

MEMORANDUM

DATE: October 7, 2011

TO: David A. Monroe
General Counsel
Center for Natural Lands Management

FROM: Stephen P. Ellingson
Hayes Scott Bonino Ellingson & McLay, LLP

RE: Case Summary for Submission to LTA Land Conservation Law Summaries

Carrillo v. Center for Natural Lands Management, et al; Santa Cruz County Superior Court, Case No. CV162827.

State: California

Procedural Status: Case concluded.

Date: 2011

Keyword(s): conservation easement, prevailing party recovery of attorney fees

Summary of Facts and Issues: The plaintiff owned residential property adjacent to a conservation easement held by the Center for Natural Lands Management (CNLM.) His property was part of a large residential development known as Seascapes Uplands, and was located on a relatively steep hillside. Plaintiff's property was damaged when a large landslide occurred downhill from his property. In February 2009, the plaintiff sued CNLM for, among other things, breach of contract, alleging that CNLM somehow caused the landslide and thus failed to meet its obligations under the conservation easement. Although the plaintiff was not a party to the conservation easement, he contended that he was a third party beneficiary. The conservation easement provided that a prevailing party under the agreement was entitled to recover attorney fees and costs. CNLM filed a motion for summary judgment, which the court granted. CNLM subsequently filed a motion for an award of attorney fees and costs as the prevailing party under the conservation easement. The plaintiff opposed the motion on the ground that he could not be liable for attorney fees because the court had concluded he was neither a party nor a third party beneficiary of the conservation easement agreement.

Holding: The court awarded attorney fees to CNLM in the amount of \$68,236. The court concluded that the mutuality of an attorney fee clause in a contract must be enforced even when the defendant prevails on a theory that the plaintiff was neither a party to the contract nor a third

party beneficiary. The court reasoned that a contrary result would defeat the public policy of mutuality of attorney fee provisions.

Analysis and Notes: This case has no precedential value because it is a judgment in the trial court. However, it provides the analytical framework for recovering attorney fees as the prevailing party where a third party unsuccessfully sues seeks to establish standing to sue on a conservation easement or any other contract.