SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/02/11			DEPT. 86
HONORABLE ANN I. JONES	JUDGE	N. DIGIAMBATTISTA A. AYALA, COURTROOM ASST.	DEPUTY CLERK
HONORABLE 5	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	C. CRUZ, CSR #9095	Reporter

9:30 am	BS128995	Plaintiff Counsel	GERALYN SKAPIK (X) MARK C. ALLEN (x)
	OPEN SPACE LEGAL DEFENSE FUND E VS VS CITY OF WHITTIER ET AL	Defendant Counsel	RICHARD GIRGADO (X) SCOTT KUHN (X) KIMBERLY H. BARLOW (x) ERIC A. WOOSLEY (X)

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANTS, GREG NORDBAK, CATHY WARNER, OWEN NEWCOMER, JOE VINATIERI AND BOB HENDERSON, FOR STATUTORY ATTORNEYS' FEES;

STATUS CONFERENCE

Matters come on for hearing.

The motion for attorneys' fees is argued and taken under submission by the court.

Status conference held.

Counsel advise the court that the environmental impact report was filed on November 29, 2011.

Petitioner's oral motion to amend the petition is made and denied without prejudice to filing a motion.

Notice is waived.

LATER: The motion for attorneys' fees is granted in the sum of $11,375.00 for the reasons set forth by the court in the document entitled COURT'S RULING ON MOTION OF RESPONDENTS FOR ATTORNEYS' FEES HEARD ON DECEMBER 2, 2011, filed this date.

A copy of this minute order as well as the court's Ruling are mailed via U.S. Mail to counsel of record

MINUTES ENTERED
12/02/11
COUNTY CLERK

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HONORABLE ANN I. JONES JUDGE | N. DIGIAMBATTISTA DEPUTY CLERK
A. AYALA, COURTROOM ASST.

HONORABLE 5 JUDGE PRO TEM | ELECTRONIC RECORDING MONITOR

NONE Deputy Sheriff | C. CRUZ, CSR #9095 Reporter

9:30 am BS128995

OPEN SPACE LEGAL DEFENSE FUND E

VS

VS
CITY OF WHITTIER ET AL

Plaintiff Counsel: GERALYN SKAPIK (X)
MARK C. ALLEN (x)

Defendant Counsel: RICHARD GIRGADO (X)
SCOTT KUHN (X)
KIMBERLY H. BARLOW (x)
ERIC A. WOOSLEY (X)

NATURE OF PROCEEDINGS:

addressed as follows:

GERALYN SKAPIK, ESQ., CLAREMONT LAND GROUP, 250 WEST FIRST ST., SUITE 330, CLAREMONT, CA 91711

SCOTT KUHN, SENIOR DEPUTY COUNTY CONSEL, 500 W. TEMPLE ST., 6TH FL., LOS ANGELES, CA 90012

KIMBERLY H. BARLOW, JONES & MAYER, 3777 N. HARBOR BLVD., FULLERTON, CA 92834

ERIC A. WOOSLEY, ESQ., 1602 STATE ST., SANTA BARBARA, CA 93101

MINUTES ENTERED
12/02/11
COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

OPEN SPACE LEGAL DEFENSE FUND ET AL	)	
Petitioners	)	
vs	)	**CASE NO. BS128995**
CITY OF WHITTIER, ET AL	)	
Respondents	)	

COURT'S RULING ON MOTION OF RESPONDENTS FOR ATTORNEYS' FEES HEARD ON DECEMBER 2, 2011

Defendants Nordbak, Warner, Newcomer, Vinatieri, and Henderson (collectively "Individual City Defendants") move this Court for an order awarding attorneys' fees and costs to the Individual City Defendants in the total amount of $45,947.25 plus a lodestar enhancement of 1.5, for a total amount of $68,920.88 due to the Court's grant of the Individual City Defendants' Special Motion to Strike.

Having reviewed the pleadings, having heard oral argument, and having taken the matter under submission, the Court rules as follows.

Statement of the Case

Petitioners filed a Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief and a Complaint Pursuant to Government and Business and Professions Codes on October 27, 2010. Petitioners are a non-profit organization and others who reside in or near the vicinity of the Project and/or have an interest in protecting the project site.

In this action, Petitioners challenge the decision by the City of Whittier and its elected officials to enter into a contract with Matrix Oil Company and Williams Energy, Inc. to explore, mine and drill gas and oil from a field located in the City of Whittier (the "Project"). Specifically, Petitioners allege that the Whittier/Matrix contract allows Matrix the right to slant drill for oil and gas under approximately 1290 acres of an Open Space preserve that was purchased in 1993 with Proposition A funds. By entering into this agreement, Petitioners contend that the City and its representatives have ignored the law and their responsibilities as trustees of a protected area.

Petitioners also challenge other contracts between the City and certain entities, e.g., Esther Feldman and Community Conservancy International ("CCI"), in May 2010. Petitioners assert that the City breached funding agreements pursuant to Proposition A and certain provisions of

the Los Angeles County Code by hiring Feldman and CCI. Finally, Petitioners allege that Councilman Bob Henderson violated the Government Code when he participated in the decision to approve the Whittier/Matrix contract.

Petitioners have named as Respondents the City of Whittier and its City Council, the individual Council members (Greg Nordbak, Cathy Warner, Owen Newcomer, Joe Vinatieri, and Bob Henderson), and a number of County entities, including the County of Los Angeles Board of Supervisors, the Los Angeles County Regional Park and Open Space District, and the Director of the County of Department of Parks and Recreation. In addition, the Petition identifies Matrix Oil Corporation, Clayton Williams Energy, Inc., and the Puente Hills Landfill Native Habitat Preservation Authority as Real Parties-in-Interest.

Procedural History

On October 27, 2010, Petitioners filed the Petition. On May 3, 2011, Petitioners filed a First Amended Petition alleging causes of action for (1) violation of the public trust doctrine; (2) violation of CEQA; (3) violation of Code of Civil Procedure section 526a and Los Angeles County Lobbyist Ordinance; (4) disgorgement of funds; (5) violation of the Los Angeles County Lobbyist Ordinance; and (6) violation of the Whittier City Charter.

On January 27, 2011, the Court ruled on Respondents' demurrers and special motions to strike. The Court granted the special motion to strike as to the entire Petition as pled against Respondents Greg Nordbak, Cathy Warner, Owen Newcomer, Joe Vinatieri, and Bob Henderson ("individual Respondents"). The Court denied the Feldman Respondents' special motion to strike.

On July 22, 2011, the individual Respondents filed a motion for statutory attorneys' fees. On August 19, 2011, the Court rescheduled the hearing on the motion for attorneys' fees for October 20, 2011. The Court ordered any opposition to be filed and served by September 16, 2011 and ordered any reply to be filed and served by October 6, 2011. On August 22, 2011, the Court continued the motion for attorneys' fees to November 2, 2011.

On September 16, 2011, Petitioners filed an opposition to the individual Respondents' motion for attorneys' fees. On October 26, 2011, Petitioners filed an untimely reply.

On October 31, 2011, pursuant to the stipulation and amended order signed and filed that date, the Court continued the motion for attorneys' fees to December 2, 2011.

Summary of Law

"Under this provision, 'any SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees.'" Mann v. Quality Old Time Service, Inc., 139 Cal.App.4th 328, 338 (2006).

"The defendant can recover only its fees and costs in connection with the motion, not the entire action." City of Industry v. City of Fillmore, 198 Cal.App.4th 191, 218 (2011). "A defendant need not succeed in striking every challenged claim to be considered a prevailing defendant entitled to recover attorney fees and costs under the statute. Instead, a defendant is entitled to

recover fees and costs in connection with a partially successful motion, unless the results obtained are insignificant and of no practical benefit to the defendant." Id.

"[T]he lodestar is the basic fee for comparable legal services in the community; it may be adjusted by the court based on factors including, as relevant herein, (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award...." Graciano v. Robinson Ford Sales, Inc., 144 Cal.App.4th 140, 154 (2006).

Analysis

As a preliminary matter, even if an order granting a motion to strike under the anti-SLAPP statute has been appealed, the trial court retains jurisdiction to entertain a motion for attorney fees. Doe v. Luster, 145 Cal.App.4th 139, 144 (2006). Accordingly, the Court is not persuaded by Petitioners' assertions that the instant motion for attorneys' fees is improper due to Petitioners' pending appeal of the Court's decision on the anti-SLAPP motions.

The Court overrules Petitioners' objection to the individual Respondents' reply brief. Given that the hearing on the motion has been continued multiple times beyond when the October 26, 2011 reply was filed, little prejudice by way of short notice has befallen Petitioners, and the Court, in its discretion, considers Respondents' reply brief.

1. Entitlement to Attorneys' Fees

Petitioners argue that Respondents are not entitled to anything more than nominal attorneys' fees because the Court's ruling on the individual Respondents' special motion to strike resulted in "no practical benefit." Respondents argue that they are entitled to mandatory fees based on Code of Civil Procedure section 425.16(c) and that the dismissal of the action against the individual Respondents constitutes a practical benefit.

Code of Civil Procedure section 425.16(c) provides that "[i]n any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her 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." "The defendant can recover only its fees and costs in connection with the motion, not the entire action." City of Industry v. City of Fillmore, 198 Cal.App.4th 191, 218 (2011). "A defendant need not succeed in striking every challenged claim to be considered a prevailing defendant entitled to recover attorney fees and costs under the statute. Instead, a defendant is entitled to recover fees and costs in connection with a partially successful motion, unless the results obtained are insignificant and of no practical benefit to the defendant." Id.

In the instant case, it is undisputed that the individual Respondents are the prevailing parties with respect to their special motion to strike. In addition, as the prevailing parties, it is also evident that the individual Respondents' special motion to strike was not frivolous or solely intended to cause unnecessary delay as the Court granted the special motion to strike after a substantive evaluation of the merits. Accordingly, pursuant to Code of Civil Procedure section 425.16(c),

the individual Respondents are entitled to attorneys' fees as the prevailing parties on a special motion to strike.

Although Petitioners argue that the Court's grant of the individual Respondents' special motion to strike conferred no practical benefit, Petitioners misapply this standard. First, pursuant to City of Industry v. City of Fillmore, the "no practical benefit" analysis is applied in instances where a party is only partially successful on its motion. This is distinguishable from the current case because the individual Respondents were entirely successful on their special motion to strike as this motion was granted by the Court in its entirety. Second, even if the Court were to apply the "no practical benefit" test contemplated by Petitioners, the special motion to strike resulted in a substantial practical benefit to the individual Respondents by striking the entire Petition as pled against the individual Respondents, thus removing the individual Respondents from the lawsuit.

Based on the foregoing, the Court finds that the individual Respondents are entitled to statutory attorneys' fees as the prevailing party on a special motion to strike.

2. Amount of Attorneys' Fees Requested

Petitioners maintain that the fee amount requested by the individual Respondents is based upon double billing and fees that are not attributable to the special motion to strike. In addition, Petitioners argue that the 269.75 hours spent to prepare one special motion to strike is not reasonable. Although Respondents argue that the amount of fees requested is reasonable and the special motion to strike required significant research, time, and expertise, the Court disagrees.

"[T]he lodestar is the basic fee for comparable legal services in the community; it may be adjusted by the court based on factors including, as relevant herein, (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award...." Graciano v. Robinson Ford Sales, Inc., 144 Cal.App.4th 140, 154 (2006). In determining the issue of a multiplier, the Court analyzes "whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." Ketchum v. Moses, 24 Cal.4th 1122, 1132 (2001).

In the instant case, it is undisputed that the requested attorneys' fees rate of $175/hour is reasonable in this area for the type of work performed here.[1]

What is unreasonable, however, is the claimed amount of hours worked in association with the narrow issues presented by the individual Respondents. The successful argument posited by the individual respondents was particularly unremarkable and did not reasonably require 229.6 hours of attorney work. Although at oral argument, counsel for the Councilmembers claimed that these hours were expended only on the limited contentions asserted by these respondents, that argument buttresses the Court's conclusion that the hours claimed here are clearly excessive.

[1] At oral argument, counsel for the individual council members claimed that this figure reflected a "blended rate," and was entirely too low if the Court would not consider as reasonable the excessive hours logged by inexperienced attorneys. There is no competent evidence before the Court as to any hourly rate otherwise charged by this firm to these clients. The Court will not, therefore, inject a figure other than the hourly rate sought in the Petition.

Counsel for the Councilmembers admitted that she was unfamiliar with SLAPP motions and had to incur many hours climbing the learning curve. That she elected to take five other lawyers in her office on that same expedition is wholly unreasonable. Assuming, as counsel represented to the Court that these hours reflect work performed on behalf of only those parties who were dismissed, these claims are grossly excessive.[2] Nor is a claim for 21.6 hours a reasonable amount of time to have been expended preparing the instant motion – a straightforward and otherwise uninteresting motion for attorneys' fees.

Inflated fee requests, of the type presented here, may be rejected as excessive or adjusted downward. See Christian Research Institute v. Alnor, 165 Cal. App. 4th 1315, 1321-22 (2008). The research required to (1) assert that individual members of the city council could not be sued for their political speech, and (2) to bring a motion for attorneys fees should not have collectively exceeded 65 hours (55 hours for the councilmen's substantive arguments and 10 hours for an attorneys' fee motion). Although the moving party claims to have required extensive time to collect affidavits and other factual discovery, the submitted declarations were short and easily drafted. The information they contained was entirely within these individuals' knowledge.

The law does not find reasonable the amount of time expended to allow inexperienced lawyers an opportunity to develop expertise. Nor does the law consider reasonable the number of hours claimed for exchanging information between and among a number of attorneys who are working on separate aspects of the same brief. That a billing partner distributes tasks in a way that is not efficient does not render the work expended in that inefficient effort reasonable.

Applying this reasonable amount of time to a reasonable per hour rate of $175.00 results in a lodestar amount of $11,375.00.[3]

Pursuant to Ketchum v. Moses, the Court declines to grant a multiplier to the attorneys' fees requested as the work done in this case does not rise to the level of extraordinary legal skill contemplated in Ketchum. A lawyer who admitted to not knowing much about SLAPP and a collection of equally inexperienced lawyers in her firm spent entirely too much time on this task. A multiplier is not used to compensate – by way of enhancing the true billable rate or otherwise – that unreasonable expenditure of time. Rather, the reasonable attorneys' fees awarded without the multiplier approximates the fair market rate for the service that would have been reasonable in this instance.

The Court declines the opposing party's oral request to stay the enforcement of this order granting attorney's fees. In order to stay enforcement, an appropriate appeal or undertaking is required. Dowling v. Zimmerman, 85 Cal. App. 4th 1400, 1434 (2001). Rather than require such a bond or undertaking, the Court will simply award those fees at this time. As the moving party pointed out, if the Court is reversed on appeal, the award of attorneys' fees will be reversed as well.

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[2] For example, the moving party claims that six different lawyers and a paralegal conducted over one hundred hours of "legal research" on the narrow issue upon which the individual counsel members prevailed. Such a claim is patently ridiculous. (See matrix contained in Decl. of Steven J. Liosi).

[3] While the Court's decision may be subject to reversal on appeal, that does not affect the councilmember's right to a claim for attorneys' fees at this juncture. See Nevada Commission on Ethics v. Carrigan, ___ U.S. ___ (No. 10 568) (June 13, 2011). Pursuant to CCP section 917.1(a), unless an undertaking is given, the perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court . . . .

Conclusion

Based on the foregoing, the Court grants Respondents' motion for attorneys' fees in the total amount of $11,375.00.

Moving party to give notice.