

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

MIKHAIL FRIDMAN, PETR AVEN,  
AND GERMAN KHAN

*Plaintiffs,*

v.

ORBIS BUSINESS INTELLIGENCE  
LIMITED AND CHRISTOPHER  
STEELE,

*Defendants.*

Case No. 2018 CA 18-002667 B

Judge Anthony C. Epstein

Next Court Date: None  
scheduled

**DEFENDANTS CHRISTOPHER STEELE AND  
ORBIS BUSINESS INTELLIGENCE LIMITED'S MEMORANDUM AND POINTS OF  
AUTHORITY IN SUPPORT OF THEIR OPPOSED MOTION FOR AWARD OF COSTS  
OF LITIGATION, INCLUDING REASONABLE ATTORNEY FEES  
UNDER THE DISTRICT OF COLUMBIA ANTI-SLAPP ACT, D.C. CODE § 16-5504(a)**

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Defendants Christopher Steele and Orbis Business Intelligence Limited prevailed on their special motion to dismiss under the District of Columbia Anti-SLAPP Act of 2010, D.C. Code § 16-5502(a) (the “Anti-SLAPP Act” or “Act”). They are therefore presumptively entitled to an award of their “costs of litigation, including reasonable attorney fees.” D.C. Code § 16-5504(a); *Doe v. Burke*, 133 A.3d 569, 572-78 (D.C. 2016); *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1238 (D.C. 2016). No “special circumstances” exist here to render unjust the “ordinary course” presumption of an attorney fee award. *Doe*, 133 A.3d at 575, 578. On the contrary, justice requires the imposition of the costs of defending this SLAPP suit on the deeply resourceful, yet ultimately unsuccessful, Plaintiffs in this case.

Defendants move for an order requiring Plaintiffs to pay an amount no less than \$127,230.33<sup>1</sup> for prevailing in the dismissal of this SLAPP.

## **LAW AND ARGUMENT**

### **I. The Court Held This Case to Be a SLAPP.**

A SLAPP is a strategic lawsuit against public participation ““filed by one side of a political or public policy debate aimed to punish or prevent the expression of opposing points of view.”” *Mann*, 150 A.3d at 1226 (D.C. 2016) (quoting Council of the Dist. of Columbia, Report of Comm. on Pub. Safety and the Judiciary on Bill 18-893 (Nov. 18, 2010) (“Comm. Report”)<sup>2</sup> at 1). SLAPPs are used as “a means to muzzle speech . . . [and] achieve their filer’s intention of punishing or preventing opposing points of view, resulting in a chilling effect on the exercise of constitutionally

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<sup>1</sup> \$127,230.33 is the amount of reasonable attorneys’ fees and costs in this matter to date. Defendants will supplement this amount and provide their final fee request to account for their August 2018 time and any additional time expended after the filing of this Motion, including responding to any appeal. *Cf. Doe*, 133 A.3d at 579 ([W]e elect to remand the case to the trial judge to evaluate the reasonableness of the award requested—a request, we add, that was necessarily augmented by the costs of litigating the initial appeal in this case.”).

<sup>2</sup> A copy of the Comm. Report is attached as Exhibit A.

protected rights.” Comm. Report (Ex. A) at 1. “[T]he goal of the litigation is not to win the lawsuit but punish the opponent and intimidate them into silence.” *Id.* at 4.

In its August 20, 2018<sup>3</sup> Order granting Defendants’ special motion to dismiss under the Act (“Order”), this Court held that “Defendants have made a prima facie showing that Plaintiffs’ claims arise from ‘an act in furtherance of the right of advocacy on issues of public interest’ within the meaning of § 16-5501(1).” Order at 12. Plaintiffs in turn failed to provide evidence that they were likely to succeed on the merits. *Id.* at 24. Defendants’ Anti-SLAPP motion to dismiss was granted, and the case was dismissed with prejudice. *Id.*

## **II. The Anti-SLAPP Act Awards Attorney Fees and Costs in the Ordinary Course**

Section 16-5504(a) of the Anti-SLAPP Act provides, “The court may award a moving party who prevails, in whole or in part, on a motion brought under § 16-5502 or § 16-5503 the costs of litigation, including reasonable attorney fees.” By contrast, successful *responding* parties (*i.e.*, defamation plaintiffs who defeat an Anti-SLAPP motion to dismiss) may recover fees and costs “**only** if the court finds that [the] motion . . . is frivolous or is solely intended to cause unnecessary delay.” D.C. Code § 16-5504(b) (emphasis added). The D.C. Court of Appeals interprets and applies § 16-5504(a)’s attorneys’ fees provision to intend that “the successful movant . . . be awarded attorney’s fees ***in the ordinary course, i.e., presumptively, on request.***” *Doe*, 133 A.3d at 575 (emphasis added). Following the “paradigmatic example” of federal Civil Rights Acts’ fee-shifting provisions, the Court of Appeals held: “We now read D.C. Code § 16-5504(a) in similar fashion: it entitles the moving party who prevails on a special motion to quash to a presumptive award of reasonable attorney’s fees on request, ‘unless special circumstances would render such

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<sup>3</sup> This motion for attorneys’ fees is timely filed less than 14 days after entry of judgment under Super. Ct. Civ. R. 54(d)(2).

an award unjust.” *Id.* at 577-78 (quoting *Christiansburg Garment Co. v. Equal Emp’t Opportunity Comm’n*, 434 U.S. 412, 416-17 (1978)).

That the *Doe* case involved a special motion to quash under § 16-5503 rather than a special motion to dismiss under § 16-5502 of the Anti-SLAPP Act is of no moment and does nothing to change the binding presumption standard. First, § 16-5504(a) explicitly provides for awarding attorneys’ fees to the prevailing party of “a motion brought under **§ 16-5502 or** § 16-5503.” D.C. Code § 16-5504(a) (emphasis added). Moreover, the *Doe* Court’s reasoning is a broad and unlimited analysis of the Anti-SLAPP Act as a whole, finding, for example, that “The protections of the Act, in short, apply to lawsuits which the D.C. Council has deemed to be SLAPP’s.” *Doe*, 133 A.3d at 573.

The Court of Appeals has since recognized that *Doe*’s holding that “the successful movant is presumptively entitled to an award of fees unless special circumstances make a fee award unjust” applies likewise “to a moving party who prevails ‘in whole or in part’ on a special motion to dismiss.” *Mann*, 150 A.3d at 1238. As such, the Court of Appeals noted that the Anti-SLAPP Act’s special motion to dismiss “not only provides substantial advantages to the defendant over and above those usually available in civil litigation, but also imposes procedural and *financial burdens on the plaintiff*.” *Id.* (emphasis added). The appellate court described the presumptive award of attorneys’ fees under § 16-5504(a) as “financial levies to deter a SLAPP plaintiff.” *Id.*

### **III. No “Special Circumstances” Render an Attorney Fee Award Unjust Here**

The D.C. Court of Appeals prohibits denial of a prevailing party’s motion for reasonable fees and costs under § 16-5504(a) except where “special circumstances in the case make a fee award unjust.” *Doe*, 133 A.3d at 571. No such special circumstances exist to protect the SLAPP Plaintiffs in this case. On the contrary, justice demands that Plaintiffs reimburse Defendants for the fees and costs incurred as a result of their meritless defamation claim. In addition to initiating

motions for dismissal of the Complaint (which asserts defamation as the sole cause of action), Defendants were forced to respond to a host of failing arguments by Plaintiffs, including:

- That neither the Anti-SLAPP Act nor the First Amendment would apply in this case because Defendants are non-resident aliens, notwithstanding Plaintiffs' own allegations about Defendants' presence in the U.S. and the fact that Plaintiffs are themselves non-resident aliens, an argument that the Court rejected and also deemed "ironic." Order at 7-12, and n.3.
- That the speech at issue was not an expressive conduct in connection with an issue of public interest within the meaning of the Anti-SLAPP Act, an argument that the Court correctly noted is contradicted by Plaintiffs' own factual allegations and central legal theories. *Id.* at 12-16.
- That Plaintiffs are not limited purpose public figures regarding relationships between Russian oligarchs and the Russian government despite having been adjudicated public figures in a 2005 defamation case and their own willing engagement in press coverage on that and many other topics in the decade-plus between the decision in that case and the filing of this one. *See id.* at 16-18. Defendants gathered and submitted tens of thousands of documented articles and interviews spanning 1990 to September 13, 2016 (one day prior to the date of CIR 112).

Plaintiffs' use of the District of Columbia court and U.S. defamation laws to combat unwelcome speech is all the more inexcusable considering the closing admonition of U.S. District Court Judge Bates in his summary dismissal of other defamation claims in 2005: "Plaintiffs no doubt have the wherewithal to respond to erroneous publications through persuasion rather than

litigation. The First Amendment demands that they pursue that path.” *OAO Alfa Bank v. Ctr. for Pub. Integrity*, 387 F. Supp. 2d 20, 57 (D.D.C. 2005). Plaintiffs have not only eschewed that ruling; they have embarked on a multi-forum litigation blitz against Defendants and other entities prosecuting claims arising from the same subject matter as this failed case.<sup>4</sup>

Moreover, even in defeat, Plaintiffs have manipulated this Court’s own Order to advance their strong-arm tactics. In a statement issued by Plaintiffs’ counsel and published in multiple news media the day after this Court’s Order, Plaintiffs announced:

We strongly disagree with the Court’s decision which we will almost certainly appeal. We are, however, pleased that ***the Court agreed that we have adequately proved Mr. Steele’s negligence in making unsupported accusations*** that our clients had something to do with alleged efforts to interfere in the 2016 election — which they did not.

See Chris Geidner, *A DC Judge Has Dismissed Russian Bankers’ Lawsuit Against the Author of the Trump Dossier*, BUZZFEED (Aug. 21, 2018),

<https://www.buzzfeednews.com/article/chrisgeidner/dc-judge-dismisses-russian-bankers-lawsuit-against-the> (emphasis added).<sup>5</sup>

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<sup>4</sup> Plaintiffs filed defamation actions against BuzzFeed, Inc. and four of its employees in New York (*Fridman, et al. v. Buzzfeed, et al.*, Index No. 154895/2017 (Sup. Ct. N.Y. 2017)); and against Bean LLC a/k/a Fusion GPS and Glenn Simpson here in U.S. District Court (*Fridman, et al. v. Bean LLC aka Fusion GPS & Glenn Simpson*, No. 1:17-cv-02041 (D.D.C. 2017)). Plaintiffs have also brought a separate suit against Mr. Steele and Orbis in the U.K. (HQ18M01646 (1) Petr Aven, (2) Mikhail Fridman and (3) German Khan v. Orbis Business Intelligence Limited). All of the cases arise from the same Dossier report at issue in this action.

<sup>5</sup> See also Julia MacFarlane, *Judge throws out defamation lawsuit against Christopher Steele over dossier*, ABC NEWS (Aug. 21, 2018), <https://abcnews.go.com/Politics/judge-throws-defamation-lawsuit-christopher-steele-dossier/story?id=57311888>; Edvard Pettersson, *Christopher Steele Beats Russian Bankers’ Defamation Lawsuit*, BLOOMBERG (Aug. 21, 2018), <https://www.bloomberg.com/news/articles/2018-08-21/ex-spy-christopher-steele-beats-russian-bankers-defamation-suit>; Natasha Bertrand, *Christopher Steele’s Victory in a D.C. Court*, THE ATLANTIC (Aug. 21 2018), <https://www.theatlantic.com/politics/archive/2018/08/christopher-steeles-victory-in-a-dc-court/568057>; Harriet Alexander, *Christopher Steele wins libel case over Trump campaign dossier*, THE TELEGRAPH (Aug. 22, 2018), <https://www.telegraph.co.uk/news/2018/08/22/christopher-steele-wins-libel-case-trump-campaign-dossier>.



Nothing in the Order holds or even suggests that the Court “agreed” with Plaintiffs that they had “proved” negligence on the part of Defendants. Such a conclusion would have no place in any motion to dismiss a defamation complaint. Indeed, on the very first page of the Order, the Court cautioned that “Defendants’ special motion to dismiss does not require the Court to determine whether any information in the Steele Dossier is accurate or inaccurate.” Order at 1. Likewise, “The purpose of such a motion is not to determine whether the defendant actually committed the tort of defamation.” *Id.* Plaintiffs nonetheless trumpeted publicly an inaccurate and unfair statement about the Court’s decision, compounding the aggravation this case has caused and continues to cause to Defendants.

#### **IV. The Submitted Costs and Attorneys’ Fees are Reasonable**

Defendants’ request for costs and fees is reasonable under D.C. law. D.C. courts calculate the “reasonable rate” for an attorney based on “the prevailing rates in the relevant community” and multiply that by the “number of hours reasonably expended on the litigation.” *D.C. v. Patterson*, 667 A.2d 1338, 1343 (D.C. 1995) (citation omitted). Alston & Bird provided its services at a significant discount off of its standard billing rates. As described in the attached affidavits, the primary billing attorneys were lead counsel Christina Hull Eikhoff, a partner with nearly 20 years’ experience, Kelley C. Barnaby, a partner with 10 years’ experience, and Kristin Ramsay, a junior associate.<sup>6</sup> Eikhoff and Barnaby’s billing rate was \$475/hour, and Ramsay’s rate was \$350.<sup>7</sup> These rates are lower than the rates in the Legal Services Index *Laffey* Matrix and are within a reasonable range of the most recent U.S. Attorney’s Office Attorney’s Fees Matrix, particularly considering

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<sup>6</sup> The affidavit of Christina Hull Eikhoff is attached as Exhibit B. The affidavit of Kelley C. Barnaby is attached as Exhibit C. The affidavit of Kristin Ramsay is attached as Exhibit D.

<sup>7</sup> The case paralegals and librarians billed at a rate of \$200.

the complexity of the issues of the case.<sup>8</sup> The attached affidavits provide additional details about the hours worked and the tasks performed by the billing attorneys. The affidavit of Christina Hull Eikhoff also includes itemized bills of all costs from the filing of the Complaint through the end of July 2018.<sup>9</sup> These affidavits and the itemized bills show that this case was leanly staffed and efficiently managed.

Defendants also seek recovery of \$880.33 in litigation costs, which generally include filings fees and printing. Those costs are also reflected on the billing statements provided.

### CONCLUSION

For the foregoing reasons, Defendants' Opposed Motion for Award of Costs of Litigation, Including Reasonable Attorney Fees Under the District of Columbia Anti-SLAPP Act, D.C. Code § 16-5504(a) should be GRANTED.

This 31st day of August, 2018.

/s/ Kelley C. Barnaby  
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<sup>8</sup> See *Laffey Matrix*, <http://www.laffeymatrix.com/see.html>; see also USAO Attorney's Fees Matrix – 2015-2019, <https://www.justice.gov/usao-dc/file/796471/download>.

<sup>9</sup> Counsel will supplement its motion for additional fees and costs that will be incurred through the briefing and argument of this motion, and any appeal that may proceed.