

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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20 Plaintiff Yreka Western Railroad Company filed this  
21 action against defendants Edward A. Tavares, Rosemary T. Tavares,  
22 and PLM Lender Services, Inc., seeking to enjoin defendants from  
23 foreclosing upon plaintiff's property until defendants apply for  
24 and obtain approval from the Surface Transportation Board  
25 ("STB"). The court granted a preliminary injunction in favor of  
26 plaintiff on June 4, 2012, (Docket No. 66), and on March 7, 2013,  
27 the court granted plaintiff's unopposed motion for summary  
28 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.<sup>1</sup> Since plaintiff's action was not "on  
16 a contract" under California Civil Code section 1717(a), the  
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19       <sup>1</sup> Defendants note that In re Johnson based its holding on  
20 the fact that the plaintiff's action "was predicated solely upon  
21 a federal statute" and "California state law was not applied to  
22 the substantive issue involved," therefore "the bankruptcy court  
23 should not have applied the state substantive law awarding  
24 attorney's fees," which is also the case here. In re Johnson,  
25 756 F.2d at 740-741. However, subsequent Ninth Circuit cases,  
26 including Lafarge and Barrientos, have not relied upon this  
27 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-  
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28       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.<sup>2</sup>

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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14 WILLIAM B. SHUBB  
15 UNITED STATES DISTRICT JUDGE  
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26           <sup>2</sup> 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.