

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

Superior Court of California, County of Ventura, Hall of Justice, Department 43

2023CUMC008352

DAVID BYRNE, et al. vs LESLIE RULE, et al.

January 30, 2024

11:38 AM

Judge: Honorable Ben Coats
Judicial Secretary: H. McIntyre
CSR: None

APPEARANCES:

NATURE OF PROCEEDINGS: Ruling on Submitted Matter - Motion for Attorney Fees

The Court, having taken Defendants Leslie Rule and Jon E. Drucker's Motion for Attorney's Fees and Costs pursuant to Code of Civil Procedure section 425.16, subdivision (c) under submission on 01/24/2024, now rules as follows:

DEFENDANTS' Motion for Attorneys' Fees is GRANTED in part, as explained below.

Initially, the Court notes that Plaintiffs' objection based on the lateness of the reply is overruled. The Court continued the motion to obtain additional information and accepted additional briefing from Plaintiff. Thus, there is no prejudice to Plaintiff as a result of the late reply and the Court elects to rule on the merits. "The law respects form less than substance." Civil Code § 3528.

With respect to the objections filed on December 1, 2023, and December 23, 2023, to the declarations of John Drucker and Steven Johnson, all the objections are overruled.

Defendants' motion for fees and costs is brought pursuant to Code of Civil Procedure §425.16(c), which provides that:

"(1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover that defendant's attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to Section 11130, 11130.3, 54960, or 54960.1 of the Government Code, or pursuant to Chapter 2 (commencing with Section 7923.100) of Part 4 of Division 10 of Title 1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney's fees and costs pursuant to Section 7923.115, 11130.5, or 54960.5 of the Government Code."

One of the “well-established” canons of construction is that [w]hen a statute omits a particular category from a more generalized list, a court can reasonably infer a specific legislative intent not to include that category within the statute's mandate.” *Bitner v. Dep't of Corr. & Rehab.* (2023) 87 Cal. App. 5th 1048, 1059.

Plaintiff's argument that CCP § 425.16(c)(2) precludes this fee claim fails because Government Code § 54960 specifically excludes only actions brought pursuant to Govt Code §§ 54960 and 54960.1, as well as actions brought under the entirety of “Chapter 2 (commencing with Section 7923.100) of Part for of Division 10 of Title 1 of the Government Code.” If the legislature had intended to exclude all actions brought pursuant to “this chapter” (meaning “the entire Brown Act”) as argued by Plaintiffs at page three of their sur-reply, it would not have needed to include Govt. Code § 54960.1 (since that is part of “this chapter”), and it would have stated “Chapter 9 commencing with Section 54950,” etc. as it did with “Chapter 2, etc. referenced above. To interpret the statute as plaintiffs do defies logic.

Plaintiff's suit was not brought under any of the five Government Code sections which expressly disallow attorney's fees in an Anti-SLAPP motion. The complaint clearly states it is brought under Govt Code §54963, which is stated, by the Court's count ten times in the document. Plaintiff's argument that it was not *really* brought under CCP § 54963 is not persuasive. Because CCP § 425.16(c)(2) specifically includes the above identified sections of the Government Code, other sections of the Government Code under which an Anti-SLAPP motion is brought, which are not specifically identified in CCP § 425.16(c)(2) are not precluded from an award of attorney's fees.

It is worth noting that CCP § 425.16 (a) expressly states that: “*The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.*” As the parties are aware, this lawsuit was brought to restrict defendants' rights to free speech by claiming that the statements at issue were made in closed session, and therefore defendants were prohibited from disseminating them. The Court disagreed in ruling on the Anti-SLAPP motion. If the Court now interpreted § 425.6 in the fashion argued by plaintiffs and denied defendants' right to fees, it would surely discourage “the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances,” contrary to the legislature's clearly stated intent.

Attorney's Fees Incurred on the Anti-SLAPP Motion

Case law has interpreted §425.16(c) as limiting a prevailing defendant's recovery of fees and costs to the sum of (a) those fees reasonably incurred in bringing the special motion to strike (see *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 39 Cal.App.4th 1379, 1384; cited with approval by the California Supreme Court in *S.B. Beach Properties v. Berti* (2006) 39 Cal.4th 374, 381); and (b) those fees reasonably incurred in bringing the motion for attorney's fees. (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1141.)

With respect to fees incurred in bringing a special motion to strike, only those fees/costs

reasonably associated with bringing the special motion to strike are recoverable:

“The anti-SLAPP statute provides for an award of attorney fees and costs to the prevailing defendant on a special motion to strike. (§ 425.16, subd. (c).) The defendant may recover fees and costs only for the motion to strike, not the entire litigation. [Citations.]”

(*Christian Research Institute v. Alnor* (2008) 165 Cal. App. 4th 1315, 1320.)

Here, Defendants contend that they incurred at least \$119,085 in total fees, and \$1,065 in costs, litigating the anti-SLAPP motion, consisting of 125.60 attorney hours billed at \$550/hour for Stephen C. Johnson, plus 90.90 attorney hours billed at \$550/hour for Jon E. Drucker.

Defendants contend the entirety of that amount was devoted to the anti-SLAPP motion which responded to the entirety of Plaintiffs’ Complaint.

The Court has broad discretion in determining the amount of Defendants’ reasonable attorney’s fees. (*PCLM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The determination of reasonable fees in California usually begins with a “lodestar” figure equal to the number of hours reasonably expended multiplied by a reasonable hourly rate. (Id.) The task entries in the invoices of Mr. Johnson and Mr. Drucker are vague and do not identify numerous entries as being related to the Anti-SLAPP motion.

Defendants’ Counsels’ Hourly Rates

The hourly rates charged by Defendants’ counsel are reasonable if they are within the prevailing rates for similar work in the local legal community. (*Margolin v. Regional Planning Comm.* (1982) 134 Cal.App.3d 999, 1004.) The determination of the reasonableness of this rate is within the sound discretion of the Court:

“It is well established that the determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court....[Citations.] The value of legal services performed in a case is a matter in which the trial court has its own expertise. [Citation.] The trial court may make its own determination of the value of the services contrary to, or without the necessity for, expert testimony. [Citations.] The trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case.” (*Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 623-624.)

Here, Defendants’ counsel each billed at the rate of \$550 per hour. The Court concludes that this is higher than typical rates charged in Ventura County, but not outside all reasonable bounds for highly experienced counsel. The problem is that counsel have not established their level of experience in this area of law. Mr. Drucker’s invoices reveal that he felt it necessary to retain a “SLAPP attorney” (May 17, 2023, invoice) and “[c]onfer w/[local] expert attorney re case and SLAPP issues (May 24, 2023). In the Court’s opinion, the admitted lack of expertise does not warrant rates paid to highly experienced counsel. Likewise, Mr. Johnson’s declaration sets forth his litigation experience, but is silent regarding his experience in the Brown Act and Anti-SLAPP law. The Court considers \$450 per hour to be an appropriate rate in the local community.

The Reasonable Hours Billed

A prevailing defendant on an anti-SLAPP motion is entitled to seek fees and costs “‘incurred in

connection with” the anti-SLAPP motion itself, but is not entitled to an award of attorney fees and costs incurred for the entire action. (*Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi* (2006) 141 Cal.App.4th 15, 21 [45 Cal. Rptr. 3d 633].)

Counsel argue that the entire case was related to the anti-SLAPP motion and all the fees are recoverable. The Court disagrees. The invoices are vague in many of the task descriptions (i.e., “8/7/23 SJ Telephone call with Drucker.”) and some are clearly unrelated to the Anti SLAPP motion (i.e., “5/7/23 - Legal research and draft P&A re Declaratory Relief.”) Others are ambiguous, but the Court can reasonably infer they were related to the Anti-SLAPP motion. The Court has determined those entries reasonably related to the Anti-SLAPP motion total of 64.0 hours for Mr. Drucker and 111.3 hours for Mr. Johnson.

Based on the foregoing, the Court awards fees of \$28,800.00 for work performed by Mr. Drucker and \$50,085.00 for work performed by Mr. Johnson. Moving parties are also entitled to recover \$1,065 in costs.

Clerk to serve notice of the Court’s ruling.

Certificate of Mailing is attached.