

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

REDEMPTION ALLIANCE OF)
GEORGIA, INC., GAMING CENTRAL,)
LLC and WILLIAM A. BOOTH,)

2015CV262003

Plaintiffs,)

v.)

CIVIL ACTION FILE NO.
2014-CV-253740

SAMUEL OLENS, IN HIS OFFICIAL)
CAPACITY AS ATTORNEY GENERAL)
OF GEORGIA, AND MICHAEL A.)
LAMBROS, IN HIS OFFICIAL)
CAPACITY AS SPECIAL ASSISTANT)
DISTRICT ATTORNEY FOR CLAYTON)
COUNTY, LANIER COUNTY,)
EMANUEL COUNTY, TOOMBS)
COUNTY AND OTHER GEORGIA)
COUNTIES,)

Defendants.)

REDEMPTION ALLIANCE OF)
GEORGIA, INC., GAMING CENTRAL,)
LLC, and WILLIAM A. BOOTH.)

Plaintiffs,)

v.)

CIVIL ACTION FILE NO.
2015-CV-262003

MICHAEL G. LAMBROS,)

Defendant.)

**CONSOLIDATED ORDER ON DEFENDANT MICHAEL G. LAMBROS' MOTIONS
FOR ATTORNEYS' FEES AND EXPENSES**

Before the Court are (1) Defendant Michael G. Lambros' ("Lambros") Motion for Attorneys' Fees and Expenses in Civil Action File No. 2014-CV-253740 (the "2014 Case" or "Redemption I") and (2) Lambros' Motion for Attorneys' Fees and Expenses in Civil Action File No. 2015-CV-262003 (the "2015 Case" or "Redemption II"). After conducting two evidentiary

hearings and upon a full review of the file and all pleadings, motions and responses in this case, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

A. Procedural Posture – 2014 Case / Redemption I.

On November 12, 2014, Plaintiffs filed an action against Samuel Olens, in his official capacity as the Attorney General of Georgia, and Lambros, in his official capacity as Special Assistant District Attorney for several Georgia Counties. See Redemption Alliance of Georgia, Inc., et al. v. Michael G. Lambros, in his Official Capacity as Special Assistant District Attorney for Clayton County, Court of Appeals of Georgia Case No. A17A0037 (May 31, 2017). Plaintiffs alleged that Lambros was appointed Special Assistant District Attorney for the purpose of initiating civil RICO actions and pursuing forfeiture proceedings against organizations and persons, such as plaintiffs, who place and operate coin operated amusement machines in convenience stores and are alleged to have unlawfully paid out cash winnings. Id. at 2. Plaintiffs further allege that Lambros' compensation was contingent upon the success of the forfeiture actions, which created an impermissible conflict of interest, and that Lambros violated their constitutional rights and the forfeiture statutes due to the manner in which he carried out his responsibilities. Id. Plaintiffs' complaint sought a declaratory judgment that a conflict of interest was created by the contracts between Lambros and various counties, that the excessive seizures violated due process, and that O.C.G.A. § 16-4-1, et seq. was unconstitutional. Id. Plaintiffs also sought a writ of mandamus to compel Lambros to afford due process rights to in personam defendants and a permanent injunction of Lambros' actions. Id.

Lambros answered the complaint in his official capacity and filed a motion to dismiss on several grounds, including that the complaint failed to present a justiciable controversy and is barred by sovereign immunity. Id. Plaintiffs subsequently filed a second amended complaint¹, naming Lambros in his individual capacity and limiting their claims to declaratory and injunctive relief. Id. at 3. In its opinion, the Court of Appeals acknowledged that Plaintiffs' attempt to amend their complaint to add Lambros as a party in his individual capacity was ineffective as Plaintiffs never sought leave of the trial court to do so. Id. at 3.

¹ Plaintiff's first amended complaint corrected Lambros' name. Id.

Plaintiffs responded to Lambros' motion to dismiss, arguing that he was not protected by sovereign immunity because he had been sued in his individual capacity. *Id.* Lambros appears to have answered the second amended complaint in his official capacity² and filed a reply brief in support of his motion to dismiss. *Id.* Plaintiffs filed a voluntary dismissal without prejudice as to all defendants on March 20, 2015, four days before a scheduled hearing on the motions. *Id.*

After Plaintiffs dismissed Redemption I, Lambros moved for attorneys' fees pursuant to O.C.G.A. § 9-15-14, arguing that Plaintiffs' claims for mandamus, injunctive relief and declaratory judgment were barred by sovereign immunity at all times and that he was never sued or brought into court in his individual capacity in spite of the Plaintiffs' attempts to add him as a party in that capacity simply by changing the caption of the case. *Id.* at 4.

After holding a hearing on Lambros' motion for attorneys' fees, the Court entered an order on December 10, 2015 awarding \$48,690 in fees and \$370.97 in expenses to Lambros, pursuant to O.C.G.A. § 9-15-14(a) and (b), based on the finding that Plaintiffs' claims for declaratory judgment, a permanent injunction and mandamus were barred by the doctrine of sovereign immunity. *Id.* (See Order Granting Defendant Michael G. Lambros' Motion for Attorneys' Fees and Expenses Under O.C.G.A. § 9-15-14, December 10, 2015, re-entered on January 8, 2016 ("Redemption I Order on Attorneys Fees")).

Plaintiffs filed a discretionary appeal of the Court's Order, which the Court of Appeals granted. *Id.* at 1. On May 31, 2017, the Court of Appeals issued its opinion vacating this Court's order and remanding the case with direction. See Redemption, Court of Appeals Case No. A17A0037. The Court of Appeals held that "it continues to be unclear whether sovereign immunity bars claims for injunctive or declarative relief relating to legislation that is alleged to be unconstitutional." *Id.* at 9-10. In accordance with its holding, the Court of Appeals held that

the trial court erred in awarding attorney fees on the single ground that sovereign immunity barred all of the [Plaintiffs'] claims against Lambros. Since the trial court based the award on an incorrect conclusion that *all* of [Plaintiffs'] claims were devoid of any justiciable issue of law and lacked substantial justification, the award must be vacated. Therefore, we cannot tell from the order what portion of the trial court's award of fees and expenses is attributable to [Plaintiffs'] claim for declaratory judgment. "As we have held in cases involving O.C.G.A. § 9-15-

² The Court of Appeals noted that Lambros apparently mislabeled the answer, as it was styled as a response to the first amended complaint, but was actually filed in response to Plaintiffs' second amended complaint. *Id.*

14(a) or (b), the trial court must limit the fees award to those fees incurred because of the sanctionable conduct.” [internal citations omitted]

Id. at 10 (emphasis in original).

Following the Court of Appeals holding that “it continues to be unclear whether sovereign immunity bars claims for injunctive or declarative relief relating to legislation that is alleged to be unconstitutional,” the Court directed Lambros to provide a revised affidavit and supporting invoice dealing only with that attorney time expended by Lambros to defend against the Plaintiffs’ mandamus claim. See Order on Remanded Issue of Attorneys’ Fees, July 6, 2017 (“Order on Remand”). The Order on Remand was consistent with the Court’s ruling in the Redemption I Order on Attorney Fees that Plaintiffs’ mandamus claim was barred by sovereign immunity.

On August 21, 2017, Lambros filed a Revised Affidavit of Fees Incurred, which pertained to the fees dealing with Plaintiffs’ mandamus claim only. On August 28, 2017, the Court held a hearing on both the attorneys’ fee motions in Redemption I and Redemption II (discussed below).

B. Procedural Posture – 2015 Case / Redemption II.

On June 12, 2015, following Plaintiffs’ dismissal of Redemption I, Plaintiffs filed Redemption II against Lambros individually, seeking a declaratory judgment, a permanent injunction and mandamus relief. On July 31, 2015, Lambros filed his Motion to Dismiss Redemption II. Plaintiffs filed their response on August 27, 2015. The Court held a hearing on December 4, 2015 on Lambros’ Motion to Dismiss. On December 8, 2015, the Court issued an order granting Lambros’ Motion to Dismiss, dismissing the Complaint with prejudice and without costs to either party. See Order on Defendant Michael G. Lambros’ Motion to Dismiss Plaintiffs’ Complaint, December, 8, 2015 (“Redemption II Order on Motion to Dismiss”).

On January 7, 2016, Lambros filed a Motion for Attorneys’ Fees. On January 26, 2016, Lambros filed the Affidavit of Andrew J. Ekonomou in support of the fees and expense incurred in his defense of the Redemption II, in support of his Motion for Attorneys’ Fees. On August 28, 2017, the Court heard testimony and arguments of counsel at a hearing on both Lambros’ remanded Motion for Attorneys’ Fees in Redemption I and the Lambros’ pending Motion for Attorneys’ Fees in Redemption II.

CONCLUSIONS OF LAW

A. 2014 Case / Redemption I.

Redemption I contained three claims for relief: injunctive relief, declaratory judgment and mandamus. As stated above, in its Redemption I Order on Attorney Fees, the Court awarded Lambros attorneys' fees on all three claims on the basis they were barred by sovereign immunity. In vacating the Redemption I Order on Attorney Fees, the Court of Appeals held that "it continues to be unclear whether sovereign immunity bars claims for injunctive or declarative relief relating to legislation that is alleged to be unconstitutional." See Redemption, Court of Appeals Case No. A17A0037 at 9-10. Based on the Court of Appeals' holding, the Court hereby declines to award any attorneys' fees incurred by Lambros defending Plaintiffs' claims for injunctive or declarative relief in Redemption I.

Upon remand, this Court instructed Lambros to provide a revised affidavit regarding the attorneys' fees incurred in defending the mandamus claim only, as the Court of Appeals did not specifically rule on the mandamus issue. Thereafter, in advance of the scheduled August 28, 2017 hearing, the parties engaged in additional briefing on the propriety of an award of attorneys' fees based on the mandamus claim. During the hearing, the Court heard lengthy testimony and arguments of counsel on the issue.

O.C.G.A. § 9-15-14(a) provides that an award of attorneys' fees *shall* be awarded against any party who has asserted a claim "to which there existed a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim." (emphasis added). O.C.G.A. § 9-15-14(b) provides that the court *may* award attorneys' fees against a party if it finds that any part of the party's action "lacked substantial justification," "was interposed for delay or harassment," or if the proceeding was unnecessarily expanded by other improper conduct. (emphasis added). Under O.C.G.A. § 9-15-14(b), the term "lacked substantial justification" means "substantially frivolous, substantially groundless, or substantially vexatious."

After careful consideration of the relevant law, pleadings of record and arguments of counsel, the Court notes that SJN Properties, LLC v. Fulton County Board of Assessors, 296 Ga. 793, 799 (2015) holds that sovereign immunity does not preclude claims for mandamus relief. SJN Properties is contrary to the Court's ruling in its Redemption I Order on Attorney Fees. As the Court's Redemption I Order on Attorney Fees has been vacated by the Court of Appeals, and after reconsideration of the mandamus question, the Court finds that attorneys' fees are not

warranted or justified under O.C.G.A. §§ 9-15-14(a) or (b) in light of SJN Properties. The holding in SJN Properties clarifies that a justiciable issue of law exists, i.e., that mandamus is not per se barred by sovereign immunity. Thus, attorneys' fees are not warranted under O.C.G.A. § 9-15-14(a). Likewise, the Court does not find any of the bases for awarding fees under the permissive prong of the statute to be present either. O.C.G.A. § 9-15-14(b). Accordingly, the Court denies Lambros' Redemption I Motion for Attorneys' Fees. See also Griggs v. Columbus Bank and Trust Co., 188 Ga. App. 741, 743 (1988) (where none of the grounds for imposing O.C.G.A. § 9-15-14 penalties were present, trial court erred in awarding O.C.G.A. § 9-15-14 attorney fees to defendant based only on plaintiff's exercise of his statutory right to voluntarily dismiss his suit pursuant to O.C.G.A. § 9-11-41(a)).

B. 2015 Case / Redemption II

On December 8, 2015, the Court issued an order granting Lambros' Motion to Dismiss, dismissing the Complaint with prejudice and without costs to either party. See Redemption II Order on Motion to Dismiss.

However, the mere fact that a [party prevails] on its motion for judgment on the pleadings, does not mandate an award of attorney fees. See Shoenthal v. DeKalb County Employee Retirement System, 343 Ga. App. 27, 30 (2017) (citing Brown v. Kinser, 218 Ga. App. 385, 387 (1995)). "[F]or purposes of O.C.G.A. § 9-15-14, the relevant question is whether some authority arguably supported [Plaintiffs'] position." Id. (citing Russell v. Sparmer, 339 Ga. App. 207, 210 (2016) (physical precedent only), citing Hall v. Hall, 241 Ga. App. 690, 692 (1999) ("where a party asserts an arguably meritorious position, there was not a complete absence of any justiciable issue of law or fact that such an award of attorney fees is appropriate").

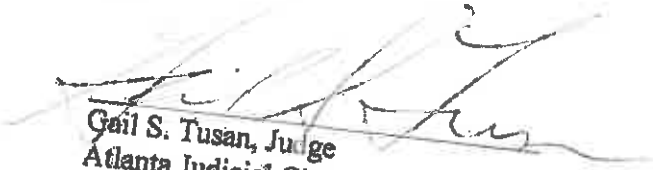
Here, the Court's granted Lambros' Motion to Dismiss, which resulted in the dismissal of the Redemption II Complaint with prejudice and without costs to either party. Despite its ruling, the Court does not agree with Lambros that Plaintiffs' claims justify an award of attorneys' fees under either O.C.G.A. § 9-15-14(a) or O.C.G.A. § 9-15-14(b). "O.C.G.A. § 9-11-14(a) is intended to discourage the bringing of frivolous claims, not the presentation of questions of first impression about which reasonable minds might disagree or the assertion of novel legal theories that find arguable, albeit limited, support in the existing case law and statutes." Shoenthal at 32 (quoting Renton v. Watson, 319 Ga. App. 896 (2013)). The Court finds the factual backdrop of

this case and the legal theories asserted in connection therewith did present novel legal theories about which reasonable minds might disagree. Although the Court was not persuaded by the arguments Plaintiffs made in responding to Lambros' Motion to Dismiss, the Court cannot say that Plaintiffs arguments were nonsensical, illogical, foreclosed by some existing precedent, or without some arguable support in the case law and statutes sufficient to warrant an imposition of fees pursuant to O.C.G.A. §9-15-14. See Shoenthal at 32 (citing Gibson Constr. Co. v. GAA Acquisitions I, 314 Ga. App. 674, 677 (2012)). Accordingly, the Court finds that an award of attorneys' fees to Lambros for his defense of Plaintiffs' claims in Redemption II are likewise not authorized or warranted under O.C.G.A. §§ 9-15-14(a) or 9-15-14(b).

CONCLUSION

In light of the foregoing, the Court hereby DENIES Lambros' Motions for Attorneys' Fees in both Redemption I and Redemption II.

SO ORDERED, this the 15th day of March, 2018


Gail S. Tusan, Judge
Atlanta Judicial Circuit