre-judgment
12 interest by noticed motion, application, or as otherwise permitted by law. The Moores
13 are further awarded two thousand three hundred seventy dollars (\$2,370) in attorney's
14 fees and costs incurred in making a motion for attorney's fees relating thereto,
15 effective February 1, 2022.

16 **II. Partial Stipulation of Phase Three Issues**

17 The parties' stipulation for Partial Settlement, filed February 24, 2016, a true
18 copy of which is attached hereto as Exhibit 1, is incorporated herein by reference and
19 is made part of this Judgment.

20 **III. Proposition 218 Assessments, Trespass, Unjust Enrichment, Breach of**
21 **Contract—Phase 3.**

22 **A. Proposition 218 Assessments**

23 By District-wide voter approval in 2002, and pursuant to Article XIID of the
24 California Constitution (a/k/a Proposition 218), the District imposed assessment on all
25 parcels within its boundaries. The assessments were comprised of four components
26 or funds specified in an engineer's report (Phase 3, Trial Exhibit 19), which formed the
27 basis for the assessments: (1) System Wide capital improvement ("System Wide"); (2)
28 Mallo Pass capital improvement ("Mallo Pass"); (3) Capital Replacements, or Greater

1 than 40 year, capital improvement ("Capital Replacements"); and, (4) loan
2 repayments. Moores' claims in Phase 3 concerned the first three funds.

3 **1. System Wide**

4 a. Injunction: A permanent injunction is hereby granted in Moores' favor,
5 limiting the District's collection of the System Wide component to 15 years, ending
6 with the property tax bill that is due and payable February 1, 2017 and delinquent April
7 2017. The District shall conclude the assessment for the component effective as of
8 that time.

9 b. Improper Expenditures, Fund Balance & Reimbursement: This Court
10 finds that the District improperly expended money from this fund and had other
11 unsupported expenditures. Those expenditures also resulted in unrealized, or lost,
12 investment/interest income. As of February 29, 2016, the District's. Proposition 218
13 System Wide assessment fund's corrected balance shall be one hundred seventy
14 thousand eight hundred twenty-nine dollars (\$170,829). (Phase 3 Trial Exhibit 167,
15 Tab 2, Corrected Reserve SW-1-11 [Tab 2 Summ. & Tab 2.B.].) This figure includes
16 unrealized investment/interest income and adjustments for improper and unsupported
17 expenditures found by this Court as of February 29, 2016. The District shall maintain
18 an accounting of this fund subsequent to February 2016, including all additional
19 assessments collected and proper expenditures (see below), using the corrected fund
20 balance stated above. The District shall reimburse this fund such that its balance, as
21 of February 29, 2016, is one hundred seventy thousand eight hundred twenty-nine
22 dollars (\$170,829). That reimbursement shall be from the District's unrestricted, non-
23 Proposition 218, monies.

24 c. Refund: After reimbursing the fund, the District shall refund the entire
25 remaining balance of this fund, as properly accounted for and as corrected (including
26 collected assessments and approved expenditures subsequent to February 2016), at
27 the conclusion of the assessment for this component as ordered above. In the
28 interim, these funds may be used by the District to construct the enumerated capital

1 improvement. project(s) detailed in the engineer's report for this component of the
2 Proposition 218 assessment, so long as the expenditure thereof does not exceed. the
3 total approved assessment amount for this component. (Phase 3 Trial Exhibit 19.)
4 Refunds of remaining monies in this fund, calculated in accordance with the
5 accounting requirements above, shall be made at the conclusion of this component of
6 the assessment as specified above, on a proportionate basis, to the owner of record
7 for each and every parcel on which said owner paid assessments.

8 **2. Mallo Pass**

9 a. Injunction: A permanent injunction is hereby granted in the Moores'
10 favor. The District shall immediately cease collecting the assessment for this
11 component. This Court finds that the District abandoned the Mallo Pass project as of
12 September 12, 2009.

13 b. Improper Expenditures, Fund Balance, & Reimbursement: The
14 District improperly expended money from this fund and had other unsupported
15 expenditures. Those expenditures also resulted in unrealized, or lost,
16 investment/interest income. As of February 29, 2016, the District's Proposition 218
17 Mallo Pass assessment fund's corrected balance shall be four hundred thirty-two
18 thousand seven hundred ninety-two dollars (\$432,792). (Phase 3 Trial Exhibit 167,
19 Tab I.B.i, "Alternate 2".) This figure includes unrealized investment/interest income
20 and adjustments for improper and unsupported expenditures found by this Court as of
21 February 29, 2016. The District shall maintain an accounting of this fund subsequent
22 to February 24, 2016, including all additional assessments collected, using the
23 corrected fund balance stated above. The District shall reimburse this fund such that
24 its balance, as of February 29, 2016, is four hundred thirty-two thousand seven
25 hundred ninety-two dollars (\$432,792). The District shall also reimburse this fund for
26 any expenditure made from it after February 29, 2016 and shall account for all
27 assessments received for this fund subsequent to that date. All reimbursement shall
28 be from the District's unrestricted, non-Proposition 218, monies.

1 c. Refund: after reimbursing the fund, the District shall refund the entirety
2 of the balance of this fund, as corrected as of February 29, 2016, and as adjusted
3 thereafter (including assessments collected after February 2016), as set forth above,
4 and shall additionally pay pre-judgment interest (again, from its unrestricted, non-
5 Proposition 218 monies) on refunds due from this fund in the amount of sixty-eight
6 thousand four hundred thirty-four dollars and eighty-eight cents (\$68,434.88), on a
7 proportionate basis to the owner of record for each and every parcel on which said
8 owner paid assessments, within one hundred eighty (180) days after entry of this
9 Judgment. Any further pre-judgment interest shall be determined by noticed motion,
10 application, or as otherwise permitted by law.

11 **3. Capital Replacements**

12 The District successfully challenged the trial court's ruling as to the amount or
13 maximum of the Capital Replacements component cash reserve fund. Given the
14 Court of Appeal reversed the trial court on this issue, judgment is entered in favor of
15 the District on the challenge to the District's implementation of the Engineering Report
16 as it pertains to the Capital Replacement component of the assessment.

17 **B. Trespass**

18 As to the Moores claims of trespass, judgment is entered in favor of the
19 District and the Moores shall take nothing from this cause of action.

20 **C. Unjust Enrichment**

21 As to the Moores claims of unjust enrichment, judgment is entered in
22 favor of the District and the Moores shall take nothing from this cause of action.

24 **D. Breach of Contract**

25 As to the Moores claims of trespass, judgment is entered in favor of the
26 District and the Moores shall take nothing from this cause of action.

27 **E. Attorney's fees, Costs, and Expenses For Phase Three**

28 The Moores are awarded, and the District is to pay the Moores, six

1 thousand seven hundred seventy-one dollars and forty-one cents (\$6,771.41) in
2 Phase Three litigation costs. The Moores may apply for further litigation costs
3 otherwise permitted by law.

4 **IT IS SO ORDERED.**

5
6 Dated: _____

7 Hon. Ann C. Moorman

8 Judge of the California Superior Court
9 In and for County of Mendocino

10 **APPROVED AS TO FORM AND CONTENT:**

11
12 Dated: _____

13 Matthew L. Emrick, Esq.

14 Attorney for the IRISH BEACH WATER
15 DISTRICT

16 Dated: _____

17 Colin W. Morrow

18 Attorney for WILLIAM AND TONA MOORES