Andrea Lynn Chasteen Will County Circuit Clerk Twelfth Judicial Circuit Court Electronically Filed 2021AR000549

Filed Date: 8/10/2021 1:39 PM Envelope: 14378983

Clerk: AJG

# IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT WILL COUNTY, ILLINOIS

JOHN E. NORTON,	
Plaintiff,	
VS.	Case No. 2021 AR 549
LEONARD MCCUBBIN, JR.,	
Defendant.	

# MOTION TO DISMISS COMPLAINT AND FOR SANCTIONS

NOW COMES Defendant LEONARD MCCUBBIN, by and through his attorneys, DDV LAW, LTD., and for his Motion to Dismiss Plaintiff, JOHN NORTON's, Complaint, pursuant to 735 ILCS 5/2-619(a)(4) and for Sanctions, states as follows:

# Introduction

- 1. On October 30, 2019, Plaintiff filed a complaint against Defendant and others under Will County Case Number 2019 L 943 (the "First Action"), which included allegations that Defendant harassed, intimidated, and battered, Plaintiff and that Defendant committed perjury. A copy of that complaint is attached hereto as Exhibit A.
  - 2. On July 31, 2020, Plaintiff's complaint was dismissed with prejudice.
- 3. Plaintiff has now refiled his claim complaining of the same alleged battery in this complaint (the "Second Action"). A copy of the complaint is attached hereto as Exhibit B.
- 4. Because this action is for the same claims based upon the same facts as the prior one, it should be dismissed pursuant to § 2-619(a)(4) of the Code of Civil Procedure.

# Argument

- I. The Complaint should be dismissed because it is duplicative of a previously-dismissed action.
- 5. In the First Action, Plaintiff alleged that on June 13, 2019, Defendant committed an act of battery against him, which was purportedly captured on video tape at the Wesley Township Hall. He also alleged that on September 11, 2019, Defendant placed signage on his property and other locations in Wesley Township for purposes of harassing, intimidating, and dissuading Plaintiff's witnesses from testifying in court.
- 6. In the Second Action, Plaintiff alleges that on June 13, 2019, Defendant committed an act of battery against him, which was purportedly captured on video tape at the Wesley Township Hall.
  - 7. The claims in both actions with respect to Defendant are factually identical.
- 8. On July 31, 2020, the Court granted Defendant's motion to dismiss under Section 2-615. The Court's July 31, 2020, order is attached as Exhibit C.
- 9. Section 2-619(a)(4) provides for the involuntarily dismissal of an action that is barred by a prior judgment. 735 ILCS 5/2-619(a)(4) (West 2021).
- 10. A defendant may seek an involuntary dismissal if the claim is barred by a prior judgment under the theory of *res judicata* or collateral estoppel. *Dick v. Peoples Mid-Illinois Corp.*, 242 Ill.App. 3d 297, 1002 (4th Dist. 1993).
- 11. The minimum threshold requirements for the application of collateral estoppel are: (1) the issue decided in the prior adjudication is identical to the one presented in the suit in question; (2) there was a final judgment on the merits; and (3) the party against whom estoppel is asserted was a party or in privity with a party in the prior adjudication. Armstead v. National Freight, Inc., 2020 IL App (3d) 170777 ¶ 23.

- 12. A final judgment is one which fixes, determines, and disposes of the parties' rights regarding litigation on some definite, separate part of the litigation. *Saddle Signs, Inc. v. Adrian*, 272 Ill.App. 3d 132, 135 (3rd Dist. 1995).
- 13. The doctrine applies in this case because the allegations against Defendant in both actions are identical, the Court issued a final judgment on the merits, and the parties are the same.
- 14. In addition, Plaintiff's Complaint is brought for purposes of harassment and with the intention of chilling Defendant's participation in the public affairs of his community.
  - 15. For that reason, the Court should dismiss the Complaint, with prejudice.

# II. The Court should enter sanctions against Plaintiff under the Citizens Participation Act and Rule 137.

- 16. In addition, the Court should impose sanctions and award Defendant's attorney's fees associated with defending against this complaint.
- 17. On September 9, 2020, Defendant petitioned the Court for sanctions on the original complaint. The Court awarded sanctions in its order of October 9, 2020. A copy of the Court's October 9, 2020 order is included as Exhibit D.
- 18. As with his previous complaint, Plaintiff brings this Complaint under the Citizens Participation Act (the "Act").
- 19. Section 25 of the Act states that the court shall award a party who prevails in a motion under this Act reasonable attorney fees and costs associated with the motion. 735 ILCS 100/25 (West 2021).
- 20. Illinois courts interpret Section 25 to allow for attorney fees related to a motion to dismiss. *Sandholm v. Kuecker*, 2012 IL 111443 ¶ 65.
- 21. Additionally, Plaintiff has intentionally filed the same claim in a different venue hoping to obtain a different result. The allegations against Defendant related to the battery claim

are identical in both actions. However, Plaintiff seeks just under the statutory maximum to bring this claim in the arbitration division before a different judge. Therefore, sanctions are proper under Rule 137.

# Conclusion

WHEREFORE, Defendant respectfully requests this Honorable court dismiss Plaintiff's complaint with prejudice, award attorney fees and costs associated with filing this motion, and any additional relief this Court deems just and appropriate.

MEGHAN PRESTON (ARDC: 6293577)
DANIEL SCHEERINGA (ARDC: 6313911)
DDV LAW, LTD.
14524 JOHN HUMPHREY DRIVE
ORLAND PARK, IL 60462
(708) 675-7144

MPRESTON@DDVLAWYERS.COM DSCHEERINGA@DDVLAWYERS.COM Respectfully submitted,

DDV Law, Ltd., By Meghan E. Preston

Andrea Lynn Chasteen Will County Circuit Clerk Twelfth Judicial Circuit Court Electronically Filed

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT

WILL COUNTY, ILLINOIS

Filed Date: 10/30/2019 12:37 PM Envelope: 7167540 Clerk: AHD

19L943

JOHN NORTON,

Plaintiff,

v.

Leonard McCubbin Jr.,

Connie Hale Forsythe,

Micheal Esposito,

Cynthia L Brzana, Mary Jones,

Kirk Allen, Becky Becker,

Arlin Fritz

Defendants.

# **COMPLAINT**

NOW COMES Plaintiff, JOHN NORTON, to bring this suit, and, in support of his Complaint, NORTON states as follows:

# INTRODUCTION

1. Pursuant to the fundamental philosophy of the American Constitutional form of government, it is declared to be the public policy of the State of Illinois that the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence. The information, reports, opinions, claims, arguments, and other expressions provided by citizens are vital to effective law enforcement, the operation of government, the making of public policy and decisions, and the continuation of representative democracy. The laws, courts, and other agencies of this State must provide the utmost protection for the free exercise of these rights of petition, speech, association, and government participation.

Civil actions for money damages have been filed against citizens and organizations of this State as a result of their valid exercise of their constitutional rights to petition, speak freely, associate freely, and otherwise participate in and communicate with government. There has been a disturbing increase in lawsuits termed "Strategic Lawsuits Against Public Participation" in government or "SLAPPs" as they are popularly called.

The threat of SLAPPs significantly chills and diminishes citizen participation in government, voluntary public service, and the exercise of

these important constitutional rights. This abuse of the judicial process can and has been used as a means of intimidating, harassing, or punishing citizens and organizations for involving themselves in public affairs. It is in the public interest and it is the purpose of this Act to strike a balance between the rights of persons to file lawsuits for injury and the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government; to protect and encourage public participation in government to the maximum extent permitted by law; to establish an efficient process for identification and adjudication of SLAPPs; and to provide for attorney's fees and costs to prevailing movants. (735 ILCS 110/5)

- 2: That Defendant Cynthia L, Brzana was Convicted of Battery against the Plaintiff on April 15, 2019. (2018 OV 003089)
- 3: That Defendant Allen, a founding member of the Edgar County Watchdogs, finds comfort in public controversy and attention surrounded by the use of unfounded facts and is thus motivated by the financial gain, by and from donations from many of the claimed 4,000 plus followers of his cause, thru his 501(c)4 status.
- 4: Federal Trade Commission complaint was filed on August 15, 2019 by the Plaintiff against Defendant Allen (FTC Report Number: 110532994).

# **PARTIES**

# 5. Plaintiff:

i. JOHN NORTON is a citizen of Wesley Township in Will County, Illinois and is a Private Citizen and not in a Position of Authority or an Elected Official as of May 15, 2017 to present.

# 6. Defendants:

- i. Defendants Leonard McCubbin Jr., Connie Hale Forsythe, Michael Esposito, Cynthia L. Brzana, Mary Jones, Becky Becker and Arlin Fritz are residents of Wesley Township, located in Will County.
- ii. Defendant Kirk Allen resides in Illinois at an undisclosed location and operates and is in control

# of the organization commonly known as The Edgar County Watchdogs.

# FACTS COMMON TO EACH COUNT

- 7: Upon information and belief, defendants have undertaken a campaign to prevent the Plaintiff from enjoining his granted rights as defined in 735 ILCS 110/1.
- 8: Upon information and belief that all named defendants have met and agreed to further the idea of such a campaign to discourage and deny the Plaintiff's participation in local government.
- 9: The Defendants, utilizing social media and cellular text messages, have pursued the Plaintiff to various locations, on numerous occasions, during the last two (2) years, to take photos and make audio/video recordings, as a means of and attempt to, intimidate and harass the Plaintiff, to which was stated in witness testimony, in open Court, by James Spinale.
- 10: Upon information and belief, each of the defendants directly and indirectly used social media to intimidate and discourage the Plaintiff from attending township meetings and utilize township properties, such as the township park.

# COUNT I-

11: On or about 13 June 2019 at 20:29 Hours, Defendant McCubbin committed an Act of Battery against the Plaintiff, resulting in bodily harm that required medical attention at Riverside Hospital located in Kankakee, Illinois, and that such Act was captured on video tape from two camera angles, located in the office spaces of Wesley Township Hall. (Exhibit A)

### COUNT II -

12: Defendant Esposito did commit perjury to the effect that he witnessed the events between Plaintiff Norton and Defendant McCubbin on 13 June 2019. Two (2) videos and other evidence were presented in and to the Court, in case number 19OP1200. (Exhibit B)

# COUNT III -

13. On August 13, 2019 at 19:15 Hours, that all of the above mentioned Defendants, with the exception of Defendant Esposito, did willingly and knowingly impede the Plaintiff's right to observe and/or participate in local government by standing in front of and blocking the view of the Plaintiff, even after the Plaintiff had moved to different locations located within the meeting hall commonly known as Wesley Township Hall. Exhibit D clearly shows there was adequate seating provided to the audience and therefore no logical reason to stand in front of the Plaintiff. (Exhibits C, D)

# **COUNT IV-**

14: Defendant Allen has a 501 (c) 4 status and had used it for the purposes of personal financial gain, to harass and intimidate the Plaintiff, and, directed others to do same, upon the Plaintiff, thru the use of the Edgar County Watchdog Facebook pages and associated Websites, and during Wesley Township meetings.

# **COUNT V-**

15: That, Defendant Mary Jones, on August 13, 2019, in the presence of witnesses, did knowingly and purposely impede the Plaintiffs granted rights under the Open Meetings Act by forcefully placing a folding chair in directly front of the Plaintiff and sitting down, causing minor injury to the Plaintiff's right foot.

### COUNT VI-

16: That on or about the evening of September 11, 2019, one or more of the Defendants placed, or caused to be placed, signage on property owned or maintained by Defendant McCubbin and various other locations in Wesley Township for the purposes of harassing, intimidating and dissuading the Plaintiff's witnesses and potential witnesses from testifying in Open Court. (Exhibits E, F and G)

WHEREFORE, PAINTIFF, NORTON, respectfully asks this Honorable Court to grant the following relief:

- i. Enjoin Defendants from participating in or making further attempts to dissuade, impede or hinder John Norton from his granted rights under the 735 ILCS 110/1;
- Award John Norton monetary damages in an amount to be determined at trial against each named defendant in an amount of at least \$1,000,000 or such other amount required for jurisdiction of this case;
- iii. Plaintiff be awarded punitive damages against each named defendant;
- iv. That John Norton have such other or further relief as this Court deems just, equitable or necessary.
- iv. Order Defendants to pay civil penalties;
- v. Award Plaintiff reasonable attorneys' fees if Plaintiff hires an attorney for this cause, and costs;
- vii. Award such other relief the Court considers appropriate;
- viii. Award Plaintiff court filing fees.

RESPECTFULLY SUBMITTED,		
JOHN NORTON		

# Exhibit A Security Camera Video 1



Exhibit B
Security Camera Video 2



Exhibit C





Exhibit E



Exhibit F



Exhibit G



# IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT WILL COUNTY, ILLINOIS

JOHN NORTON,	)	21 JUN 17 PM 2: 32
Plaintiff,	)	CLERK, CIRCUIT COURT WILL COUNTY, ILLINOIS
<b>v.</b>	)	Case No: <u>Z() Z   T K ()</u> () 59°
Leonard McCubbin Jr.,	)	
Defendant.	ý	

# **COMPLAINT**

NOW COMES Plaintiff, JOHN NORTON, to bring this suit, and, in support of his Complaint, NORTON states as follows:

# INTRODUCTION PARTIES

# 1. Plaintiff:

i. JOHN NORTON is a citizen of Wesley Township in Will County, Illinois and is a Private Citizen and not in a Position of Authority or an Elected Official as of May 15, 2017 to present;

# 2. Defendant:

i. Defendant Leonard McCubbin Jr. is a resident of Wesley Township, located in Will County;

# **FACTS COMMON TO EACH COUNT**

- 3: Upon information and belief, the Defendant has undertaken a campaign to prevent the Plaintiff from enjoining his granted rights as defined in 735 ILCS 110/1, commonly referred to as the Citizens Participation Act;
- 4: Upon information and belief, the Defendant directly and indirectly used social media to intimidate and discourage the Plaintiff from attending township meetings and utilize township properties, such as the township parks: 28 WCCH
- 96/21 township park; 28 WCCH EXHIBIT B 5: that the Defendant has had numerous Orders of Protection granted against him in Will County due to his violent history:

6: that Plaintiff Norton has grave concerns for his personal safety from the Defendant due to the actions of the Defendant and his previous history with this Court;

# COUNT I -

7: On or about 13 June 2019 at 20:29 Hours, Defendant McCubbin committed an Act of Battery against the Plaintiff, resulting in bodily harm that required medical attention at Riverside Hospital located in Kankakee, Illinois, and that such Act was captured on video tape from two camera angles, located in the office spaces of Wesley Township Hall. (Exhibit A and B);

I: Plaintiff Norton was standing outside the township hall when he heard his daughter, Sarah Norton, Wesley Township Clerk, in a loud voice, telling defendant McCubbin to leave the office space so she could complete her duties;

II: Plaintiff Norton entered thru the front door, believing his daughter, Sarah Norton, Wesley Township Clerk, was under duress by an unknown person, and asked "What's going on?":

III: Upon entering the front hallway, Defendant McCubbin ran up and got within six (6) inches of the Plaintiff's face;

IV: Plaintiff Norton immediately placed his hands behind his back, as seen in Exhibit 1 video, and said "Shut up, Lenny";

V: Plaintiff Norton attempted to pass on the Defendants left side in order to avoid a conflict;

VI: Defendant McCubbin turned and struck Plaintiff Norton, with his right fist, contacting with Plaintiff Norton's head at the base of the skull on his left side (Video Time Index 21:29:35 EST);

VII: Plaintiff Norton took several steps forward, with his hands still behind his back and told the Wesley Township Clerk to call the Police;

VIII: Witness Sarah Norton stated in Open Court, in Case No: 2019OP1200, as to what she observed, relating to Defendant McCubbins actions, and confirmed in her testimony that Defendant McCubbin's actions was that of an unprovoked attack upon the Plaintiff;

# COUNT II -

8: that Michael Esposito, witness for Defendant McCubbin in Case No. 2019OP1200, did commit perjury to the effect that he stated, in Open Court, that he witnessed the events between Plaintiff Norton and Defendant McCubbin on 13 June 2019, when in fact, he was standing outside the township hall, next to his vehicle, smoking a cigarette, during the time of the alleged Battery upon the Plaintiff (Video Time Index 21:29:35 EST of Exhibit C);

9: Three (3) videos and other evidence were presented in and to the Court, in case number 2019OP1200 (Exhibits A, B and C); 10: that Defendant McCubbins's request for an Order of Protection was

**DENIED**;

11: that the Defendant filed for such Order in an attempt to deter and intimidate the Plaintiff from pursuing criminal charges and/or any future civil case;

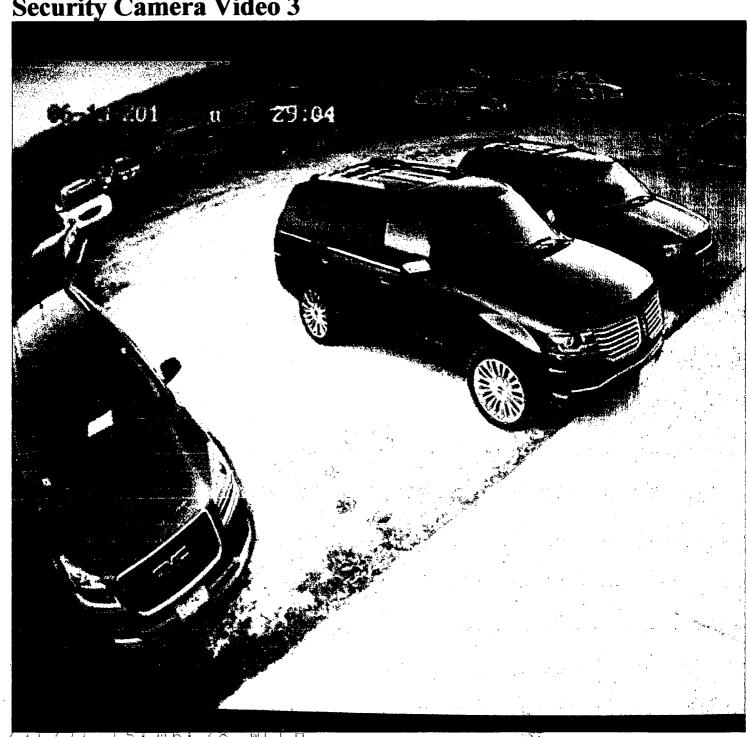
12: Attorney Robert Hanlon was representing Defendant McCubbin during the trial:

WHEREFORE, PAINTIFF, NORTON, respectfully asks this Honorable Court to grant the following relief:

- Enjoin the Defendant from participating in or making further attempts to dissuade, impede or hinder Plaintiff Norton from his granted rights under the 735 ILCS 110/1;
- ii. Award Plaintiff John Norton monetary damages in an amount to be determined at trial against the Defendant in an amount of at least \$45,000 or such other amount required for jurisdiction of this case;
- iii. Plaintiff be awarded punitive damages from the defendant;
- iv. That the Plaintiff have such other or further relief as this Court deems just, equitable or necessary.
- iv. Order Defendant to pay civil penalties;
- v. Award Plaintiff reasonable attorneys' fees if Plaintiff hires an attorney for this cause, and costs;
- vii. Award such other relief the Court considers appropriate;
- viii. Award Plaintiff court filing fees.

RESPECTFULLY SUBMITTED,

Exhibit C Security Camera Video 3



# **Exhibit A Security Camera Video 1**



IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT WILL COUNTY, ILLINOIS				
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DEFENDANT YES PRESENT NO			DEFENDANT PLESTON FLCA	DYES NO
	THE COURT BEING AD	VIC		<u> </u>
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# IN THE CIRCUIT COURT OF THE TWELFTH JUDICUAL CIRCUIT WILL COUNTY, ILLINOIS 20 OCT -9 PM 2: 53 John Norton, Plaintiff, 19-L-943 v. John C. Anderson Leonard McCubbin Jr., et al., Defendants. IN THE CIRCUIT COURT OF THE TWELFTH JUDICUAL CIRCUIT WILL COUNTY, ILLINOIS 19-L-943 V. John C. Anderson Circuit Judge Defendants.

# **ORDER**

This case is before the Court on two motions for attorneys' fees pursuant to section 25 of the Citizen Participation Act (CPA) (735 ILCS 110/25). The first motion was filed by defendants Cynthia Brzana, Connie Hale Forsyte, Becky Becker, and Kirk Allen through their attorney, Robert Hanlon. The second motion was filed by Leonard McCubbin through his attorney, Megan Preston. The Court awards fees as identified below.

# I. Background

The case began on October 30, 2019, when Mr. Norton filed an unsigned complaint that he characterized as being brought under the CPA. He amended on January 16, 2020 without leave of court.

On February 18, 2020, he appeared in Court along with Mr. McCubbin, who was the only defendant who had been served. On that date, he claimed that the other defendants had been evading service, although there is no basis in the Court record to firmly establish that he tried to serve them. He made an oral motion for alternative service, and the Court advised him (three times) that such a motion must be made in writing and be supported by an affidavit.

On March 2, 2020, Mr. Norton appeared again. And, again, he advised the Court that the other defendants were evading service. He presented the Court with what could be arguably construed as a motion for alternative service, but the Court determined that it was not supported by a sufficiently detailed affidavit. The Court denied Mr. Norton's motion and advised him that he could make another attempt.

On March 3, 2020, Mr. Norton filed another motion for alternative service, but that motion (again) lacked the information the Court instructed Mr. Norton to include.

On March 5, 2020, Mr. Hanlon filed an appearance for defendants Cynthia Brzana, Connie Hale Forsythe, Becky Becker, and Kirk Allen. He also filed a petition for rule to show cause. In it, he noted that Mr. Norton's suggestions of defendants "evading service" appeared specious and that there was little basis to show Mr. Norton had made a good-faith effort to serve the remaining defendants. The same day, Mr. Hanlon filed two motions to dismiss on behalf of his clients, one under 2-619 and the other under 2-615.

On March 9, 2020, with Mr. Norton present, the Court entered a briefing order which directed Mr. Norton to respond (by April 23, 2020) to the motions to dismiss. The Court also took under advisement the March 3, 2020 motion for alternative service, as defendants Michael Esposito, Mary Jones, and Arlin Fritz were never served. The following day, the Court denied the motion for alternative service, holding that the motion did not adequately establish that Mr. Norton had undertaken sufficient efforts to obtain service in the conventional fashion, nor did he adequately establish defendants were evading service.

On March 12, 2020, defendant McCubbin filed his own motion to dismiss under 2-615.

On July 31, 2020 (following continuances due to COVID-19), the case was called. Mr. Norton was present in court but acknowledged that he had not responded to Mr. Hanlon's motions to dismiss. When asked why, he claimed to not know anything about the motions. The Court determined that he was not at all credible in making this claim. The Court took all matters under advisement and informed the parties that it would issue a ruling by mail.

Following adjournment, Mr. Norton filed a motion for an order of protection. Later that day, the Court entered an order which, among other things, granted Mr. Hanlon's 2-615 and 2-619 motions. The Court also granted Ms. Preston's 2-615 motion to dismiss, finding that further briefing and hearing would be unnecessary and unhelpful. See Korbelik v. Staschke, 232 Ill.App.3d 114, 118-19 (1992); Parkway Bk. v. Meseljevic, 406 Ill.App.3d 435, 441 (2010). The Court also found that repleading would likely not cure the defects in his amended complaint and dismissed the case with prejudice in part due to the nature of his claim, and in part due to his previously-demonstrated inability to follow the Court's directives. The Court also struck his request for an order of protection because the 12<sup>th</sup> Circuit has a separate administrative division that hears cases for orders of protection. The Court advised Mr. Norton that he could seek an order of protection by filing an OP case through standard channels.

Mr. Hanlon then filed his motion seeking roughly \$17,000 in fees. Ms. Preston seeks over \$5000.

# II. Fees

Under the American rule, a successful litigant may not recover litigation expenses in the absence of a statute or a contractual agreement between the parties permitting recovery of such fees. *Duignan v. Lincoln Towers Insurance Agency, Inc.*, 282 III.App.3d 262, 267 (1996); *Krantz v. Chessick*, 282 III.App.3d 322, 329 (1996). In this instance, defendants rely on a statutory fee-shifting provision. *See* 735 ILCS 110/25. But, two barriers stand between defendants and the full amounts they seek.

# A. Which Fees are Recoverable

It appears defendants seek fees from the inception of the case, and for work on all aspects of the case. They are not entitled to that. Rather, under the fee shifting statute, they may seek "reasonable attorney's fees and costs incurred *in connection with the motion*." (Emphasis added.) 735 ILCS 110/25. A "motion," includes "any motion to dismiss, for summary judgment, or to strike, or any other judicial pleading filed to dispose of a judicial claim." 735 ILCS 110/10 (West 2008). Statutes which allow for such fees must be strictly construed, and that includes the fee-shifting provision in section 25. *Sandholm v. Kuecker*, 2012 IL 111443, ¶64. Indeed, in *Sandholm*, our supreme court held:

In an apparent misreading of the plain language of the statute, defendants contend that the phrase "incurred in connection with the motion" does not mean solely in connection with the motion filed under the [CPA]. Rather, they interpret the phrase to mean that prevailing movants are entitled to attorney fees incurred in connection with the entire defense, including attacking the allegations on the face of the complaint and raising other defenses and privileges unrelated to the [CPA]. \*\*\* In our view, the language in section 25 is unambiguous and supports only one interpretation. Attorney fees "incurred in connection with the motion" include only those fees which can specifically be delineated as incurred in connection with the motion to dismiss filed under the [CPA]. \*\*\* Therefore, any fees incurred which are not specifically connected to the motion to dismiss pursuant to the [CPA] are not allowed.

Id. at ¶¶65-66.

Thus, section 25 does not permit recovery for fees incurred in all aspects of a case; only fees in connection with the motion (i.e., here, the motions to dismiss).

Mr. Hanlon filed two motions to dismiss (a 2-615 and a 2-619). As far as the Court can tell from the submitted time entries, Mr. Hanlon billed time to the motions as follows: 2/25/20, 1.6 hours; 2/26/20, 4.82 hours; 2/27/20, 7.5 hours, 2/28/20, 2 hours, 3/9/20, 1.2 hours; and 7/31/20, 1 hour. Total time spent is 18.12 hours, and at \$425 per hour, the total fees claimed in connection with the motions to dismiss is \$7701.

Ms. Preston billed time relating to her motion as follows: 3/5/20, .2 hours; 3/9/20, .8 hours; 3/11/20, .3 hours; 7/29/20, .4 hours; 7/30/20, .1 hours; 7/31/20, .5 hours. Total attorney time (and excluding paralegal time) is 2.3 hours at \$295 per hour, for a grand total of \$678.50.

There might have been additional fees incurred in connection with the three motions, but the time entries are not sufficiently clear to establish that.

# B. Reasonableness of Fees Relating to the Motions

The Court notes that Mr. Norton filed no written response objecting to the fees. And, while he physically appeared in Court for the hearing (despite this Court's repeated directives that he participate by Zoom), he failed to offer a lucid objection relating to the entitlement and propriety of fees. Nonetheless, the Court is obligated to ensure that the fees sought are reasonable.

An attorney presenting a fee petition has the burden of establishing the reasonable value of his services. See Estate of Callahan, 144 III.2d 32, 43 (1991). Only those fees which are reasonable will be allowed. Kaiser v. MEPC American Properties, 164 III. App. 3d 978, 983 (1987). The party seeking fees carries the burden of establishing that the fees sought are reasonable. See id. A proper fee consists of reasonable charges for reasonable services; however, to justify a fee award, the movant cannot simply submit a mere compilation of hours multiplied by a fixed hourly rate or bills issued to the client, since this type of information, without more, fails to provide the court with sufficient information as to their reasonableness—a matter which cannot be determined on the basis of conjecture or on the opinion or conclusions of the attorney seeking the fees. Id. at 983-84. Rather, any fee petition must identify the services performed, by whom they were performed, the time expended thereon and the hourly rate charged for said services. Id. at 984. Because these factors are critical, the movant must present "detailed records maintained during the course of the litigation containing facts and computations upon which the charges are predicated." Id. Once presented with this information, the trial court should then review other relevant considerations such as the skill and standing of the attorneys, the nature of the case, the novelty and/or difficulty of the issues and work involved, the importance of the matter, the degree of responsibility required, the usual and customary charges for comparable services, the benefit to the client, and whether there exists a reasonable connection between the fees and the amount involved in the litigation. *Id.*; see also Callahan, 144 III.2d at 44.

Having considered the factors enumerated in *Kaiser*, *Callahan*, and RPC 1.5, the Court finds that the fees sought by Ms. Preston in connection with the 2-615 motion to dismiss are reasonable. The Court awards \$678.50 in fees in favor of Leonard McCubbin and against John Norton.

With regard to the \$7701 in fees Mr. Hanlon identifies as being related to the 2-615 and 2-619 motions he filed, the Court finds that those fees are not reasonable.

Of the \$7701, 2.2 hours (\$935) is court time spent on two dates. On the first date (1.2 hours), the parties discussed the case for only a few minutes, and little time was devoted to the question of dismissal. On the second date (1 hour) the case was heard by Zoom and took only a few minutes. Ms. Preston billed half the time for that date than did Mr. Hanlon. The court finds that it would be reasonable for Mr. Hanlon to seek 1 hour total for those two court dates combined.

Mr. Hanlon's 2-615 motion (after accounting for the caption, boilerplate, and signature block) is less than two pages long. It could not have taken much effort. Further, if Mr. Hanlon had made an oral 2-615 motion, the Court likely would have granted it. Indeed, the Court might have made a 2-615 motion on its own. See Patterson v. Northern Trust Co., 286 III. 564, 567 (1919) ("A court has inherent power to protect itself against harassing and vexatious [litigation] and an abuse of process of the court."); see also McGann v. Illinois Hosp. Ass'n, Inc., 172 III. App. 3d 560, 565 (1988) (same); Crissman v. Strickland, 43 III. App. 3d 496, 498 (1976) (same); People v. Tiller, 361 III. App. 3d 803, 806 (2005). ("[T]he circuit court has the authority to sua sponte dismiss proceedings that fail to present a recognizable cause of action."); Rhodes v. Mill Race Inn, Inc., 126 III. App. 3d 1024, 1028 (1984) (holding that even where a party had not filed an appearance or motion to dismiss, the trial court "properly dismissed the count on its own motion" for failing to state a cause of action); Mason v. Snyder, 332 III. App. 3d 834, 841 (2002) ("a trial court could sua sponte dismiss a civil complaint as long as the court made the appropriate and necessary findings."). The Court finds it would be reasonable to award Mr. Hanlon \$678.50 in fees for the 2-615 motion (same as Ms. Preston).

The Court acknowledges that Mr. Hanlon's 2-619 motion likely took more work (and Mr. Hanlon estimated during oral argument that his time divided in the range of 75%/25% for the 2-619/2-615 motions, respectively). Still, the 2-619 motion is heavily block quoted and the Court simply concludes (again, taking into consideration *Kaiser*, *Callahan*, and RPC 1.5) that the amount of time spent is unreasonable. (The Court withholds comment on whether a \$425 rate for *this* type of litigation in Will County is reasonable.) The Court awards \$2500 in fees for researching and drafting the 2-619 motion.

# Accordingly, the Court finds and orders:

- 1. Leonard McCubbin's fee petititon is granted insofar as the Court finds he is entitled to fees in the amount of \$678.50 plus costs of \$239. Mr. McCubbin's request for fees beyond that amount is denied. The Court denies Mr. McCubbin's request for Rule 137 sanctions. Judgment is entered in favor of Leonard McCubbin, and against John Norton, in the amount of \$917.50.
- 2. The fee petition filed by Cynthia Brzana, Becky Becker, Connie Hale Forsythe, and Kirk Allen is granted insofar as the Court finds they are entitled to fees in the amount of \$3603.50 (consisting \$2500 for the 2-619 motion, \$678.50 for the 2-619 motion, and \$425 for court appearances relating to the motions), plus costs of \$239. The Court splits that fee award equally among Mr. Hanlon's four clients. Accordingly, the Court enters judgment in favor of Cynthia Brzana, and against John Norton, in the amount of \$960.63; the Court enters judgment in favor of Becky Becker, and against John Norton, in the amount of \$960.63; the Court enters judgment in favor of Connie Hale Forsythe, and against John Norton, in the amount of \$960.63; and the Court enters judgment in favor of Kirk Allen, and against John Norton, in the amount of \$960.63.
- 3. To the extent it was not made clear in the Court's July 31, 2020 order, the claims against Michael Esposito, Mary Jones, and Arlin Fritz are dismissed on the Court's motion, on 2-615 grounds, with prejudice. Clerk to notify.

Dated: October 9, 2020

John C. Anderson

**Circuit Judge** 

ENTERED: