

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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YREKA WESTERN RAILROAD
COMPANY,

NO. CIV. 2:11-1868 WBS CMK

Plaintiff,

v.

ORDER RE: MOTIONS FOR AWARD OF
ATTORNEY'S FEES AND COSTS

EDWARD A. TAVARES, ROSEMARY T.
TAVARES, PLM LENDER SERVICES,
INC.,

Defendants.

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Plaintiff Yreka Western Railroad Company filed this action against defendants Edward A. Tavares, Rosemary T. Tavares, and PLM Lender Services, Inc., seeking to enjoin defendants from foreclosing upon plaintiff's property until defendants apply for and obtain approval from the Surface Transportation Board ("STB"). The court granted a preliminary injunction in favor of plaintiff on June 4, 2012, (Docket No. 66), and on March 7, 2013, the court granted plaintiff's unopposed motion for summary judgment, (Docket No. 74). Plaintiff now moves for the award of

1 attorney's fees, citing California Civil Code section 1717.
2 (Docket No. 77), and for costs, (Docket No. 76).

3 "California Civil Code [section] 1717(a) authorizes
4 reasonable attorney's fees '[i]n any action on a contract where
5 the contract specifically provides that attorney's fees and
6 costs, which are incurred to enforce the contract, shall be
7 awarded either to one of the parties or to the prevailing
8 party.'" Barrientos v. 1801-1825 Morton LLC, 583 F.3d 1197, 1216
9 (9th Cir. 2009) (second alteration in original). A California
10 appellate court has explained that:

11 An action (or cause of action) is 'on a contract' for
12 purposes of section 1717 if (1) the action (or cause of
13 action) 'involves' an agreement, in the sense that the
14 action (or cause of action) arises out of, is based upon,
15 or relates to an agreement by seeking to define or
interpret its terms or to determine or enforce a party's
rights or duties under the agreement; and (2) the
agreement contains an attorney fees clause.

16 Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc., 211 Cal. App.
17 4th 230, 241-42 (4th Dist. 2012). "In determining whether an
18 action is 'on a contract' under section 1717, the proper focus is
19 not on the nature of the remedy, but on the basis of the cause of
20 action." Kachlon v. Markowitz, 168 Cal. App. 4th 316, 347 (2d
21 Dist. 2008). "The provision is interpreted liberally."
22 Barrientos, 583 F.3d at 1216 (citing Lafarge Conseils Et Etudes,
23 S.A. v. Kaiser Cement & Gypsum Corp., 791 F.2d 1334, 1340 n.16
24 (9th Cir. 1986)).

25 Neither side disputes that the Secured Promissory Note
26 provides for attorney's fees when it states that "Borrower
27 promises to pay all costs of collection, including, without
28 limitation, attorneys' fees . . . in connection with the

1 protection or realization of any collateral securing this Note or
2 the enforcement of any guaranty hereof," which includes expenses
3 incurred in any proceedings "involving Borrower which may affect
4 the exercise by Lender of its rights or remedies under this
5 Note." (Compl. Ex. A-1 ¶ 6 (Docket No. 1).) Rather, the parties
6 dispute whether plaintiff's suit for declaratory relief was an
7 action "on a contract" under California Civil Code section
8 1717(a).

9 In Barrientos, the Ninth Circuit considered the award
10 of attorney's fees when the district court granted summary
11 judgment in favor of tenants who sought a declaratory judgment
12 that a landlord's eviction notices violated federal and local law
13 when the lease contained an attorney's fee provision. See
14 Barrientos, 583 F.3d at 1206, 1216. When determining whether the
15 action was "on a contract" under section 1717(a), the Ninth
16 Circuit looked to two prior cases, one of which upheld the award
17 of attorney's fees and one which rejected the award of attorney's
18 fees.

19 Barrientos noted that "[i]n Lafarge, [the Ninth
20 Circuit] awarded attorney's fees to the plaintiff for opposing
21 the defendant's motion to vacate an arbitration award, which was
22 based on a contract." Id. at 1216. The court in Lafarge "held
23 that 'the underlying contract between the parties is not
24 collateral to the proceedings but plays an integral part in
25 defining the rights of the parties.'" Id. (citing Lafarge, 791
26 F.2d at 1340). "In contrast, in In re Johnson, 756 F.2d 738 (9th
27 Cir. 1985), . . . [the Ninth Circuit] refused to award debtors
28 attorney's fees for opposing the creditors' unsuccessful motion

1 for relief from an automatic stay." Id. In re Johnson "held
2 that because the '[s]tay litigation is limited to issues of lack
3 of adequate protection, the debtor's equity in the property, and
4 the necessity of the property to an effective reorganization,'
5 '[t]he validity of the . . . contract underlying the claim [was]
6 not litigated during the hearing.'" Id. (citing In re Johnson,
7 756 F.2d at 740) (first three alterations in original).

8 Ultimately, the court in Barrientos upheld the award of
9 attorney's fees, explaining that "Tenants' lease contracts
10 underlying the claim are not collateral to the litigation because
11 they incorporate and define the rights and obligations of Tenants
12 and [the landlord], the applicability of relevant state and
13 federal law, and the role of federal and state actors." Id.
14 "Tenants' complaint was one to enforce their rights as tenants
15 under the lease." Id. (internal quotation marks omitted).
16 "Thus, Tenants' action for a declaratory judgment regarding their
17 right to remain in their apartments is properly considered an
18 action 'on a contract.'" Id.

19 Here, the situation is more akin to In re Johnson than
20 Barrientos and Lafarge. Plaintiff brought suit to enjoin the
21 foreclosure and sale of its property until defendants sought
22 approval from the STB, which has exclusive jurisdiction over
23 transportation by rail carriers, including the abandonment of
24 rail facilities. (Compl. ¶ 14; June 4, 2012 Order at 6.)
25 Plaintiff's suit was limited to the question of whether
26 defendants had to first seek review with that agency before
27 foreclosing upon and selling plaintiff's property. In the June
28 4, 2012 Order granting a preliminary injunction, the court

1 granted a preliminary injunction on the grounds that, in part,
2 the STB "is far better suited than any court to uniformly apply
3 national rail policy and determine whether the proposed
4 foreclosure will result in interference with, or abandonment of,
5 plaintiff's railroad operations." (June 4, 2012 Order at 12.)

6 Unlike Barrientos, in which the tenants sought
7 declaratory judgment on their right to remain in their apartments
8 under their leases, here plaintiff did not seek declaratory
9 judgment to determine whether defendants have a right to
10 foreclose upon the property under the Secured Promissory Note.
11 Instead, plaintiff sought declaratory judgment on which
12 governmental body has jurisdiction to first decide that issue.
13 As in In re Johnson, "[t]he validity of the . . . contract
14 underlying the claim [was] not litigated" in this case. In re
15 Johnson, 756 F.2d at 740.¹ Since plaintiff's action was not "on
16 a contract" under California Civil Code section 1717(a), the

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20 ¹ Defendants note that In re Johnson based its holding on
21 the fact that the plaintiff's action "was predicated solely upon
22 a federal statute" and "California state law was not applied to
23 the substantive issue involved," therefore "the bankruptcy court
24 should not have applied the state substantive law awarding
25 attorney's fees," which is also the case here. In re Johnson,
26 756 F.2d at 740-741. However, subsequent Ninth Circuit cases,
27 including Lafarge and Barrientos, have not relied upon this
28 language in In re Johnson and have not based their rulings on the
distinction between federal and state claims. In Lafarge, for
example, the relevant motion was to vacate an arbitration award
that was compelled under the United States Arbitration Act, 9
U.S.C. §§ 1-14 (1982), a federal statute. Lafarge, 791 F.2d at
1337. Barrientos involved preemption of local ordinances by HUD
regulations, also a federal issue. Barrientos, 583 F.3d at 1208-
15.

This court will therefore not base its decision on the
fact that the sole substantive law to be applied was federal law.

1 court will decline to award attorney's fees to plaintiff.²

2 In addition to a motion for attorney's fees, plaintiff
3 has submitted a bill of costs in conformance with Local Rule 292.
4 (Docket No. 76.) The costs appear appropriate under 28 U.S.C. §
5 1920 and Local Rule 292(f), and defendants do not object to the
6 award of those costs. The court will therefore award costs of
7 \$1,204.10 to plaintiff.

8 IT IS THEREFORE ORDERED that plaintiff's motion for the
9 award of attorney's fees be, and the same hereby is, DENIED.
10 Plaintiff is awarded \$1,204.10 in costs.

11 DATE: April 22, 2013

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13 WILLIAM B. SHUBB

14 UNITED STATES DISTRICT JUDGE

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26 ² The case at hand is also distinguishable from the other
27 authority cited by plaintiff, Marsu, B.V. v. Walt Disney, 185
28 F.3d 932 (9th Cir. 1996), as that case awarded attorney's fees
for tort claims, such as material concealment, closely tied to a
breach of contract action on a licensing agreement.