

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
HARBOR JUSTICE CENTER - NEWPORT BEACH**

MINUTE ORDER

DATE: 12/19/2017

TIME: 09:00:00 AM

DEPT: H02

JUDICIAL OFFICER PRESIDING: Thomas A. Delaney

CLERK: Erin Trinh

REPORTER/ERM:

BAILIFF/COURT ATTENDANT: R. Zerance

CASE NO: **30-2017-00936029-SC-SC-HNB** CASE INIT.DATE: 08/04/2017

CASE TITLE: **Glenn vs. City of Newport Beach**

CASE CATEGORY: Small Claims

CASE TYPE: Small Claims

EVENT ID/DOCUMENT ID: 72721630

EVENT TYPE: Small Claims Trial

APPEARANCES

Michael Glenn, self-represented Plaintiff, is present.

Leilani I. Brown, City Clerk, is present on behalf of the City of Newport Beach - Defendant(s).

Diane Dixon, a City Official, is not present – Defendant.

Jennifer Nelson, a City Employee, is not present - Defendant.

Proceedings recorded electronically.

Leilani I. Brown, on behalf of City of Newport Beach, states that she is also present representing Jennifer Nelson and Diane Dixon.

Plaintiff objects.

Court inquires if Leilani I. Brown, City Clerk, is authorized to represent Jennifer Nelson and Diane Dixon.

Court reviews Authorization to Appear provided by Leilani I. Brown.

Court notes documents have not been filed stamped nor is there evidence they were filed in the case previously.

Copies of Authorization to Appear for Diane Dixon and Jennifer Nelson made by the Court Clerk. Originals to be filed today and copies given back to Leilani I. Brown.

Written declaration re: Authorized Representative filed.

Written declaration re: Authorized Representative filed.

In the matter of Leilani I. Brown being able to appear on behalf of Jennifer Nelson and Diane Dixon, Court takes this under submission.

As to Defendant's Special Motion to Strike, Court rules as follows:

Defendants' Special Motion to Strike is denied. The special motion to strike under Code of Civil Procedure (CCP) section 425.16 is not authorized by statute for small claims actions. Indeed, since there are no pleadings in small claims action, there literally is nothing to strike. In fact, the special motion to strike is contrary to small claims case procedures which provide for a speedy, inexpensive and informal method of resolving disputes that involve damage claims of \$10,000 or less. There are no attorneys, no formal pleadings, no discovery and only limited rights to appeal. See CCP 116.310, et seq. For these reasons, Defendants' Motion is denied.

Trial Proceedings:

All parties as noted above and witnesses are sworn. The following parties testify: Michael Glenn and Leilani Brown.

Plaintiff Exhibit 1 (for identification only) – audio recording of Diane Dixon's voicemail message – played in open court.

Plaintiff Exhibit 2 (for identification only) – YouTube video of City Council proceedings – played in open court.

Plaintiff's exhibits released in open court.

Matter taken under submission.

Parties excused.

Later in the PM:

No appearance by parties.

Court rules as follows:

Judgment after trial is for Defendants. The Court finds that Leilani Brown properly represented Defendant City of Newport Beach, but was not a proper representative of either Defendant Diane Dixon or Defendant Jennifer Nelson. No person other than the plaintiff or the defendant may take any part in the conduct or defense of a small claims action. CCP 116.540. There are exceptions to this rule, but no exception applies here. And the Authorization to Appear forms submitted to the Court do not justify Ms. Brown's appearance for any Defendant other than City of Newport Beach. Therefore, neither Defendant Diane Dixon nor Defendant Jennifer were present at trial. Nevertheless, Plaintiff must still prove his case. CCP 116.520(b).

Here, the statement made by Defendant Councilmember Diane Dixon that Plaintiff Michael Glenn owed

\$600 in copying costs, which is the only statement at issue in Plaintiff small claims action, is protected under Civil Code (CC) section 47, since it was made in the proper discharge of the Councilmember's official duty and in an official legislative proceeding discussing taxpayer dollars being spent on a trolley proposal and taxpayer dollars in general. (CC 47 (a) & (b). See *Maranatha Corrections LLC v. Department of Corrections and Rehabilitation* (2008) 158 Cal.App.4th 1075, 1088-1089.)

Even assuming those statements were not privileged, Plaintiff failed to prove his case by a preponderance of the evidence. Based on the evidence admitted during trial, Plaintiff did prove by a preponderance of the evidence that the statement regarding Plaintiff owing \$600 in copying costs was not true, since it is undisputed that he never requested actual copies of the documents, even though he did submit a PRA request. Plaintiff could have reviewed the documents through other means, including but not limited to: electronically, without ever requesting actual copies be made. He only requested that the document be made accessible to him under the PRA. (Plaintiff does not dispute, and in fact admits that he cannot dispute the statement made by Defendant Dixon regarding the cost to the City to research documentation responsive to the PRAs requests, including Defendant Dixon's statement that it took 500 hours of staff time at an estimated cost of \$25,000. Therefore, that statement is not at issue here, other than to demonstrate that both statements were made in the context of taxpayer dollars.) That said, Plaintiff failed to show by a preponderance of the evidence that he has suffered any damages as a result of the false statement. He argued that his reputation as a businessman has suffered in the community, but showed no proof of how his reputation has suffered, nor did he prove that he has suffered any damage as a result of the statement.

No costs are awarded.

City of Newport Beach, Diane Dixon, Jennifer Nelson do not owe Michael Glenn any money on Plaintiff's Claim.

Court orders Clerk's Office to give notice.

Minutes of E. Trinh, entered by K. Gates.