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| District Court, Larimer County, State of Colorado 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 494-3500 | DATE FILED: December 6, 2018 CASE NUMBER: 2018CV149 ▲ COURT USE ONLY ▲ |
| Plaintiff: Eric Sutherland v. Defendants: The City of Fort Collins, et al. | |
| ORDER GRANTING FORT COLLINS'S MOTION FOR ATTORNEYS' FEES AND BILL OF COSTS | |

The Court has reviewed The City of Fort Collins's Motion for Attorneys' Fees and Bill of Costs, dated September 26, 2018. Having reviewed the motion, response, reply, exhibits, and applicable law, the court finds and orders as follows.

On April 26, 2018, Eric Sutherland filed a Complaint for Declaratory Judgment and Equitable Relief. Plaintiff sought a declaratory judgment from the Court finding that any repayment of debt would be an unlawful violation of the Urban Renewal Authority Act. C.R.S. § 13-25-101, et seq. Plaintiff asked the Court to enjoin the Larimer County Assessor and the Larimer County Treasurer from "calculating or disbursing property tax increment for the purposes of repaying any part" of the debt.

On September 5, 2018, this Court dismissed all of Plaintiff's claims against the City of Fort Collins, Steve Miller, and Irene Josey. The City of Fort Collins now seeks an award of attorneys' fees and costs pursuant to C.R.S. § 13-17-102.

I. Legal Standards

In a civil action, a court may award attorney fees if the opposing party "brought or defended an action, or any part thereof, that lacked substantial justification." C.R.S. § 13-17-102(4). An action "lacked substantial justification" if it was "substantially frivolous, substantially groundless, or substantially vexatious." *Id.* Attorney fees may only be awarded against an unrepresented party when "the party clearly knew or

reasonably should have known that his action or defense, or any part thereof, was substantially frivolous, substantially groundless, or substantially vexatious.” C.R.S. § 13-17-102(6).

“A claim is substantially frivolous if the proponent can present no rational argument based on the evidence or law in support of that claim or defense.” *City of Aurora ex rel. Util. Enter. v. Colorado State Eng'r*, 105 P.3d 595, 620 (Colo. 2005), *as modified on denial of reh'g* (Feb. 14, 2005).

If a party “requests a hearing concerning the award of fees and costs... then the district court must hold a hearing.” *In re Marriage of Aldrich*, 945 P.2d 1370, 1379-80 (Colo. 1997). If, however, a party objects to the amount of fees requested but does not request a hearing, the court is not required to hold a hearing. *Id.*

When determining whether to award attorney fees and, if so, what amount to award, the court examines a list of factors:

- (a) The extent of any effort made to determine the validity of any action or claim before said action or claim was asserted;
- (b) The extent of any effort made after the commencement of an action to reduce the number of claims or defenses being asserted or to dismiss claims or defenses found not to be valid within an action;
- (c) The availability of facts to assist a party in determining the validity of a claim or defense;
- (d) The relative financial positions of the parties involved;
- (e) Whether or not the action was prosecuted or defended, in whole or in part, in bad faith;
- (f) Whether or not issues of fact determinative of the validity of a party's claim or defense were reasonably in conflict;
- (g) The extent to which the party prevailed with respect to the amount of and number of claims in controversy;
- (h) The amount and conditions of any offer of judgment or settlement as related to the amount and conditions of the ultimate relief granted by the court.

C.R.S. § 13-17-103(1).

II. Application of Law

The City of Fort Collins asks the Court to award it attorney fees and costs. Plaintiff opposes this request and requests a hearing. The Court will hold a hearing on the motion.

Order

The City is ordered to file a notice to set hearing within 14 days of the date of this order.

Settings may be scheduled any Tuesday or Wednesday at 1:15 p.m. The Division Clerk will initiate the call to the Parties/ Attorneys. If you have any questions regarding setting procedures, please call Alyson Miller, Division Clerk, at (970) 494- 3810.

Dated: December 6, 2018.

BY THE COURT:



Gregory M. Lammons
District Court Judge