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OCT 30 2007

LOS ANGELES
SUPERIOR COURT

6 Attorneys for plaintiffs LARRY and MELISSA SHIELDS

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR LOS ANGELES COUNTY**

10
11 LARRY SHIELDS, an individual, and
MELISSA SHIELDS, an individual,

12 Plaintiffs,

13
14 vs.

15
16 THE COMMUNITY REDEVELOPMENT
17 AGENCY OF THE CITY OF LOS
ANGELES, CALIFORNIA, and DOES 1
18 through 100, inclusive,

19 Defendants.

Case No. BC 346 249

[assigned for all purposes to the Honorable
Soussan G. Bruguera, Judge, dept. 71]

**~~(PROPOSED)~~ ORDER AND FINDINGS
ON PLAINTIFF'S MOTION FOR
DETERMINATION OF ATTORNEY'S
FEES**

Hearing:

Date: October 25, 2007

Time: 10:00 a.m.

Dept.: 71

20 Plaintiffs LARRY and MELISSA SHIELDS' motion for determination of attorney's fees
21 came on regularly on October 25, 2007, in department 71 of the above entitled court, the
22 Honorable Soussan Bruguera, Judge, presiding. Counsel for plaintiff and defendant submitted on
23 papers.

24 On December 13, 2002, plaintiffs, Mr. and Mrs. Shields ("the Shields"), purchased a
25 single-family home from the Community Redevelopment Agency of the City of Los Angeles
26 ("CRA") for \$210,000.

27 The Shields obtained a first mortgage from conventional sources and the CRA took back
28 a silent second, deferred-interest, mortgage of \$45,800.

1 The second trust deed and the deferred second mortgage note stated, *inter alia*, that if the
2 house was sold before the Shields had lived in the house for five years, then the Shields would
3 owe the principal (\$45,800) plus either 7% non-compounded interest per year or 50% of the
4 appreciation in value, whichever was greater. If the Shields stayed more than five years before
5 selling the house, then they would owe the principal plus either 7% non-compounded interest per
6 year or 50% of the appreciation in value, whichever was the lesser.

7 On December 27, 2005, the Shields decided to sell the house after their son was
8 murdered. A buyer paid \$540,000 for the house. The CRA contended that it is entitled by the
9 terms of the note, and the second trust deed, to the principal of \$45,800 plus 50% of the
10 appreciation (\$330,000 minus any amounts spent by the Shields that increased their basis).

11 On January 23, 2006, the Shields filed suit against the CRA seeking to invalidate the
12 shared appreciation provision in the note and the deed. The Third Amended Complaint has four
13 causes of action: 1) Violation of Civil Code section 2943 (failure to provide a legally timely
14 written payoff demand when requested); 2) Violation of the state usury laws; 3) Declaratory
15 Relief; 4) Violation of Civil Code section 1671 (invalid liquidated damages provision). The
16 Shields had also requested a payoff demand statement from the CRA which the CRA never
17 provided.¹

18 The CRA contended that it is neither in violation of state usury laws nor the state laws
19 regarding liquidated damages nor any statutory prohibitions against pre-payment penalties.
20 Moreover, it contended that it had a right to the principle and 50% of the appreciation under the
21 note, and the second trust deed should be upheld because the Shields' sold the property after
22 three years and thus failed to live in the house for at least five years. Plaintiff's made numerous
23 attempts to resolve the case prior to filing their lawsuit.

24 The Court entered judgment and made findings against the Plaintiff on August 10, 2007.
25 Those findings and judgment were not appealed and are now final.

26
27 ¹ The CRA does admit that after the Shields' multiple requests for a demand statement
28 over several months and numerous discussions with the Shields' lawyer about the information
required before the CRA could issue a written demand statement, the CRA ultimately never sent
the requested statement.

1 The Court should note that the following benefits to the operating procedure of the
2 Community Redevelopment Agency have inured to the public's benefit due to the issues and
3 findings from this litigation.

- 4 1. The CRA violated Civil Code section 2943 in its willful refusal to provide a
5 payoff demand statement when requested by both the Shields and the escrow
6 company. The public will benefit from the CRA timely processing payoff
7 demands.
- 8 2. The loan repayment terms in the promissory note and deed of trust violated State
9 law as they are pre-payment fees, coupled with an acceleration clause, were
10 unreasonable in amount and were in violation of Civil Code section 2954.10 and
11 Title 12 of the Code of Federal Regulations, section 541.14, which specifically
12 preclude a prepayment fee when there is an acceleration clause in a deed of trust
13 that is due on sale. The exposure of these violations ~~will prevent further~~

14 ~~violations of the CRA.~~ *benefits the public.* 

- 15 3. In addition, the CRA took the position that the sale at issue was a credit or cash
16 discount sale instead of it being a single transaction with one price by the seller
17 who financed the sale with a deed of trust secured by the property. By trying to
18 exempt itself from these very important consumer protection statutes, the CRA
19 took a position that would have caused serious injuries to any of its borrowers
20 who may not have the resources to bring a civil action against it. There was no
21 evidence that the CRA ever offered a cash discount and their position was not
22 supported by any evidence before the Court.

- 23 4. ~~The Court concluded that the prepayment statutes equally apply to the CRA. The~~
24 ~~Court further found that the requested prepayment penalty by the CRA was~~
25 ~~unconscionable and in violation of numerous Civil Code sections relating to~~
26 ~~prepayment fees, and truth and lending disclosures. By exposing all of~~
27 ~~these practices, plaintiff's counsel has provided an invaluable public benefit.~~

28 The Court ordered that the plaintiffs' counsel shall be allowed to recover attorney's fees

1 and costs pursuant to a motion in compliance with Rule 3.1702 of the California Rules of Court.

2 The plaintiffs' counsel timely filed a motion and the matter was set for hearing on
3 October 25, 2007 at 10:00am. The Court, after considering the arguments of counsel, the
4 motion, the opposition, the reply, the declarations, and reviewing applicable law, makes the
5 following findings:

6 Among the factors justifying a multiplier are the novelty and difficulty of the questions
7 involved, and the skill displayed in presenting them. The nature of the action was both difficult
8 and novel requiring a creative approach to the litigation. Initially, counsel indicated to the Court
9 that they participated in numerous discussions with counsel for the defendant to reach a
10 resolution in light of the Shields' particular circumstances. They requested a variance from the
11 CRA's strict interpretation of the repayment terms. Over \$90,000 was held in escrow for almost
12 two years as the CRA would not provide a payoff demand statement and would not release the
13 funds. The Shields also had to sign an indemnity agreement with the escrow company.

14 To make matters slightly more challenging, the CRA advanced different theories of how
15 the loan terms were legal as plaintiffs' counsel presented argument, case law and statutory law.
16 Not only did the CRA have able litigation counsel, they were not the only ones aware of the
17 problems with the loan terms. The CRA apparently had additional counsel to interpret the terms
18 of the loan. For each theory advanced by the CRA purportedly justifying the loan terms, counsel
19 was able to demonstrate ~~that the CRA did not understand it was violating the laws protecting~~
20 ~~people from just these types of loans.~~ ^{the problems with the theory} ~~number of complex~~ ~~ing target of theories.~~ Shared
21 appreciation loan, seller exemption from the prepayment laws, and others. Each theory required
22 extensive research, briefing, and drafting.

23 Plaintiff achieved extraordinary results herein which should ultimately benefit the
24 constituents of the City of Los Angeles and the Community Redevelopment Agency specifically.
25 As an initial matter, counsel's creative problem-solving skills allowed the Shields to move
26 forward with their lives without losing the proceeds from the sale of their home and while also
27 being able to fight for justice against the CRA. Also, as a result of this action, there can be no
28 further doubt by the CRA that the loan terms at issue herein are illegal. Thus, perhaps they will

1 be deterred from continuing to keep people's money and force them to file lawsuits to obtain a
2 recovery.

3 As far as the level of skill is concerned, the level of representation far exceeded the
4 quality of representation that would have been provided by an attorney of comparable skill and
5 experience billing at the hourly rate used in the lodestar calculation. The novel issues raised by
6 the CRA's attorneys required a highly skilled advocate to litigate across numerous subjects,
7 which plaintiffs' counsel did.

8 Finally, the most significant justification for the enhancement comes as a result of the
9 contingent nature of the fee award. There was a high risk of loss. Numerous attorneys would not
10 take a case against the CRA with its vast resources. The agreements are intimidating and there
11 was very little money in the way of net recovery to the plaintiffs. The only way plaintiffs'
12 counsel really could recover for their time in advancing this highly beneficial litigation was to
13 recover attorney's fees. The Court finds the risk of non-payment was very high to plaintiffs'
14 counsel.

15 The Supreme Court has held that the trial court first determines the lodestar method and
16 then makes an adjustment, or multiplier, to compensate the attorney at a rate reflecting the risk of
17 nonpayment in contingency cases as a class. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138,
18 17 P.3d 735, 104 Cal.Rptr.2d 377 (*Ketchum*)). The aim is to compensate attorneys for their
19 services at fair market value as an inducement to accept such matters. (*Ibid.*)

20 The nature of the contingent relationship and the risks associated by plaintiff's counsel in
21 representing plaintiffs without payment is an important factor. In fact, a decision not to consider
22 contingent risk in deciding not to apply a multiplier alone is reversible error. (*Greene v.*
23 *Dillingham Constr.* (2002) 101 Cal.App.4th 418, 426-427; see also *Sternwest Corp. v. Ash*
24 (1986) 183 Cal.App.3d 74, 75-76.)

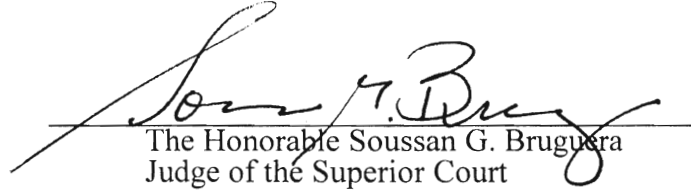
25 The Court finds that the lodestar amount is \$57,520.00. The Court applies a 3X increase
26 multiplier to bring the total fees awarded to \$172,560.00.

27 /// Frankly, it is hard to for the Court to
28 /// believe that anyone took plaintiff's
case as the odds were great in favor of the CRA.
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1 **THEREFORE IT IS ORDERED THAT:**

- 2 1. Plaintiff's counsel, Law Offices of Ronald Richard & Associates shall be awarded
3 \$172,560.00 to be paid forthwith.

4
5 October 29, 2007
6 Date

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The Honorable Soussan G. Bruguera
Judge of the Superior Court