

**DEPARTMENT TWELVE
JUDGE CHRISTINE A. CARRINGER
707-207-7312
TENTATIVE RULINGS SCHEDULED FOR
THURSDAY, MAY 19, 2016**

**DDPP, LLC v. PAPPAS, et al.
Case No. FCS044978**

Defendants' Motion for Attorneys Fees

TENTATIVE RULING

Preliminarily, the court denies the request for statement of decision, contained in the opposition brief filed by Plaintiff DDPP, LLC ("DDPP"). 7 Witkin, California Procedure (5th ed. 2008) Trial, §392, p. 460 ["A statement of decision is not required in ruling on a motion"; see also numerous cases cited therein, and in March 2016 supplement, p. 71].

Even in the absence of this improper "request", the court would have offered the following explanation for its ruling on this motion (which is not a statement of decision).

Generally, under the "American rule" of civil litigation, the parties are each required to pay their own attorneys fees, unless a statute states otherwise. C.C.P. §1021.

Civil Code §1717(a) authorizes recovery of attorneys fees if their recovery is authorized by a contract involving those parties.

Paragraph 28(xv) of the Lease contains the following attorneys fees provision:

Attorney's Fees. In the event of any action or proceeding brought by either party against the other under this Lease the prevailing party shall be entitled to recover for the fees of its attorneys in such action or proceeding, including costs of appeal, if any, in such amount as the court may adjudge reasonable as attorney's fees.

At the time the Lease was entered into, the only parties to it were the Lessor (at that time, Peter and Vernice Gasser) and the Lessee (Rancho Sarco Vineyards, "RSV").

The Gassers (or successors in interest) later subdivided the property, in effect creating 2 sets of lessors, each covering different parcels within the leased property.

The parties disagree over the interpretation of the phrase “any action or proceeding brought by either party against the other under this Lease”. DDPP interprets this phrase to mean only actions by the lessor against the lessee, or vice versa. Defendants JOHN R. PAPPAS and CARLA C. PAPPAS, as Trustees of the Pappas Family Trust (“Pappas”) interprets that to apply to any action under the lease against any other party to the lease.

Neither cited any cases directly on point.

With contracts or statutes, one important rule of interpretation is to give effect to every word or phrase. ACL Technologies, Inc. v. Northbrook Property & Casualty Ins. Co. (1993) 17 Cal.App.4th 1773, 1785 [“In California, however, contracts . . . are construed to avoid rendering terms surplusage”]; Delaney v. Superior Court (1990) 50 Cal.3d 785, 798-799 [“Significance should be given, if possible, to every word of an act . . . a construction that renders a word surplusage should be avoided”].

The interpretation urged by Pappas would render the phrase “by either party against the other” surplusage, and is therefore rejected.

In addition, Pappas waived and/or is estopped from asserting any right to seek recovery of attorneys fees, by its pleadings, and an agreement between counsel to omit any claims by either to attorneys fees.

DDPP’s complaint contained within its prayer a claim for “reasonable attorney fees and costs”.

Pappas’ counsel thereafter contacted DDPP’s counsel, and asked and/or insisted that DDPP amend the complaint to delete the request for attorneys fees.

DDPP thereafter filed a 1st amended complaint, which omitted the request for attorneys fees from the prayer.

Pappas’ answer to the 1st amended complaint then included a claim for “attorney’s fees incurred herein if such are allowable by the court”.

In an e-mail exchange between counsel just after the filing of that answer, DDPP’s counsel questioned why the answer included a prayer for attorneys fees.

In response, Pappas’ counsel emailed, “My error. We’ve pulled it, and will correct Monday”.

It is not clear that Pappas filed an amended answer to the 1st amended complaint.

The parties did thereafter file new pleadings.

On January 9, 2014, DDPP filed a 2nd amended complaint, which again failed to include a specific claim for attorneys fees within the prayer.

On February 10, 2014, Pappas filed an answer to the 2nd amended complaint, whose prayer omitted any claim for attorneys fees.

It is well accepted that counsel can stipulate to “limit issues or defenses to be tried, whether or not those issues or defenses are pleaded”. 1 Witkin, California Procedure (5th ed. 2008) Attorneys, §272, p. 349 [quoting *Bemer v. Bemer* (1957) 152 Cal.App.2d 766, 771].

On its face, C.C.P. §283(1) appears to require any attorney stipulation to be filed with the court clerk to be binding on the client.

An attorney and counselor shall have authority:

1. To bind his client in any of the steps of an action or proceeding by his agreement filed with the clerk, or entered upon the minutes of the court, and not otherwise

Nevertheless, courts have long enforced informal stipulations between counsel. As one secondary source explained:

Despite the mandatory language of C.C.P. 283(1), many stipulations that fail to comply with either of the alternative forms prescribed in the statute are enforced. “To give section 283 a literal construction would greatly retard the business of the court and lead to absurd consequences. Every admission, consent or agreement made in the course of the trial would either have to be reduced to writing or filed with the clerk or by the clerk entered in his minutes. It was never intended that the section should receive such a construction.” (*Continental Bldg. & Loan Assn. v. Woolf* (1910) 12 C.A. 725, 730, 108 P. 729.) 1 Witkin, California Procedure (5th ed. 2008) Attorneys, §269, pp. 345-346 [citing 2 cases enforcing oral stipulations made outside of court].

Thus, for 2 independent reasons (no authorization within the Lease for recovery of attorneys fees in an action such as this, and waiver/estoppel to raise attorneys fees claims), Pappas’ motion for attorneys fees is denied in its entirety.