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Fulton County Superior Court

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**IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA**

STRATEGIC JUBILEE HOLDINGS, LLC,)	
and JUBILEE MANAGER, LLC)	
)	
Plaintiffs,)	
)	
v.)	Civil Action File No. 2016CV283484
)	
JUBILEE DEVELOPMENT PARTNERS,)	
LLC, MINCHEW ENTERPRISES, LLC,)	
RONALD REESER, MASON DRAKE and)	
KENNETH MINCHEW,)	
)	
Defendants.)	

ORDER ON PENDING MOTIONS

The above-styled case is before this Court on Plaintiffs Strategic Jubilee Holdings, Inc. (“Stategic Jubilee”) and Jubilee Manager, LLC’s (“Jubilee Manager”) (collectively “Plaintiffs”) Motion for Attorneys’ Fees pursuant to O.C.G.A. § 9-11-11.1(b.1) (“Motion for Attorneys’ Fees”) and Plaintiffs’ Motion to Strike Defendants’ Supplemental Response Brief. Having considered the record, the Court finds as follows:

SUMMARY OF RELEVANT PLEADINGS AND PROCEDURAL BACKGROUND

In 2015 Jubilee Investment Holdings, LLC (“JIH”) was formed to purchase and hold 2,718 acres of land in Santa Rosa County, Florida. Jubilee Manager was simultaneously formed to serve as the managing member of JIH, and was expected to lead the development of the Florida property. Jubilee Manager’s members included: Strategic Jubilee; Defendant Jubilee Development Partners, LLC (“JDP”); Defendant Minchew Enterprises, LLC (“Minchew Enterprises”), which is owned by Defendant Kenneth Minchew; and non-party River Life Investments, LLC (“River Life”).

In January 2016, Defendants received letters alleging that Jubilee Manager was in material breach of JIH's Operating Agreement for failing to make certain capital contributions. Specifically, Plaintiffs allege JDP and Minchew Enterprises had failed to make their initial capital contributions as set forth in the Jubilee Manager Operating Agreement ("Jubilee Manager Agreement"). Thus, Jubilee Manager was unable to pay its capital contribution to JIH as set forth in the JIH Operating Agreement ("JIH Agreement"). Defendants dispute that their capital contributions were due. However, based on the alleged breach, Jubilee Manager was removed as the managing member of JIH and Plaintiff Strategic Jubilee was substituted in that role.

Subsequently certain investors in JIH (specifically Ricky B. Novak and James W. Freeman) determined they no longer intended to develop the Florida property, but instead would donate a large portion of it to the State of Florida. To prevent the property from being donated, on Nov. 1, 2016, the five Defendants in this case along with Jubilee Manager sued Strategic Jubilee, JIH, River Life, and others in Santa Rosa County, Florida (hereinafter "Florida Lawsuit") seeking damages and injunctive relief for the wrongful removal of Jubilee Manager as managing member of JIH and for attempting to donate the property and also filed a *lis pendens*. On Nov. 7, 2016, Defendant Ronald Reeser (manager of Jubilee Manager) wrote a letter to the Santa Rosa county attorney (and copied all Santa Rosa County Commissioners and the County Administrator), stating that the proposed donation of property to Santa Rosa County was not approved by JIH and that the control of JIH was the subject of the Florida lawsuit. The Florida court ultimately dissolved the *lis pendens* and the Florida Lawsuit was voluntarily dismissed Lawsuit on Jan. 19, 2017.

In this action Plaintiffs seek a declaratory judgment that JDP and Minchew Enterprises are not members of Jubilee Manager since they failed to make the requisite initial capital

contributions. To the extent these Defendants are determined to be members, Plaintiffs raise a breach of contract claim against JDP and Minchew Enterprises for failing to make their capital contributions per the Jubilee Manager Agreement as well as a breach of fiduciary duty claim against Defendants Ronald Reeser, Mason Drake, and Kenneth Minchew—the managers appointed by JDP and Minchew Enterprises—for failing to cause JDP and Minchew Enterprises to pay their initial capital contributions.

Earlier in this litigation, Defendants sought to strike Plaintiffs' Complaint as a violation of Georgia's anti-SLAPP statute, contending this lawsuit arises from their attempts to lawfully petition the government through the Florida Lawsuit and through their various contacts with Santa Rosa County.¹ On April 14, 2017, this Court entered an Order denying Defendants' Motion to Strike. The Court held that the Complaint did not violate Georgia's anti-SLAPP statute and noted that even assuming the Florida Lawsuit and letter to the Santa Rosa county attorney were acts of free speech, the claims in this action do not arise from the same facts as the Florida Lawsuit and, thus, the anti-SLAPP statute does not apply. The Court of Appeals of Georgia affirmed the Court's ruling in January 2018 and the Supreme Court of Georgia denied certiorari in August 2018. Plaintiffs now seek their attorneys' fees and expenses of litigation under the anti-SLAPP statute's fee shifting provision,² and have moved to strike a supplemental brief submitted by Defendants in opposing Plaintiffs' Motion for Fees.

¹ See generally Defendants' Motion to Strike, or in the Alternative, Motion to Dismiss Plaintiffs' Complaint for Violation of Georgia's Anti-SLAPP Statute ("Motion to Strike").

² Defendants filed their Notice of Appeal of the Court's Apr. 14, 2017 order on May 15, 2017. Thus, although Plaintiffs' Motion for Attorneys' Fees was filed on May 22, 2017, the Court deferred ruling on the motion pending the appeal.

ANALYSIS

The purpose of the anti-SLAPP statute is to ensure that the “valid exercise of the constitutional rights of petition and freedom of speech” is not “chilled through abuse of the judicial process.” O.C.G.A. § 9-11-11.1(a). *See Settles Bridge Farm, LLC v. Masino*, 318 Ga. App. 576, 580, 734 S.E.2d 456, 460 (2012) (“The purpose of the anti-SLAPP statute is to quickly end oppressive and speech-chilling litigation against those who attempt to participate in discussions on matters of public importance”) (citing *Atlanta Humane Soc’y v. Harkins*, 278 Ga. 451, 456, 603 S.E.2d 289, 295 (2004)).

(b)(1) A claim for relief against a person or entity arising from any act of such person or entity which could reasonably be construed as an act *in furtherance of the person's or entity's right of petition or free speech* under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern shall be subject to a motion to strike unless the court determines that the nonmoving party has established that there is a probability that the nonmoving party will prevail on the claim.

O.C.G.A. § 9-11-11.1(b) (emphasis added).

[T]he term ‘act in furtherance of the person's or entity's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern’ *shall include*: [a]ny written or oral statement or writing or petition made before a ... judicial proceeding, or any other official proceeding authorized by law; [or] [a]ny written or oral statement or writing or petition *made in connection with* an issue under consideration or review by a ... judicial body, or any other official proceeding authorized by law[.]

O.C.G.A. § 9-11-11.1(c) (emphasis added).

In the present Motion, Plaintiffs ask the Court to grant an award of their attorneys’ fees and expenses of litigation, asserting Defendants’ Motion to Strike based on the anti-SLAPP statute was frivolous and aimed at causing delay. In this regard O.C.G.A. § 9-11-11.1(b.1) states in pertinent part:

If the court finds that a motion to strike *is frivolous or is solely intended to cause unnecessary delay*, the court *shall* award attorney's fees and expenses of litigation to the nonmoving party prevailing on the motion for the attorney's fees and expenses of litigation associated with the motion in an amount to be determined by the court based on the facts and circumstances of the case.

O.C.G.A. § 9-11-11.1(b.1) (2016) (emphasis added).

A. Motion to Strike Defendants' Supplemental Response Brief

The parties submitted supplemental briefing on Plaintiffs' Motion for Fees following the Supreme Court of Georgia's denial of Defendants' petition for writ of certiorari. Plaintiffs now move to strike Defendants' Supplemental Response in Opposition to Plaintiffs' Motion for Attorney Fees ("Supplemental Response"), noting it was filed after the entry of a Case Management Order which stated the Court would rule on the Motion for Attorneys' Fees based on the briefs that had already been submitted. Nevertheless, having considered Plaintiffs' own reply brief, the Court will consider Defendants' Supplemental Response and, thus, hereby DENIES Plaintiffs' Motion to Strike Defendants' Supplemental Response Brief.

B. Plaintiffs' Motion for Attorneys' Fees

In opposing the Motion for Attorney's Fees, Defendants argue the Motion to Strike was not "frivolous" and cite the procedural history of their appeal, specifically noting that the Court of Appeals granted oral argument, issued a written opinion, and did not *sua sponte* assess fees for a frivolous appeal. Defendants also assert their Motion to Strike was not "solely intended to cause unnecessary delay" but rather was filed in good faith because they viewed this lawsuit as arising from and attempting to frustrate their petitioning activity in Florida. They further argue that, insofar as no evidence is before the Court of the subjective intent of any Defendant in filing the Motion to Strike, there is nothing in the record that would permit the Court to make a finding of such intent. The Court is not persuaded.

The appellate history of the case relates to the Court of Appeals' assessment of the appeal itself and not the frivolity of the Motion to Strike. Furthermore, to the extent that the Court of Appeals only reviews the findings and holdings of the trial court, the issue of the frivolity of the motion to strike, which was not decided by the trial court, was not before the Court of Appeals. See Etowah Environmental Group, LLC v. Walsh, et al., 333 Ga. App. 464, 470, 774 S.E.2d 220 (2015) (noting that on appeal, the Court of Appeals only "pass[es] . . . judgment" on the issues that have been decided by the trial court and have been challenged on appeal).

Notably, the current fee shifting provision contained in O.C.G.A. § 9-11-11.1 (b.1) was added during the 2016 amendment to the anti-SLAPP statute. The pre-2016 version of the statute did not provide for an award of fees for a frivolously asserted motion to strike/motion to dismiss. Insofar as the language did not exist in the pre-2016 version of the statute and Georgia courts have not yet interpreted the new version of the anti-SLAPP law, no binding interpretation of "frivolous" as used in the anti-SLAPP statute exists. However, Black's Law Dictionary defines "frivolous" as "lacking a legal basis or legal merit." FRIVOLOUS, Black's Law Dictionary (10th ed. 2014). *Cf.* O.C.G.A. §9-15-14 (authorizing an award of reasonable attorney's fees and expenses where an attorney or party brings or defends an action that "lacked substantial justification" or was "interposed for delay or harassment"; defining "lacked substantial justification" to mean "substantially frivolous, substantially groundless, or substantially vexatious").

Here, Defendants' Motion to Strike itself suggests that this litigation did not arise from the underlying dispute in the Florida Lawsuit as it characterizes the Florida litigation as the result of "unsuccessful negotiations" concerning "the improper efforts to donate the land."³ A Consent Order entered by the Florida court notes that it was "entered into to reach a settlement of certain matters among the parties affecting a certain parcel of land."⁴ Similarly, Reeser's letter to the Santa Rosa county attorney focuses on the parties' dispute regarding the attempted donation of the Florida property.

A review of the pleadings in this action demonstrates this litigation plainly does not arise from the voluntarily dismissed Florida Lawsuit or Defendants' contacts with the Santa Rosa county attorney nor are the causes of action asserted in this case based on acts in furtherance of the rights of free speech or the petition of government. Rather, this action plainly concerns a bona fide dispute over the ownership and control of Jubilee Manager and the rights and obligations of the parties under the relevant Operating Agreements. Thus, even construing the anti-SLAPP statute "broadly" as required by O.C.G.A. §9-11-11.1(a), it appears apparent the statute simply has no application or bearing whatsoever on the subject claims. The Court finds Defendants' attempt to strike the Complaint on such grounds was manifestly frivolous and so completely lacking in legal basis or merit that it could only have been intended to unnecessarily delay this litigation. Having considered the totality of the record in rendering this decision, the Court hereby GRANTS Plaintiffs' Motion for Attorneys' Fees under O.C.G.A. §9-11-11.1(b.1) but will defer a hearing and ruling on the measure of such fees until later in the case.

³ Defendants' Brief in Support of Motion to Strike, or in the Alternative, Motion to Dismiss Plaintiffs' Notice of Filing Relating to Defendants' Anti-SLAPP Motion to Strike (filed Mar. 14, 2017), p. 4.

⁴ *Id.* at Ex. B (Consent Order) at p. 1.

SO ORDERED this 11th day of December, 2018.



SENIOR JUDGE ELIZABETH E. LONG
Superior Court of Fulton County
Business Case Division
Atlanta Judicial Circuit

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