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SUPERIOR COURT OF THE STATE OF CALIFORNIA,
FOR THE COUNTY OF SAN BERNARDINO

VINAY BHARADWAJ,

Plaintiff,

v.

SRI SWAMI NITHYANANDA, an individual, and agent and employee of Nithyananda Foundation, Life Bliss Foundation, International Governing Body Commission Of Nithyananda Dhyanapeetam And Nithyananda Mission, Dhyanapeeta Charitable Trust, and Dhyanapeetam Hindu Temple & Cultural Center, et al.

Defendants.

CASE NO.: CIVRS1013793

Assigned For All Purposes To:
Hon. Judge Keith D. Davis, Department R12

~~[PROPOSED]~~ ORDER GRANTING MOTION FOR ATTORNEY'S FEES

Date : April 4, 2013
Time : 8:30 a.m.
Department: R12

Defendants' Motion for Attorney's Fees filed by Defendant NITHYANANDA FOUNDATION and LIFE BLISS FOUNDATION (collectively, "Defendants") against Plaintiff VINAY BHARADWAJ came for hearing in Department R12 of this Court on April 4, 2013. Attorneys Aviv L. Tuchman and Amelia Sanchez-Moran appeared on behalf of Defendants. Attorneys Mark Alvarado and Michael Scott Kendall appeared telephonically on behalf of Plaintiff. Mr. Alvarado is not licensed to practice law in the state of California. No substitutions of attorneys have been filed by Plaintiff. The Motion was unopposed.

Having read the motion, points and authorities and declarations filed by the parties, and having heard argument of counsel, the Court finds that:

1. On August 10, 2009, Plaintiff Vinay Bharadwaj and Gopal Reddy Sheelum, on behalf of Defendants, entered into a valid, enforceable mutual release agreement, which was even notarized (the "Release Agreement"). The Release Agreement contained a release provision at page 2, paragraph 3, which released any and all claims Plaintiff had as against Defendants. The Release Agreement also contained an attorney's fee provision at page 6, paragraph 12, which provided, in relevant part: "If any party to this Agreement employs attorneys to enforce any rights arising out of or in relation to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees."
2. In November 2010, criminal charges were filed against Mr. Bharadwaj in the State of Washington for three felony counts of child molestation in the second degree.
3. On January 3, 2011, Mr. Bharadwaj filed his initial verified Complaint alleging both contract and tort claims. Plaintiff's verified Complaint named 13 different defendants, including Nithyananda Foundation and Life Bliss Foundation, and was 23 pages and contained more than 112 allegations. Among other things, the Complaint requested that $1,000,000 be held in trust for Plaintiff, and sought "an order that all contracts entered into between Plaintiff and Defendants be rescinded."
4. On June 8, 2011, Plaintiff filed the First Amended Complaint (FAC), which consisted of 65 pages and more than 189 paragraphs of verified allegations, including for the first time allegations of sexual abuse. The FAC named ten different defendants, both entities

and individuals. Among other claims, Plaintiff added a cause of action for declaratory relief that the Release Agreement was "null, void, and is of no legal force and effect." The FAC attached the notarized Release Agreement as "Exhibit B."

5. On September 30, 2011, Plaintiff filed his Second Amended Complaint (SAC). With the exception of the civil conspiracy cause of action, the SAC mirrored the allegations and causes of action of the FAC, including as relating to the Release Agreement which was still attached as "Exhibit B."

6. On February 14, 2012, Defendants filed an Answer to Verified Second Amended Complaint and asserted as their Tenth Affirmative Defense that Plaintiff's complaint, and each cause of action therein, was barred by the written release in the Release Agreement. Defendants also prayed for their attorney's fees.

7. On August 14, 2012, Mr. Bharadwaj was convicted of three Felony Counts of Child Molestation in the Second Degree and one Gross Misdemeanor Count of Communication with a Minor for Immoral Purposes. He was immediately taken into custody. On September 21, 2012, he was sentenced to 57 months imprisonment at the Washington Corrections Center and is currently serving his sentence.

8. On September 11, 2012, Defendants filed a Motion for Terminating Sanctions following nearly a year-and-a-half of discovery abuse by Plaintiff, including frivolous attempts to stay the action pending the outcome of his criminal case which predated the filing of this action, failing to respond to discovery or otherwise providing evasive responses, asserting frivolous objections to discovery including the Fifth and Sixth Amendment privileges, forcing Defendants to file numerous motions to compel, refusing to submit to deposition, and willfully disobeying this Court's discovery orders.

9. On November 26, 2012, this Court granted Defendants' Motion for Terminating Sanctions and ordered the entire case to be dismissed with prejudice. The notice of entry of order was served on Plaintiff on December 10, 2012. This Motion for Attorney's Fees was timely filed and served on February 8, 2013.

10. Defendants are the prevailing party in this matter as having successfully defended the action and obtained a simple, unqualified dismissal with prejudice of the entire action.

11. As the prevailing party, Defendants are entitled to their reasonable attorney's fees pursuant to the attorney's fee provision of the Release Agreement under Civil Code § 1717. This was an action "on a contract" within the meaning of Civil Code § 1717. The declaratory relief cause of action sought to invalidate the Release Agreement and therefore was clearly a claim "on a contract." Moreover, the tort causes of action were also "on a contract" as those claims were subject to the release provision of the Release Agreement and Defendants sought to enforce the release as against those claims by asserting the contract as an affirmative defense to all of the claims.

12. The amount of attorney's fees requested by Defendants is full, fair, and reasonable:

    a. Hourly Rates: No evidence has been presented challenging the moving party's hourly rates, and therefore they are presumed reasonable. Nonetheless, the Court finds that the hourly rates claimed and actually billed by Defendants' counsel are reasonable based upon their individual and collective experience.

    b. Hours Billed: The total numbers of hours claimed is thoroughly documented by detailed contemporaneous time records and is reasonable. The Court has thoroughly reviewed all Defendants' counsel's billings, which were submitted as part of the Motion, and finds that the number of hours spent on this matter is reasonable and commensurate with the nature of the claims and Plaintiff's conduct over the course of this litigation, which necessitated the filing of a number of motions, hearings, appearances, and briefings in this matter.

13. This Motion was timely filed and served on February 8, 2013 with an initial hearing date of March 21, 2013. Plaintiff was served with the Motion by mail sent to the Washington Corrections Center, the last address on file with this Court as provided by his former attorney Ford Greene. To date, Plaintiff has not filed any notice of change of address. Pursuant to CCP § 1005(b), Defendant's Motion was to have been served by Saturday, February 16, 2013, which was 16 court days plus 10 calendar days for

mailing (plus an additional calendar day since the original date fell on a Sunday). Accordingly, service was proper and timely, and Plaintiff was given well-beyond the minimum statutory notice required for the hearing date. Moreover, on February 27, 2013, the Court continued the hearing date for the Motion to March 25, 2013, giving Plaintiff even more time to respond and file an opposition. However, no opposition was filed or served by Plaintiff.

14. The Motion came for hearing on March 25, 2013. At that hearing, Mr. Bharadwaj appeared by telephone and represented to this Court that he did not receive the Motion until March 9, 2013 because he moved from the Washington Corrections Center to the Stafford Creek Corrections Center. However, on March 22, 2013, Defendants filed a Declaration of Mark Dragoo, the mailroom employee at the Stafford Creek Corrections Center who actually processed the Motion and had it delivered to Mr. Bharadwaj. Mr. Dragoo verified that the Motion was processed on February 15, 2013 and delivered to Mr. Bharadwaj on February 16, 2013. The Court denied Plaintiff's oral request to continue the Motion but, on the Court's own motion, nonetheless continued the hearing to April 4, 2013. Despite the continuance, Plaintiff still failed to file an opposition.

15. Based thereon, Plaintiff was timely served and given sufficient notice of this Motion. He has had more than enough time to respond and file an opposition, but failed to do so. Moreover, no reasonable explanation or excuse justifying Plaintiff's delay and failure to file an opposition to the Motion has been provided.

THEREFORE, IT IS SO ORDERED THAT the Motion for Attorney's Fees is GRANTED, and Defendants Nithyananda Foundation and Life Bliss Foundation are awarded their reasonable attorney's fees as costs against Plaintiff Vinay Bharadwaj in the total amount of **$390,491.50**.

Date: 4/8/13

Hon. Judge Keith D. Davis

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed at Tuchman & Associates in the aforesaid County, State of California; I am over the age of 18 years and am not a party to the within action; my business address is 6080 West Pico Boulevard, Los Angeles, California 90035.

On April 4, 2013, I served the foregoing: **[PROPOSED] ORDER GRANTING MOTION FOR ATTORNEY'S FEES** on interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

X **BY MAIL**: I placed such envelope for deposit in the U.S. Mail for service by the United States Postal Service, with postage thereon fully prepaid.

Plaintiff Vinay Bharadwaj, pro per

Vinay Bharadwaj
DOC No. 361033
Washington Corrections Center
2321 West Dayton Airport Road
P.O. Box 900
Shelton, WA 98584

Vinay Bharadwaj
DOC No. 361033
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

X **BY EMAIL**: I caused such document to be transmitted by email to the email address of the addressee listed below.

Attorneys for Defendant Nithyananda Dhyanapeetam Temple & Cultural Center
McKay de Lorimier & Acain
3250 Wilshire Blvd., Suite 603
Los Angeles, California 90010
Tel: (213) 386-6900
Fax: (213) 381-1762

Attn: Paul de Lorimier, Esq.

X (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 4, 2013, at Los Angeles, California.

Rebecca E. Myers
Type or Print Name

Rebecca E. Myers
Signature