

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 12/16/2010

TIME: 02:00:00 PM

DEPT: 53

JUDICIAL OFFICER PRESIDING: Kevin Culhane

CLERK: E. Brown

REPORTER/ERM:

BAILIFF/COURT ATTENDANT: V. Carroll

CASE NO: **06AS00839**

CASE INIT.DATE: 03/02/2006

CASE TITLE: **Glenn Hagele vs. Brent Hanson**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Motion for Attorney Fees - Civil Law and Motion

APPEARANCES

Glenn Hagele, self represented Plaintiff, present.

Darrell Fruth, counsel, present for Defendant(s) telephonically.

Nature of Proceeding: Motion for Attorney Fees

TENTATIVE RULING

Defendant Burch's motion for attorney fees is granted.

Defendant filed a Special Motion to Strike on August 31, 2010. Plaintiff did not oppose the motion and filed a dismissal without prejudice of all claims against Burch; i.e. defamation and invasion of privacy. Plaintiff cannot avoid mandatory fees by dismissing the action prior to hearing on the motion. *Coltrain v Shewalter* (1998) 66 Cal.App.4th 94, 106-107.

In her motion defendant met her initial burden of demonstrating that the complaint arises from protected conduct, that is defendant's speech was on an issue of public importance, the risks and merits associated with the LASIK procedure. Furthermore, defendant's speech was not limited to plaintiff and his organization. Plaintiff has placed himself in the public eye with his widespread criticism of LASIK's critics.

In his opposition to this motion, plaintiff argues that his claims do not arise from defendant's protected activity. The defamatory letter did not pertain to the risks and merits of LASIK and publication of his private information was illegal and not protected. The private information was contained in public records, plaintiff's bankruptcy. Defendant has come forward with evidence that she neither published the defamatory letter nor the private information. (Burch declaration pages 27, 28, 31, Exhibit K.) Furthermore, plaintiff has acknowledged that Hansen published the letter and the private information.(Burch declaration pages 27, 28, 31, Exhibit K.)

Plaintiff contends that the three websites, one of which is owned by Burch, are linked and therefore Burch is responsible. However, 47 U.S.C. 230(c) provides that website operators and their users cannot be held liable for Internet content posted by another user.

Plaintiff is not likely to prevail on the merits as he cannot establish that Burch published the defamatory

letter or the private information. Another reason he is unlikely to prevail is the plaintiff is a limited public figure by injecting himself into a public debate regarding LASIK procedures. Thus he must show defendant's comments were made with malice and he has not done so.

Having dismissed his claims, plaintiff has the burden of overcoming the presumption that defendant was the prevailing party. *Coltrain v Shewalter* (supra) 66 Cal.App.4th 106-107. Plaintiff has not overcome this presumption as he has not shown that he achieved any legitimate goal when he dismissed his claims. He declares he did so for health reasons but he had health issues before he sued defendant in California and he continues to litigate this case against other defendants.

Defendant is awarded attorney fees and costs in the amount of \$16,857. This is the total amount of fees incurred on the SLAPP motion, but not fees associated with the demurrer and motion to quash. It also does not include costs associated with the related motions.

Defendant shall submit a formal order for the Court's signature.

COURT RULING

The matter was argued and submitted.

The Court takes this matter under submission.