

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-001200

09/27/2017

HONORABLE TIMOTHY J. THOMASON

CLERK OF THE COURT  
B. Randhawa  
Deputy

KENNETH FIELDS, et al.

COLIN F CAMPBELL

v.

ELECTED OFFICIALS RETIREMENT PLAN,  
THE, et al.

BENNETT EVAN COOPER

CHARLES A GRUBE

RULING

The Court has considered Plaintiff's Application for Attorney's Fees and Costs filed August 7, 2017, the Opposition to Plaintiff's Application for Attorney's Fees and Costs filed August 21, 2017 and the supplemental filings by both sides on September 22, 2017. The Court finds and rules as follows:

The private attorney general doctrine does not apply here. In *Arnold v. Dept. of Health Services*, 160 Ariz. 593, 609, 718 P.2d 18, 21 (App. 1987), the Court of Appeals held that the private attorney general doctrine is an equitable rule which permits courts, in their discretion, to award attorneys' fees to a party who has vindicated a right that:

1. benefits a large number of people;
2. requires private enforcement; and
3. is of societal importance.

Often, plaintiffs in an action qualifying under this doctrine seek no personal financial gain for themselves and act only for the benefit of the public at large. No such situation is presented here.

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No showing was made that the ruling here benefits a large number of people. Further, it does not appear to the Court as if the issue is of broad societal importance. The plaintiffs here, while hoping to benefit others, also clearly wanted to benefit themselves. As such, the Court declines to award fees under the private attorney general doctrine.

The Court turns to A.R.S. § 12-341.01. That statute empowers the Court, in its discretion, to award fees in contract actions. The amount of fees awarded “need not equal or relate to the attorney fees actually paid or contracted” so long as the award does not “exceed the amount paid or agreed to be paid.” The State argues that the plaintiffs have no personal liability for fees other than those awarded by the Court and therefore no award can be made. The State is wrong.

The fees provision at issue here provides that the attorneys “agree to limit recovery of their fees to those fees and costs awarded by the Court ...” The clients, however, agreed to pay any such fee award over to the attorneys.

The fee obligation belongs to the client. Here, the clients did agree to pay any attorney fees awarded to the lawyers. As such, the language in the statute that the fee not exceed the amount paid or agreed to be paid does not preclude a fee award, because the clients agreed to pay the fees awarded over to the lawyers.

The Court of Appeals addressed a situation where the client agreed to pay her attorney such fees as would be awarded by the court, if any. *Moedt v. General Motors Corp.* 204 Ariz. 100, 60 P.3d 240 (App. 2002). In that case, the Court ruled that this type of an arrangement created a financial obligation between the client and attorney, sufficient to merit a fee award under a different statute. The same situation is presented here. As such, plaintiffs had a sufficient financial obligation to merit a fee award under A.R.S. § 12-341.01.

The “beginning point in a development of a reasonable fee is the determination of the actual billing rate which the lawyer charged in the particular matter.” *Schweigert v. China Doll Restaurant, Inc.* 138 Ariz. 183 (App. 1983). Although Mr. Campbell’s rate is certainly high, the Court finds that the general rates charged and the overall amount of time spent on the case was reasonable.

The Court has considered the factors from *Assoc. Indemnity Corp. v. Warner*, 143 Ariz. 657, 570, 694 P.2d 1181 (1985). Plaintiffs’ counsel are excellent and well-respected lawyers. They did a very good job presenting their case, as did the State and EORP counsel. They were adequately prepared. The time spent on the case was reasonable. This litigation likely could not have been avoided or settled. The legal question presented was not particularly novel, in light of the *Hall* decision. The specific issue presented, however, had not been previously adjudicated. The State’s position on certain points had merit. Assessing fees here will not cause an extreme

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hardship. Awarding fees will not discourage other parties with similar claims or defense from litigation. In light of the foregoing, the Court believes that the bulk of the fees requested should be awarded.

The time spent on January 26 by Mr. Campbell is not awarded. No breakdown of what time was spent on what task is provided. Therefore, Court is unable to determine if that time spent was reasonable. The entire entry is disallowed.

The Court also sustains the three objections on the top of page four of the response. (The Court notes that the \$1300 charge appears to have been reversed in any event).

The objections on the bottom of page four and top of page five regarding clerical time are sustained.

The objection to the time spent on the Power Point is also sustained. Although the Power Point was “well done,” it was not necessary in this trial to the Court.

The objections to the West Law charges are also sustained.

The objection to the \$109.00 fee for “process” is also sustained.

The Court has considered State’s argument that fees should be reduced because of the failure of the plaintiffs to get all of the requested relief. The State has a point. For example, plaintiffs initially requested that the Court dictate how the problem with the unconstitutionality of the statute should be solved. The Court did not grant that relief and did not grant some other requested relief. However, the jist of the requested relief was granted—that the statute is unconstitutional. The time spent by plaintiffs on this case would have been about the same even if they had not requested the other relief that was not awarded.

The Court, in its discretion, reduces the fee award by 20% based on the plaintiffs not receiving all of the requested relief and the other *Warner* factors. The supplemental fees requested on September 12, 2017 are also awarded, with a 20% percent reduction.

**IT IS ORDERED** that the parties shall recalculate the fees and agree upon the amount. Plaintiffs should lodge a judgment within 10 days of this Order and any objection to the proposed judgment is due five days after lodging. There will be no reply.