Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-013671 03/19/2015

HONORABLE ARTHUR T. ANDERSON

CLERK OF THE COURT
L. Nelson
Deputy

JOHN HASTINGS, et al.

JOHN HASTINGS
P O BOX 5352
SAN DIEGO CA 92165

v.

JEFFREY DALE DUMAS, et al.

BRYAN N SANDLER

RULING

The Court finds that the briefing is sufficient, and that oral argument would not add to the court's consideration of the issues presented in the motions identified in this minute entry. Accordingly, oral argument is waived pursuant to Ariz. R. Civ. P. 7.1(c)(2) to expedite the business of the Court.

IT IS ORDERED denying the request for oral argument for each of the matters addressed below.

DUMAS' APPLICATION FOR ATTORNEYS FEES

The Court has considered Defendants, Jeffrey and Christina Dumas' (collectively, "Dumas"), Application for Attorney's Fees, Plaintiffs, John and Jill Hastings ("collectively, "Hastings") Response and the Reply in Support[1].

Dumas requests attorney's fees pursuant to A.R.S. §12-341.01.

[1] The Sur-Reply of Hastings is not accepted by the Court.

A party requesting fees under A.R.S. § 12-341.01 must provide a reasonable basis for determining the award. *Schweiger v. China Doll Rest., Inc.,* 138 Ariz. 183, 187-88 (App. 1983). The Court has broad discretion to determine what fees are reasonable. *E.g., Flood Control Dist. of Maricopa Cnty. v. Paloma Inv. Ltd. P'ship,* 230 Ariz. 29, 50 (App. 2012). In reaching this decision, the Court considers the factors set forth in *Associated Indem. Corp. v. Warner,* 143 Ariz. 567, 570 (1985). The *Warner* Court stated:

> In the instant action, the Court of Appeals listed several factors which we agree are useful to assist the trial judge in determining whether attorney's fees should be granted under the statute:
>
> 1. The merits of the claim or defense presented by the unsuccessful party.
>
> 2. The litigation could have been avoided or settled and the successful party's efforts were completely superfluous in achieving the result.
>
> 3. Assessing fees against the unsuccessful party would cause an extreme hardship.
>
> 4. The successful party did not prevail with respect to all of the relief sought.

Associated Indemnity, supra, at 589, 694 P.2d at 1203.

Taking into consideration various claims, the Bryan Sandler affidavit, the material filed in support of the award, Hastings' objections, and exercising its discretion,

THE COURT FINDS reasonable attorney's fees to be $17,772.00.

IT IS ORDERED awarding Dumas reasonable attorney's fees to be $17,772.00.

COSTS

The Affidavit of Bryan Sandler (pg.2) identifies taxable costs in the full amount of $628.00.

THE COURT FINDS taxable costs to be $553.00 (Cancellation Fee divided equally).

IT IS ORDERED awarding Dumas taxable costs of $553.00.

HASTINGS' MOTION TO DISMISS COUNTERCLAIM

Dumas asserts two counterclaims. (Counterclaims, filed Justice Court, November 18, 2010). Count One seeks damages to the rental space in the amount of $1,251.32. Count Two alleges libel by postings on *ripoffreport.com* and claims damages in excess of $8,738.68. The Complaint fails to supply any specifics concerning the alleged libel act(s).[2]

In the Motion to Dismiss,[3] the Hastings contend that the alleged libel started on March 3, 2009. They further contend that Dumas reacted to these postings on May 6, 2009.

A.R.S. § 12-541

> There shall be commenced and prosecuted within one year after the cause of action accrues, and not afterward, the following actions:
>
> 1. For malicious prosecution, or for false imprisonment, or for injuries done to the character or reputation of another by libel or slander.

The Court agrees that to be timely, Dumas had to file his libel counterclaim, no later than May 6, 2010. Since the Counterclaim was filed on November 18, 2010, the libel claim is barred by the statute of limitations.

IT IS ORDERED granting Dumas Motion to Dismiss Count Two (Libel).

MOTIONS FOR SANCTIONS AND TO STRIKE

The Court has also considered the following Sanction Motions: Defendants' Motion to Strike and Motion for Rule 11 Sanctions filed 2/25/15; Defendants' Motion for Rule 11 Sanctions filed 2/26/15; and Plaintiffs' Motion for Rule 11 Sanctions filed 3/03/2015. The Court has also considered the Responses and Replies, if any.

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[2] *See Cullen v. Auto-Owners Ins. Co*., 218 Ariz. 417, 419 (2008); *Peagler v. Phx. Newspapers, Inc.,* 114 Ariz. 309, 315 (1977) (elements of defamation of a private person). The Complaint does not allege that Defendant made, said, or wrote a defamatory statement of fact about Plaintiff; the statement was false; Defendant made, said, or wrote the statement to a third person; Defendant was negligent in failing to determine the truth of the statement; and the statement caused Plaintiff to be damaged. *See* RAJI Defamation 1B (elements in negligence case).

[3] The Court construes this Motion to Dismiss as a Rule 12(b)6 motion in lieu of a Reply to the Counterclaim.

In the context of the procedural history of this case, the Court believes that sanctions are not appropriate.

IT IS ORDERED denying the Motions for Sanctions and to Strike as referenced above.

DISCOVERY DISPUTES AND HEARING

The only remaining claim in this action is the Counterclaim (Count One) for rental space damage of $1,251.32. Since this claim was previously tried, discovery is closed and the pending discovery disputes are moot (written discovery and depositions).

Based on the foregoing,

IT IS ORDERED vacating the April 10, 2015 deadline to file a 3-page memorandum as set forth in the Court's March 17, 2015 Minute Entry.

IT IS FURTHER ORDERED setting this matter for a 1-day Jury Trial for **October 5, 2015,**[4] at **9:30 a.m.** in this division.

IT IS FURTHER ORDERED setting a Final Trial Management Conference in this matter on **September 25, 2015, at 10:15 a.m. (30 min.)** in this division. Counsel who will try this case shall appear in person at the Final Trial Management Conference. All trial exhibits shall be brought to the hearing and submitted to the clerk of the division for marking.

IT IS FURTHER ORDERED Motions in *Limine* shall be filed no later than **September 4, 2015.** Responses thereto shall be filed in compliance with the Rules. No replies are necessary. Each pleading shall not exceed 5 pages in length and shall be filed in accordance with Rule 7.2 of Civil Procedure and as follows:

A. Motions in Limine shall be consecutively numbered in the caption identifying the party filing it and the subject of the motion; e.g. "Plaintiff's Motion in Limine No. 1 Re: Defendant's expert;" or "Defendant's Motion in Limine No. 1 Re: No mention of insurance."

B. Each motion in limine shall deal with one discrete subject.

[4] One day's jury fees will be assessed unless the court is notified of settlement by 2:00 p.m. on the judicial day before trial.

C. DO NOT combine a motion in limine with ANY other motion.

D. DO NOT file a "cross-motion in limine."

E. Label responses to motions in limine by identifying the number and subject of the motion being responded to; e.g. "Defendant's Response to Plaintiff's Motion in Limine No. 1 Re: Defendant's expert."

F. DO NOT respond to more than one motion in limine in each response.