



In [*Sonoma Land Trust v. Thompson*](#) (Sonoma County, Super. Ct. No. SCV-258010), the 1st District Court of Appeal of the State of California affirmed the trial court in all respects finding the landowners' arguments unavailing concerning the destruction of three mature oak trees on conserved land and other severe damage done to the land. The California Council of Land Trusts, the Land Trust Alliance, Save the Redwoods League, Sierra Foothill Conservancy and the Trust for Public Land filed a joint amicus brief in this case. The state attorney general also filed an amicus brief on behalf of several state agencies.

You may recall that, in 2009, the Sonoma Land Trust accepted a donated conservation easement on a 34-acre parcel. Toni and Peter Thompson purchased the property in 2013, and they contracted with a landscaping company one year later to relocate three mature rare heritage oak trees from the protected property to an adjacent parcel that they owned through an LLC, where they were building a house. Two trees died after crews uprooted, dragged and transplanted them. Another tree died because of an attempted transplant — crews could not move it because of large boulders entangled in its root system. To facilitate the tree relocations, the landscaper established a one-third-mile haul road that required the removal of 12 smaller trees and other vegetation. The Thompsons also directed a contractor to dump four-foot-thick dredged pond sediments from their abutting LLC parcel onto the protected property. The Thompsons failed to obtain required grading permits or stormwater pollution prevention plans for any of these activities. They neither requested nor received permission from the land trust, as required by the conservation easement.

When a neighbor informed SLT of suspicious activities, SLT arranged for a site visit. The Thompsons scrambled to finish the relocation project before the visit, but they could only move one of the three trees by the time SLT staff arrived. During and after the visit, the court affirmed the trial court finding that the Thompsons actively concealed evidence about the land damage, and in fact SLT did not learn about work on two of the mature trees until after the litigation had commenced. The Thompsons also lied repeatedly about their reasons for relocating the one known tree, claiming that they were saving the tree from pruning by the utility company, which held a senior easement across a portion of the protected property. Following the site visit, the Thompsons engaged in a variety of other dilatory, threatening and mendacious behaviors toward SLT. The Thompsons attempted to conduct their own restoration to minimize the impacts of their work but only made matters worse by hydro seeding a grass mix that included non-native seeds and failing to address erosion.

After the Thompsons refused to carry out an appropriate, professional restoration, SLT filed [suit](#) in 2015, backed by Terrafirma Risk Retention Group LLC. The court conducted a bench trial in 2018 and ruled that the Thompsons, as well as the LLC of which they were the sole members, were jointly and severally liable for numerous, extensive and "truly extraordinary" violations of the conservation easement. With respect to the LLC, the court pointed to the California conservation easement enabling statute and longstanding common law in determining that third parties could be liable for easement violations. Moreover, the court rejected the Thompsons' claims that SLT staff had acquiesced, tacitly approved or waived any of the easement's provisions, quoting provision of the easement that precluded any such oral approvals or any waivers. Nor did the court credit the Thompsons' arguments that SLT failed to mitigate its damages.

As the court order meticulously documented, SLT responded promptly and diligently to the violations they observed. Any alleged hesitation in enforcing the easement more promptly and vigorously after the site visit was due to the Thompsons' numerous lies of commission and omission. The court awarded SLT injunctive relief to implement its proposed restoration plan, as well as the full damage amounts requested: restoration costs of \$318,870, \$73,800 for destruction of the three oaks, staff costs of \$92,286 and expert costs of \$90,943, for a total of \$575,899.

Pointing to the easement itself, the enabling statute, relevant case law and the Restatement (Third) of Property, Servitudes, the court found that the appropriate measure of damages was the cost to restore the property and not, as the Thompsons claimed, the loss to the fair market value of the easement. The high restoration costs reflected the extensive steps required to bring back the native plants that had been replaced by invasive species across the haul road area. In addition, because the land trust could not restore the three mature oaks at the heart of the dispute, a professional arborist used a trunk formula method to value the damage attributable to their removal. The court awarded staff and expert costs because of the broad wording of the easement's violation provision and the express provision for their reimbursement.

In December 2019, the trial court awarded SLT attorneys' fees and costs of \$2.96 million, applying Bay Area market rates to the attorneys' hours as well as a fee enhancement, or multiplier, of 1.4x to account for the contingent nature of the work, the risk undertaken by counsel, and land trust's resounding success in the case. And in December 2020, the appellate court affirmed the trial court's judgment on the merits in all respects. The hearing and opinion on the attorneys' fees award is not set yet and that division isn't following its published calendar. Counsel expects it will be set soon, but it is difficult to predict. *Source: Rob Levin, Leslie Ratley-Beach, Bob Neale, Sarah Sigman*