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Plaintiff in pro se
Laura Lynn Hammett

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Laura Lynn Hammett,

Plaintiff,

v.

Mary E. Sherman, et al.

Defendant.

Case No.: 19-CV-0605-LL-AHG
Plaintiff's Special Appearance Challenging Jurisdiction for the District Court to Rule on a Motion for Attorney Fees; and Opposition to Defendants Patrick C. McGarrigle and McGarrigle, Kenney & Zampiello's Renewed Motion for Attorneys' Fees (ECF No. 292)

Hearing Date: October 6, 2023
Time: none scheduled
Courtroom: 5D
Judge: Hon. Linda Lopez
Action Filed: April 2, 2019

TO: THE COURT AND ALL PARTIES OF RECORD:

I, Laura Lynn Hammett ("I" or "Plaintiff"), make this special appearance to challenge the jurisdiction of the District Court to hear this attorney fee motion. In case the Ninth Circuit does not agree with my contention about jurisdiction, I am asking for a stay on the District Court proceedings and I am opposing the motion to preserve my arguments on the merits for appeal.

I. The District Court Lacks Jurisdiction

The Court issued an "Order" (ECF No. 290) denying MKZ's motion for additional attorney fees (ECF No. 270, "*MKZ II*") but allowing MKZ to "renew" *MKZ II* in the District Court. By "renew" the Court meant "amend" or "move for reconsideration based on an additional argument that could have been made in *MKZ II* but was not.

MKZ II addressed substantially the same issues and arguments as the first MKZ attorney fee motion (ECF No. 49, "*MKZ I*"). The fees were granted in *MKZ I*. (ECF No. 111) *MKZ II* asked to include the hours allegedly worked on motions to vacate and appeal the order on *MKZ I*.

The Order on *MKZ II* was issued after the Notice of Appeal of the Order on *MKZ I* (ECF No. 273) was filed on October 25, 2022, and after the Appeal of *MKZ I* was fully briefed.

The District Court typically can have concurrent jurisdiction with the Court of Appeals, where the District Court is deciding a motion for attorney fees.

This is not a typical case. *MKZ I*, addresses the same issues as *MKZ II* and *MKZ III*.

Allowing the District Court to decide on *MKZ II* and *III* can give rise to contradictory opinions from two courts on virtually identical subject matter.

The District Court and the Attorney Defendants, by acting as if the District Court still has jurisdiction, caused Plaintiff the need to file a notice of appeal and pay the filing fees.

The Defendants and the Court misunderstand the applicable precedent. Plaintiff's appeal divests this court of jurisdiction over issues related to the *MKZ I* judgment on attorney fees. (*Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982)* ("The filing of a notice of appeal is an event of jurisdictional significance–it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal."); *Gilda Indus., Inc. v. United States, 511 F.3d 1348, 1350 (Fed. Cir. 2008)* ("Ordinarily, the act of filing a notice of appeal confers jurisdiction on an appellate court and divests the trial court of jurisdiction over matters related to the appeal."))

It is true that the court retains jurisdiction to conduct proceedings on defendants' attorney fee motions, as long as there is not already a related attorney fee motion in the same case that is already ripe for appeal.

"A district court . . . may award attorneys' fees while the court of appeals addresses the merits . . . because there is no concurrent exercise of power on the same subject and little overlap of issues. True, a decision reversing the judgment on the merits would affect or nullify the award of fees, but the subjects are distinct." *Apostol v. Gallion*, 870 F.2d 1335, 1338 (7th Cir. 1989). In this case, the subject of the appeal of *MKZ I* is not distinct from the subject of *MKZ II* and *III*. All three motions address the reasonableness of attorney fees.

MKZ made the decision to file the *MKZ I* motion for attorney fees before a final judgment in the case. The Court cannot give MKZ a second bite at the apple by issuing an order on the same subject that is already on appeal.

The District Court must wait to decide the reasonableness of the attorney fees until the Ninth Circuit is divested of jurisdiction. Considering this a "stay" would make a notice of appeal unnecessary and therefore save resources.

II. *MKZ III*, like *MKZ I* and *II*, is Based on Four False Premises

MKZ III is based on the premise that any proceedings on the derivative claims filed by a non-attorney on behalf of a limited liability company are not void. MKZ III is based on the fallacy that MKZ was the prevailing party. MKZ III is based on the outrageous notion that the attorney fees were reasonable. And MKZ is based on an unconstitutional interpretation of the fee shifting statute.

A. The proceedings on void claims are void.

B. It is a manifest injustice for the Court to determine MKZ was the prevailing party on either claim.

This Court's prior orders determined that the S&G Defendants and MKZ Defendants were prevailing parties, based on the Court's analysis under *Coltrain v. Shewalter, 66 Cal. App. 4th 94 (1998)*, and awarded fees to the Attorney Defendants for expenses incurred up to the Court's initial order granting fees. See ECF Nos. 111 at 48; 266 at 9-10. The Court ignored the language in Coltrain that excludes dismissals by the plaintiff based on reasons other than the merits from the presumption that the defendant prevailed.

The "voluntary dismissal" of the malpractice cause was mandated because the derivative cause of action was not filed by an attorney. The conversion cause was dismissed as a courtesy, so MKZ would not need to retain an attorney until after the Member Defendants' motions to dismiss were decided and, if needed, went through appeal. There can therefore be no presumption that MKZ was the prevailing party.

Neither cause of action against MKZ was Strategic Litigation Against Public Participation ("SLAPP"), therefore failing the first prong of the anti-SLAPP test. The

Court repeatedly blew over this argument, basing its decision solely on the erroneous analysis of the second prong.

C. It was not reasonable to do all that work and not reasonable to pay anyone $250 per hour when that person was multiplying the proceedings unnecessarily.

Mr. Agle is asking that the Plaintiff be forced to pay $250 per hour, which he says is less than half his worth. Yet, the attorney had his client file an declaration that was signed under penalty of perjury for the opening sentence only.

Mr. Agle is asking for $260 per hour. She did not read the Court's Chamber Orders and was late in filing her client's opposition to the motion to vacate the order on *MKZ I*.

Mr. Cochran saw that the Clerk omitted Linda R. Kramer as an individual from the list of parties on the electronic filing system. So, instead of bringing the mistake to the clerk's attention, he removed his client in one capacity from the face of the motion to dismiss. [ECF No. 19] Or, he made the same error as the clerk, coincidentally, and the paralegal he supervises.

In general, there are people like Mr. Tom Girardi living like kings while the commoners he is supposed to represent lose children to cancer and don't see a penny of the $31 million dollar settlement their attorney negotiated.

Mr. Stern claimed the value of 14 % of the limited liability company he represented was $218,000. It sold for over $1.4 million 18 months later. Mr. Stern took part of Plaintiff's capital account to pay for giving an opinion that favored the other members of SSP rather than SSP.

All the attorneys involved in this case and three judges, who also studied and work in law, spent hundreds of hours to vigorously oppose a woman who is not an attorney, on a cause that was stated as derivative and other causes that were ruled to be derivative. The Plaintiff worked alone against many, had documented anxiety disorders and Hashimoto's

disease that causes fatigue and brain fog, and still an appeal of the resulting orders is not frivolous.

Plaintiff was not compensated for her work. She had her $70,000 capital retained by SSP the entire time. Precedence shows that even though Plaintiff shows the anti-SLAPP motion was filed maliciously, with the full knowledge that it must not survive the first prong of the test and that it was void on its face, Plaintiff will not be awarded reasonable attorney fees because the fees were "not incurred".

The Judges who purposefully make errors to rationalize transferring wealth to other attorneys are well insulated from any meaningful negative repercussions for their dishonest services.

The attorneys involved in this case are not worth three times as much as licensed therapists nor 10 times what a skilled carpenter charges. The attorneys time is not worth hundreds of dollars per hour, while the Plaintiff's time is worthless. It is not reasonable to force the Plaintiff, who could not afford to hire an attorney to represent her, to pay the fees incurred by the Attorney Defendants, whether the harm they did was to the Plaintiff or to a company in which the plaintiff is a shareholder.

D. It is not Constitutional to Shift Fees in this Case to the High-Income Defendants, Especially Because Precedence Gives the Unrepresented Plaintiff No Hope of Compensation for the Time She Worked on the Case.

Equal protection and due process are fundamental rights guaranteed by the United States Constitution.

The Court appeared to have a bias and retaliated against a litigant for complaining about clerk "JPP" altering the docket, then altering it back without indication on the docket after he was informed of the existence of a copy of the unaltered version. As long as the biased judge's opinions were "law of the case", the proceedings were tainted.

The denial of leave to hire an attorney on limited scope made equal protection for me impossible because I am not a net-worth-elite person. The Southern District of California is split from other districts in the Circuit and throughout the country. The result of having no mechanism to retain limited scope representation is to render the "anti-SLAPP" statute, Cal. Code Civ. Proc. Sec. 425.16(C)(1) unconstitutional as applied in the Southern District of California.

An intervening-change-in-law was issued October 20, 2022, *Wakefield v. ViSalus, Inc*., 2022 WL 11530386 United States Court of Appeals, Ninth Circuit, that questions the constitutionality of awarding an oppressive award, even if mandated by statute. Even though the award in *Wakefield* was for liability and the award challenged here is for attorney fees, the same principle of fairness applies.

The aggregate attorney fee awards against Plaintiff are unreasonable, oppressive and violate the Constitution, and therefore, if not reversed should be reduced drastically.

This opposition is based on this Opposition to Defendants Patrick C. McGarrigle, Esq. and McGarrigle, Kenney & Zampiello's Renewed Motion for Attorney' Fees, the accompanying Brief Memorandum of Points and Authorities, the Declaration of Laura Lynn Hammett, as well as the pleadings and papers filed herein, and any oral argument presented at the time of hearing, should the Court desire oral argument.

Respectfully submitted,

9/8/2023 /s/ Laura Lynn Hammett

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Certificate of Service

A copy of this Plaintiff's Opposition to Defendants Patrick C. McGarrigle, Esq. and McGarrigle, Kenney & Zampiello's Renewed Motion for Attorney' Fees (Doc. 270) was served upon all counsel of record by filing on the electronic filing system, which automatically notifies all attorneys of record. The service list attached to MKZ's Certificate of Service is incorporated here as if fully set forth, with the addition of Daniel S. Agle, KLINEDINST PC, dagle@klinedinstlaw.com.

9/8/2023

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