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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SAN DIEGO - CENTRAL

9 AVAIL SHIPPING, INC.,

10 Plaintiff,

11 vs.

12 RAZUKI INVESTMENTS, LLC, et. al.,

13 Defendants.

) Case No.: 37-2018-00022710-CU-FR-CTL

) **MEMORANDUM IN OPPOSITION TO**
) **MOTION TO DEEM PLAINTIFF**
) **PREVAILING PARTY**

) DATE: August 9, 2019

) TIME: 9:00 a.m.

) DEPT: 67

) JUDGE: Hon. Eddie Sturgeon

14 Defendants Razuki Investments, LLC (“Razuki Investments”), San Diego Private
15 Investments, LLC, SH Westpoint Group, LLC, Salam Razuki (“Razuki”) and Marvin Razuki
16 submit their Memorandum In Opposition To The Motion To Deem Plaintiff As Prevailing Party,
17 Fix Attorneys’ Fees, And Dismiss Action Based On Mootness as follows:
18

19 **I. Preliminary Statement**

20 Avail Shipping is not entitled to an award of attorneys’ fees on either a “collection of
21 judgment” or “prevailing party” theory. Avail Shipping tried to use this action to coerce Razuki
22 Investments to pay a million dollars more than the judgment (the “Judgment”) in the *Avail*
23 *Shipping, Inc. v. Razuki Investments, LLC, et. al.* action, San Diego Superior Court Case No. 37-
24 2017-00042459-CU-PA-CTL (the “Arbitration Action”). Avail Shipping previously took the
25 position it would receive an award of punitive damages in this action. Now, when Avail
26 Shipping has finally realized that it won’t prevail in this action at all, Avail Shipping wants to
27 stop proceeding with this case but also improperly claims to be entitled to attorneys’ fees.
28

1 Avail Shipping is not entitled to an award of attorneys' fees for alleged collection of the
2 Judgment. This Court already determined the reasonable attorneys' fees to be awarded to Avail
3 Shipping for work regarding collection of the Judgment. The motion further admits that Avail
4 Shipping received full satisfaction of the Judgment on April 8, 2019, and this motion was filed
5 on April 18, 2019. Avail Shipping's motion for collection of the Judgment fees is barred by
6 CCP section 685.080(a) ("The motion shall be made before the judgment is satisfied in full . . .").

7 Avail Shipping is also not entitled to an award of attorneys' fees as a prevailing party.
8 The approximately \$13,000 in attorney's fees which Avail Shipping seeks are for this ongoing
9 fraudulent transfer action in which it has not obtained any relief, and certainly not a net monetary
10 award, and is therefore not the prevailing party. See, CCP section 1032(a)(4). This Court
11 already held on February 22, 2019 in the Arbitration Action, "Petitioner's request for \$13,185.00
12 in attorney's fees and \$5,062.79 costs incurred in the preparation and prosecution of a uniform
13 fraudulent transfer action against respondent is denied. That is a different case, and there is no
14 prevailing party at this time." That status didn't change between February 22, 2019 and April
15 18, 2019 when Avail Shipping filed the current motion, and there is still no prevailing party.

16 Avail Shipping for months refused to accept the full payment of the Judgment as
17 anything other than partial satisfaction of the Judgment, and opposed Razuki Investments
18 depositing the full amount of the Judgment with the Court. At the hearing on August 18, 2018 in
19 this action, this Court warned Avail Shipping that its litigation tactics in this action may
20 ultimately result in fees being awarded to Defendants in this action. The transcript is included in
21 Defendants' opposition papers. Avail Shipping has not proven that there were any fraudulent
22 transfers by Defendants. The real property transfers which are alleged in this action to be
23 fraudulent were made in the ordinary course of business as demonstrated by Razuki in his
24 declarations in the *Razuki v. Malan, et. al.* case, San Diego Superior Court Case No. 37-2018-
25 00034229-CU-BC-CTL (the "Malan Action"). Avail Shipping has objected to responding to all
26 discovery in this case for any facts and/or documents supporting its fraudulent transfer
27 allegations.

28 The motion should be denied.

1 **II. Facts**

2 Avail Shipping, Inc. (“Avail Shipping”) is a tenant of Razuki Investments pursuant to a
3 written lease. Avail Shipping operates a laundromat at the leased premises. *See*, Jaffe Dec. at
4 paragraph 2.

5 Avail Shipping filed an arbitration action against Razuki Investments and Salam Razuki
6 claiming more than a million dollars in alleged damages. Avail Shipping claimed that Avail
7 Shipping had been fraudulently induced to lease its current space, and that the leased space was
8 not sufficiently improved. *See*, Jaffe Dec. at paragraph 3.

9 The Arbitrator rejected Avail Shipping’s claims for fraud, negligent misrepresentation,
10 and found Avail Shipping’s claims against Razuki were so unsupported that the Arbitrator
11 granted a non-suit in favor of Razuki and against Avail Shipping. *See*, Jaffe Dec. at paragraph 4.

12 The Arbitrator found in favor of Avail Shipping on the breach of contract claim,
13 awarding damages of approximately \$150,000 and some of Avail Shipping’s fees and costs for a
14 total award of \$230,867.20. The Judgment was entered and Razuki Investments immediately
15 attempted to satisfy the Judgment. Avail Shipping refused to accept the full amount of the
16 judgment as full satisfaction of the Judgment, claiming it was owed an additional \$1,000,000 in
17 this action. *See*, Jaffe Dec. at paragraph 5.

18 After the claims against Razuki were dismissed by non-suit, the parties had settlement
19 discussions as the arbitration continued including, without limitation, whether Razuki would
20 receive an award of fees and costs due to the non-suit of the claims against him in the arbitration.
21 *See*, Jaffe Dec. at paragraph 6.

22 The alleged fraudulent transfers in this action were made in the ordinary course of
23 business as demonstrated by Razuki’s declarations in the Malan Action. *See*, Jaffe Dec. at
24 paragraph 7.

1 **III. The Motion For Alleged Collection Fees Is Barred By CCP Section 685.080**

2 A motion to claim alleged fees to collect a judgment must be made before the judgment is
3 satisfied in full. *See*, CCP section 685.080(a). "[T]he statutory purpose of requiring that the
4 motion for enforcement costs be brought 'before the judgment is satisfied in full' (§ 685.080,
5 subd. (a)) is to avoid a situation where a judgment debtor has paid off the entirety of what he
6 [justifiably] believes to be his obligation in the entire case, only to be confronted later with a
7 motion for yet more fees." *Gray1 CPB LLC v. SCC Acquisitions Inc.* (2015) 233 Cal.App.4th
8 882, 891 (2015); *Conservatorship of McQueen* (2014) 59 Cal. 4th 602, 605.

9 The motion admits that Avail Shipping received full satisfaction of the Judgment on
10 April 8, 2019. *See*, Yaege Dec. at paragraph 14. Avail Shipping filed the current motion on
11 April 18, 2019. Avail Shipping's motion for fees to enforce the Judgment is barred by CCP
12 section 685.080 ("The judgment creditor may claim costs authorized by Section 685.040 by
13 noticed motion. The motion shall be made before the judgment is satisfied in full . . .").

14 Furthermore, this Court already determined the reasonable attorneys' fees to be awarded
15 to Avail Shipping for work regarding collection of the Judgment. *See*, Jaffe Dec. at paragraph 8
16 and Exhibit A, page 2. Accordingly, the cases cited by Avail Shipping are inapposite and have
17 no application to this action. In *Globalist v. Rada* (2008) 167 Cal. App. 4th 1267, the Court
18 determined whether attorney fees expended by a judgment creditor in successfully defending
19 itself in a separate action filed against it by the judgment debtor are attorney fees expended by
20 the judgment creditor in enforcing the judgment. That has no application to this action. In *Jaffe*
21 *v. Pacelli* (2008) 165 Cal. App. 4th 927, the Court determined whether efforts taken in the
22 bankruptcy court were incurred to enforce the superior court judgment. Again, that has no
23 application to this action. The case of *Zuehlsdorf v. Simi Valley* (2007) 148 Cal. App. 4th 249
24 did not involve collection of a judgment. With regard to all of these cases, this Court already
25 determined the reasonable attorneys' fees to be awarded to Avail Shipping for work regarding
26 collection of the Judgment. *See*, Jaffe Dec. at paragraph 8 and Exhibit A, page 2.

1 **IV. Avail Shipping Chose To Litigate This Action Instead Of Accepting The Full**
2 **Satisfaction Of The Judgment A Year Ago**

3 At the hearing on August 18, 2018 in this action wherein Razuki Investments tried to
4 deposit the full amount of the Judgment with this Court and Avail Shipping opposed, this Court
5 warned Avail Shipping that its choice to continue litigating this action instead of accepting the
6 full satisfaction of the Judgment may ultimately result in fees being awarded to Defendants in
7 this action:

8 THE COURT: He has a check for \$250,000 [sic] he wants to give you.

9 MR. YAEGE: He hasn't give me the check for \$250,000.

10 MR. JAFFE: I have it in my office right across the street.

11 THE COURT: Do you want a check for \$230,000 [sic]?

12 MR. YAEGE: Your Honor, if he wants to give me a check, I will send him an
13 acknowledgment of satisfaction of judgment to whatever the dollar amount is. We
14 had this discussion, Your Honor. We had this discussion on July the 19th in front
15 of --in -- in front of Judge Parsky. I said, "If you want to give me a check, give me
16 a check. I'll give you the acknowledgment." And we keep coming back in
17 here for him to try to deposit it with the court.

18 MR. JAFFE: He's saying it would be a partial satisfaction of judgment, and then
19 they would continue on for the million. I mean, I asked him, "Let's settle it." He
20 said, You got to pay it for a million more to settle it. We'll take your 230,000, and
21 we'll keep litigating for the million.

22 MR. YAEGE: Your Honor, to the extent that there is a fraudulent transfer action,
23 we're not just limited to the face value of the judgment.

24 ...

25 THE COURT: Is there an attorney fees position in this?

26 MR. YAEGE: Yes, Your Honor.

27 THE COURT: So, therefore, whoever I decide is right or wrong, I got to award
28 attorney fees?

 MR. JAFFE: You could go to the defendant as well if they –

 THE COURT: Absolutely. I go on both sides of the table.

 See, Jaffe Dec. at paragraph 9 and Exhibit B at p. 9-10.

29 **V. Avail Shipping's Failure To Mediate The Alleged Fraudulent Transfer Issue**
30 **Prior To Filing This Lawsuit Bars Its Attorneys' Fee Claim**

31 The attorneys' fees clause in the contract between Avail Shipping and Razuki
32 Investments states, "In any action or proceeding arising out of this agreement, the prevailing
33 party between Landlord and Tenant shall be entitled to reasonable attorneys fees and costs from

1 the non-prevailing Landlord or Tenant, except as provided in paragraph 36A.” Paragraph 36A
2 of the lease between Avail Shipping and Razuki Investments addresses mediation and states, “If
3 for any dispute or claim to which this paragraph applies, any party commences an action without
4 first attempting to resolve the matter through mediation, or refuses to mediate after a request has
5 been made, then that party shall not be entitled to recover attorney fees, even if they would
6 otherwise be available to that party in any such action.” *See*, Jaffe Dec. at paragraph 10.

7 Avail Shipping failed to request mediation of the alleged fraudulent transfer issues,
8 including Avail Shipping’s claim for a million dollars in addition to the Judgment, before filing
9 this action. *See*, Jaffe Dec. at paragraph 10. Accordingly, Avail Shipping cannot receive an
10 attorneys’ fee award in this action.

11
12 **VI. Avail Shipping Has Not Prevailed**

13 This Court already held on February 22, 2019 in the Arbitration Action, “Petitioner’s
14 request for \$13,185.00 in attorney’s fees and \$5,062.79 costs incurred in the preparation and
15 prosecution of a uniform fraudulent transfer action against respondent is denied. That is a
16 different case, and there is no prevailing party at this time.” *See*, Jaffe Dec. at Exhibit A, page 2.
17 That didn’t change between February 22, 2019 and April 18, 2019 when Avail Shipping filed the
18 current motion, and there is still no prevailing party to date.

19 The approximately \$13,000 in attorney’s fees which Avail Shipping now seeks are for
20 this ongoing fraudulent transfer action in which it has not obtained any relief, and certainly not a
21 net monetary award, and is therefore not the prevailing party. *See*, CCP section 1032(a)(4).
22 Avail Shipping’s “litigation objective” by this action was to coerce Razuki Investments to pay
23 one million dollars more than the Judgment. Avail Shipping has achieved nothing in this case to
24 date.

25 Avail Shipping has not proven that there were any fraudulent transfers by Defendants.
26 Avail Shipping will be required to prove actual intent to hinder, delay or default by the
27 Defendants. *See*, CACI 4200. The transfers alleged in this action to be fraudulent were made in
28

1 the ordinary course of business. Razuki explained the transfers in his declarations in the Malan
2 Action. *See*, Jaffe Dec. at paragraph 7.

3 Avail Shipping has objected to responding to all discovery in this case for any facts
4 and/or documents supporting its fraudulent transfer allegations. *See*, Jaffe Declaration at
5 paragraph 11.

6
7 **VII. The Fees Requested Are Not Reasonable**

8 In the unlikely event the Court reaches the issue of the amount of fees (since no fees
9 should be awarded as set forth above), the fees requested are unreasonable and not properly
10 documented.

11 Avail Shipping “bears the burden of establishing entitlement to an award and
12 documenting the appropriate hours expended and hourly rates. (Hensley, *supra*, 461 U.S. at p.
13 437, 103 S.Ct. 1933.) To that end, the court may require defendants to produce records
14 sufficient to provide ‘a proper basis for determining how much time was spent on particular
15 claims.’ (Id., at p. 437, fn. 12, 103 S.Ct. 1933.). The court also may properly reduce
16 compensation on account of any failure to maintain appropriate time records. (Id., at p. 438, fn.
17 13, 103 S.Ct. 1933.)” *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal. App. 4th 993, 1019; *See*
18 *also, Levy v. Toyota Motor Sales, USA, Inc.* (1992) 4 Cal. App. 4th 807, 816 (Party seeking
19 attorneys’ fees has the “burden of showing that the fees incurred were ‘allowable’, ‘were
20 reasonably necessary to the conduct of the litigation’, and were ‘reasonable in amount’”). As the
21 Court in *Levy* stated, “There is nothing in any of the cases cited by Levy or found by us
22 abrogating the trial court’s discretion in setting attorney fees. The person seeking such an award
23 is not necessarily entitled to compensation for the value of attorney services according to [his]
24 own notion or to the full extent claimed by [him]”. *Levy v. Toyota Motor Sales USA, Inc.* (1992)
25 4 Cal. App. 4th 807, 815-816.

26 “An attorney's chief asset in submitting a fee request is his or her credibility, and where
27 vague, block-billed time entries inflated with noncompensable hours destroy an attorney's
28 credibility with the trial court, we have no power on appeal to restore it.” *Christian Research*

1 *Institute v. Alnor* (2008) 165 Cal. App. 4th 1315, 1326. Block billing obscures the nature of the
2 work performed and exacerbates the vagueness of the fee request. It increases the risk that the
3 trial court, in a reasonable exercise of its discretion, will discount the fee request. *See, Christian*
4 *Research Institute v. Alnor* (2008) 165 Cal. App. 4th 1315, 1325.

5 “A fee request that appears unreasonably inflated is a special circumstance permitting the
6 trial court to reduce the award or deny one altogether”. *Christian Research Institute v. Alnor*
7 (2008) 165 Cal. App. 4th 1315, 1329. “Substantial evidence supports the trial court’s conclusion
8 counsel leavened the fee request with noncompensable hours and vague, indecipherable billing
9 statements, destroying the credibility of the submission and therefore justifying a severe
10 reduction”. *Id.* at 1318. “If ... the Court were required to award a reasonable fee when an
11 outrageously unreasonable one has been asked for, claimants would be encouraged to make
12 unreasonable demands, knowing that the only unfavorable consequence of such misconduct
13 would be reduction of their fee to what they should have asked in the first place. To discourage
14 such greed, a severer reaction is needful...”. *Id.* at 1323; *See also, Levy v. Toyota Motor Sales*
15 *USA, Inc.* (1992) 4 Cal. App. 4th 807, 816 (Reduction of requested fees by nearly 80% affirmed,
16 with the Court finding the fee request to be “grossly exaggerated”).

17 Avail Shipping improperly seeks fees for, without limitation, a consolidation not
18 requested by Defendants and numerous bulk billing entries for multiple tasks such that
19 Defendants and the Court cannot evaluate what work was done and for what amount of time.

20
21 **VIII. Conclusion**

22 Defendants Razuki Investments, LLC, San Diego Private Investments, LLC, SH
23 Westpoint Group, LLC, Salam Razuki and Marvin Razuki request the Court deny the motion,
24 and for such other and further relief as the Court deems proper.

25 Dated: July 29, 2019

LAW OFFICES DOUGLAS JAFFE

26 BY: 
27 DOUGLAS JAFFE, ESQ.