UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

WOODWARD HARBOR L.LC. and LSU HEALTH FOUNDATION NEW ORLEANS	*	**CIVIL ACTION NO. 2:23-cv-05824**
	*	**JUDGE BRANDON S. LONG**
VERSUS	*	**MAG. JUDGE EVA J. DOSSIER**
CITY OF MANDEVILLE and JASON ZUCKERMAN, INDIVIDUALLY	*	**SECTION "O" DIVISION 3**

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WOODWARD HARBOR L.L.C.'S OPPOSITION TO RENEWED MOTION FOR ATTORNEY'S FEES ON BEHALF OF JASON ZUCKERMAN AND THE CITY OF MANDEVILLE

NOW INTO COURT, through undersigned counsel, come Plaintiff, Woodward Harbor, L.L.C. ("Woodward Harbor") who respectfully opposes the Renewed Motion for Attorney's Fees filed by Jason Zuckerman ("Zuckerman") and the City of Mandeville ("City"),[1] and state as follows:

I. INTRODUCTION

While Woodward Harbor may not have prevailed against the City of Mandeville and Mr. Zuckerman, that does not mean that the litigation was frivolous, groundless, or without foundation and that attorneys' fees are warranted. Woodward Harbor respectfully requests this Honorable Court to exercise its discretion and decline to award attorneys' fees to Mr. Zuckerman.

II. BACKGROUND

An objective reading of the Complaint evidences that the situation Woodward Harbor faced before the Mandeville City Council was not standard nor a run of the mill denial of a zoning application. Woodward Harbor spent months before the City of Mandeville Planning Commission

[1] Rec. Doc. 107.

tailoring the Project to meet all requirements of the Comprehensive Land Use Regulations Ordinance ("CLURO").[2] The Planning Commission engages in the deep-dive, if you will, with the assistance of the Planning Director as a consultant, to determine whether the proposed developments satisfies the requirements of the CLURO.[3] The Planning Commission recommended approval after 5 public hearings and a detailed review.[4] The Planning Commission did not make any zoning changes and did not recommend any zoning changes to the property.[5] Thereinafter, Woodward Harbor presented the Project to the City Council, who conducted an additional 9 more hearings before ultimately denying the application.[6] Thus, after 13 months of working with the City of Mandeville and modifying the Project not only to meet the requirements of the CLURO, but the additional requests of the City Council, the Project was voted down.

Faced with a situation where its proposed development met the requirements of the CLURO and was recommended for approval by the body tasked with ensuring compliance with the CLURO, then denied despite all efforts to meet the City's additional requests, Woodward Harbor filed its Complaint within 30 days as required by Article 4.3.4 of the CLURO. As plead in its Complaint, Woodward Harbor reasonably believed the basis for the City's denial was contrary to the provisions of the CLURO and motivated by reasons outside of those legitimately related to the City's police powers.[7]

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[2] According to Article 2.1.8 of the CLURO "The Mandeville Planning Commission shall exercise all of the powers and duties conferred by Louisiana R.S. 33:101 through R.S. 33:119, inclusive, and shall exercise all powers and duties which are now or may hereafter be assigned to it by City charter, these Land Use Regulations or any other of the City Council, such duties to include but not limited to the following [. . .] "[h]ear and make recommendations to the City Council regarding the approval or denial or amendment of conceptual development plans submitted in conjunction with Conditional Use Permits and Planned District developments and the conditions associated with such recommendations".

[3] Article 2.1.7.

[4] Rec. Doc. 1 at Para. 1.

[5] Id. at Para. 51 and 52.

[6] Id. at Para. 53.

[7] Id. See Para 10. The City of Mandeville operates under a Home Rule Charter ("Charter"). The Charter grants to the City the authority to "exercise any power and perform any function necessary, requisite, or proper for the management of its local affairs." Additionally, the "city government shall have the right, power, and authority to pass all ordinances

Further, as plead in its Complaint, the Sucette Project was faced with strenuous opposition from the City Council and Mr. Zuckerman, in particular, despite receiving a recommendation of approval from the Planning Commission. As alleged, Mr. Zuckerman used a density calculation in conflict with the method set out in the Comprehensive Plan and CLURO, to reduce the number of apartment units from 210 to 90, without notice to Woodward Harbor, rendering the Project uneconomically unfeasible.[8] Woodward Harbor also alleged that the City unilaterally changed its official zoning maps, changing the designation for the Property from PD to PRD, which Mr. Zuckerman used to assert that commercial uses were incompatible – which is false pursuant to the CLURO.[9] Woodward Harbor further alleged Mr. Zuckerman deprived it of its Due Process Rights and Equal Protection through violations of the Open Meetings Laws and Roberts Rules of Order by preventing votes on the ordinance which would have reduced density and the number of proposed apartment units.[10] Woodward Harbor also alleged that Mr. Zuckerman's motives were personal as he is an architect and stated that his employer, who is a competitor of the design builder for the proposed Project, could provide better plans.[11]

It was further alleged that Mr. Zuckerman was not entitled to immunity for his actions, which again, Woodward Harbor reasonably believed were in violation of the law and Woodward Harbor's constitutionally protected rights.[12]

> 88. The City Council's consideration of and action on Sucette's Development was not a legislative decision. Instead, it was based on specific, particular facts that resulted in disparate treatment of

requisite or necessary to promote, protect and preserve the general welfare, safety, health, peace and good order of the city…" [. . .] However, Mandeville, including its Council, lacks the authority to take actions or pass ordinances that are "inconsistent with the constitution, expressly denied by general law, or inconsistent with this charter." *See* Mandeville Charter, Article I, Sections 1-01 and 1-05.

[8] Id. at Para. 66, 68, 69, 70.

[9] Id. at Para. 37-43.

[10] Id. at Para. 60, 62, 63, 77.

[11] Id. at Para. 69.

[12] Id. at Para. 88-91.

> this Development. The denial of the conditional use did not involve the determination of a policy, but instead purportedly applied general rules of the CLURO to a specific development on one specific piece of property.
>
> 89. Because the City Council was not engaged in a legislative function when it denied the Development, the Councilmember Defendant is not entitled to legislative immunity from liability under 42 U.S.C. § 1983.
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> 90. Section 2.5.2.2.a of the CLURO provides that the Planning Director shall "Interpret and administer the provisions of Division II of this CLURO." Division II of the CLURO embraces all of the provisions relevant to this civil action. Despite this express provision assigning the interpretive responsibility of the CLURO to the Planning Director, the Councilmember Defendant disregarded the Planning Director's express statements of how the CLURO applies to the Development and instead interposed his own incorrect personal opinions that were without basis in the CLURO regarding density, compatibility, traffic, noise, scale, and use considerations.
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> 91. In interposing his own personal opinions contrary to the CLURO, the Councilmember Defendant failed to adhere to clearly established standards, including those set out in the CLURO and including the interpretive information furnished by the Planning Director. Accordingly, the Councilmember defendant is not entitled to qualified immunity from liability under 42 U.S.C. § 1983.

Simply put, Woodward Harbor's allegations against Mr. Zuckerman were not frivolous, unreasonable, or groundless; all allegations in the Complaint were made in good faith and upon a reasonable basis. As stated by the Supreme Court, "[e]ven when the law or the facts appear questionable or unfavorable at the outset, a party may have an entirely reasonable ground for bringing suit." *Christiansburg Garment Co. v. E.E.O.C.* 434 U.S. 412, 421-22 (1978). Woodward Harbor submits such is the case here and attorneys' fees are not warranted.

III. LAW & ARGUMENT

42 U.S.C. 1988(b) states that "the court, in its discretion, may allow the prevailing party ... a reasonable attorney fee as part of the costs." "The primary purpose of [§ 1988] is to encourage private enforcement of the civil rights statutes," *Vaughner v. Pulito,* 804 F.2d 873, 878 (5th

Cir.1986), while at the same time "protect[ing] defendants from burdensome litigation having no legal or factual basis." *Dean v. Riser,* 240 F.3d 505, 508 (5th Cir.2001). Section 1988 creates a presumption that attorneys' fees will be granted to a prevailing civil rights plaintiff in all but special circumstances. *Vaughner,* 804 F.2d at 878. However, an award of attorneys' fees to a prevailing defendant under Section 1988 is presumptively unavailable, and is proper only upon a finding that the plaintiff's suit is "frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly becomes so," regardless of whether the suit was brought in good faith. *Christiansburg Garment Co. v. E.E.O.C.,* 434 U.S. 412, 422, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978); *see also Hughes v. Rowe,* 449 U.S. 5, 14, 101 S.Ct. 173, 66 L.Ed.2d 163 (1980). This limitation attempts to prevent any chilling effect on the enforcement of civil rights. *See Vaughner v. Pulito,* 804 F.2d 873, 878 (5th Cir.1986).

The Supreme Court has noted that, in considering whether to award attorneys' fees to a prevailing defendant, "it is important that a district court resist the understandable temptation to engage in *post hoc* reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation." *Christiansburg* 421-22. "This kind of hindsight logic could discourage all but the most airtight claims, for seldom can a prospective plaintiff be sure of ultimate success." *Id.* at 422. Thus, granting a defendant's motion to dismiss is not, in and of itself, sufficient to support a finding of frivolousness, because "[e]ven when the law or the facts appear questionable or unfavorable at the outset, a party may have an entirely reasonable ground for bringing suit." *Id.*

A. Woodward Harbor's Suit Was Neither Frivolous Nor Groundless – Woodward Harbor Had Reasonable Grounds For Bringing Its Suit Against the City and Mr. Zuckerman.

As stated by the Fifth Circuit, to determine whether a claim is frivolous or groundless, courts may examine factors such as: (1) whether the plaintiff established a prima facie case; (2)

whether the defendant offered to settle; and (3) whether the court dismissed the case or held a full trial. *Myers v. City of W. Monroe,* 211 F.3d 289, 292 (5th Cir.2000). A finding of bad faith is not a prerequisite to awarding fees to a prevailing defendant, but "if a plaintiff is found to have brought or continued such a claim in bad faith, there will be an even stronger basis for charging him with the attorneys' fees incurred by the defense." *Christiansburg,* 434 U.S. at 422. "These factors are, however, guideposts, not hard and fast rules. Determinations regarding frivolity are to be made on a case-by-case basis." *Lewis v. Smith*, No. 18-4776, 2019 WL 4521422 (E.D. La. Sept. 19, 2019) (Ashe, J.) *citing E.E.O.C. v. L.B. Foster Co.,* 123 F.3d 746, 751 (3d Cir.1997) (internal quotations marks and citations omitted).

i. Whether Plaintiff Established a Prima Facie Case.

To overcome qualified immunity, a plaintiff must show two things: first, that the defendant violated their constitutional rights and, second, "that the right at issue was 'clearly established' at the time of the alleged misconduct." *Salazar v. Molina*, 37 F.4th 278, 281 (5th Cir. 2022). In its Order granting Mr. Zuckerman's Motion to Dismiss, the Court found "Sucette fails to plead facts sufficient to overcome the "clearly established" prong of Zuckerman's qualified-immunity defense. "The 'clearly established' prong is difficult to satisfy." *Id.* at 191 (citing *Morrow v. Meachum*, 917 F.3d 870, 874 (5th Cir. 2019))."[13] Considering this high bar, other courts in the Eastern District have found that successful immunity defenses do not automatically establish frivolity, as immunity protects defendants from liability even when plaintiffs present colorable claims. As stated by Judge Africk, citing to Judge Ashe, "[t]hough the Court has concluded that plaintiffs failed to allege some causes of action and failed to overcome qualified immunity on others, the fact that a defendant prevails on a motion to dismiss does not establish that the plaintiff's

[13] Rec. Doc. 69 at Pg. 11.

claims were frivolous." *Washington v. Smith*, 639 F.Supp.3d 625, 658 (2022) citing *Lewis v. Smith*, No. 18-4776, 2019 WL 4521422, at *3 (E.D. La. Sept. 19, 2019) (Ashe, J.).

ii. Whether the Defendant Offered to Settle.

As stated by the Fifth Circuit, "whether a defendant offers to settle a case is of questionable value in determining whether the plaintiff's claims are frivolous." *Myers* at 292. The Court goes on to note that this is particularly true where governmental entities are involved as a "City may have a policy of rarely settling claims in order to discourage lawsuits. If that is the City's policy, it seems odd to allow that factor to further enable the city to obtain attorney fees from losing plaintiffs."[14] *Id.* As the factors are "guideposts, not hard and fast rules," Woodward Harbor submits that fact that the defendants did not offer to settle this matter is not indicative of whether its claims against Mr. Zuckerman or the City were frivolous. See *Lewis v. Smith,* 2019 WL 4521422 (Judge Ashe) *citing E.E.O.C. v. L.B. Foster Co.,* 123 F.3d 746, 751 (3d Cir.1997).

It is also important to note that in accordance with this Honorable Court's Order, the parties participated in a settlement conference with Magistrate Judge Dossier and, did in fact, engage in settlement negotiations.[15] In *Bailey v. Normand,* Judge Milazzo noted "neither side has indicated whether there was ever an offer to settle, but the parties attended a settlement conference before the magistrate judge prior to the dismissal of this case." No. 12-2795, 2015 WL 1268325 at *3 (E.D. La. March 19, 2015) (Milazzo, J.). Ultimately, attorneys' fees were not awarded. Further, in *Buisson Creative Strategies, LLC v. Roberts, et al*, Judge Milazzo noted that the parties engaged

[14] The frivolity factors originated in *Christiansburg Garment Co. v. E.E.O.C.,* 434 U.S. 412, 422, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978) and as stated by the Fifth Circuit "assuming that the factor has been transported from the employment law cases, we would then question its strict applicability in § 1983 cases. Whether a municipality offers to settle simply seems less indicative of the weakness of a plaintiff's case than whether a private employer offers to settle. A private employer who is insured and who sees few of these cases may settle to make the problem go away. A municipality may choose not to address the problem in as businesslike a fashion and may be more worried that settlement will simply generate more lawsuits."

[15] See Rec. Doc. 58.

in settlement negotiations, although the prevailing defendant did not make an offer to settle. No. 15-6272, 2018 WL 1070118 at *2 (E.D. La. Feb. 27, 2018) (Milazzo, J.). Again, Judge Milazzo determined that the attorneys' fees were not warranted.

Woodward Harbor's suit was not frivolous, and this factor should not be indicative of whether attorneys' fees are owed. Considering the Fifth Circuit's position that this factor "is of questionable value in determining whether the plaintiff's claims are frivolous" and that the parties engaged in settlement discussions, Woodward Harbor respectfully requests that this factor be considered neutral or weigh in its favor. *Myers* at 292.

iii. Whether the Court Dismissed the Case.

In *Washington v. Smith*, Judge Africk, citing Judge Ashe, explicitly stated that "the fact that a defendant prevails on a motion to dismiss does not establish that the plaintiff's claims were frivolous." 639 F.Supp.3d 625, 658 (2022) citing *Lewis v. Smith*, No. 18-4776, 2019 WL 4521422, at *3 (E.D. La. Sept. 19, 2019) (Ashe, J.). Judge Africk denied the attorneys' fees motion despite granting qualified immunity, emphasizing that prevailing on immunity grounds alone is insufficient for fee recovery. Similarly, in *Buisson Creative Strategies, LLC v. Roberts, et al*, Judge Milazzo declined to award fees after finding absolute legislative immunity, noting that while the plaintiff's argument was "not ultimately successful, neither was it entirely groundless." No. 15-6272, 2018 WL 1070118 at *2 (E.D. La. Feb. 27, 2018) (Milazzo, J.).

In the present matter, although Woodward Harbor was unsuccessful in this case, it had reasonable grounds to bring its suit and Woodward Harbor was required by the City's Ordinance to bring suit within 30 days. It cannot be denied that in those 30 days, Woodward Harbor presented all of the facts available to it and presented viable causes of action. While the arguments regarding

immunity were unpersuasive to this Honorable Court, as they were to Judges Africk and Milazzo, it does not mean that the lawsuit is frivolous.

B. Woodward Harbor Respectfully Requests the Court to Consider Factors Beyond the Guide Posts in *Christiansburg.*

i. Woodward Harbor Did Not Continue to Pursue its Litigation.

Woodward Harbor does not challenge this Honorable Court's decision to refuse to allow it to amend its Complaint, however, when considering whether to award attorneys' fees to a prevailing defendant, this fact is relevant. A finding of bad faith is not a prerequisite to awarding fees to a prevailing defendant, but "if a plaintiff is found to have brought or continued such a claim in bad faith, there will be an even stronger basis for charging him with the attorneys' fees incurred by the defense." *Christiansburg,* 434 U.S. at 422. This is not a situation where Woodward Harbor attempted, and failed twice, to survive a Rule 12 Motion. As noted in *Christiansburg*, such a situation certainly weighs in favor of frivolity.

For instance, the Fifth Circuit upheld an award of attorneys' fees to a prevailing defendant under Rule 12, but only after plaintiff was allowed the opportunity to amend. In *Doe v. Silsbee Independent School District,* the defendants moved to dismiss the complaint for failure to state a claim under Rule 12. 440 Fed.Appx. 421 (5th Cir. 2011). The district court denied the motion, but noted that the complaint was "utterly insufficient, and the Court is inclined to gran[t] dismissal." *Id.* at 424. However, the court granted "one—and only one—chance to file an amended pleading that complies with the Federal Rules of Civil Procedure." *Id.* After amendment, the defendants again moved to dismiss under Rule 12; the district court granted the Motion and the prevailing defendants moved for attorneys' fees under 1988, which were awarded after the district court's review of the three *Myers* factors. The plaintiff appealed the award of the attorneys' fees. Upon review, the Fifth Circuit reversed and remanded because it found the district court erred in finding

one of the plaintiff's claims frivolous, but affirmed the district court's ruling on the other claims. However, in *Doe*, the plaintiff was allowed the opportunity to amend – even after the district court initially found the original complaint "utterly insufficient." Here, Woodward Harbor did not amend its Complaint and did not continue to litigate after being admonished for failing to initially state a claim.

Also instructive are *Chauvin* and *Picou,* where Judge Milazzo granted a prevailing defendants Motion for Fees,[16] but only in part, for the fees incurred related to the filing of a failed Amended Complaint where the "Plaintiff continued to litigate his ADA claims by filing an Amended Petition after this Court made it clear that the claims—as stated in the Complaint and then simply rephrased in [the] Amended Complaint—had no arguable basis in law or fact and effectively made the same allegations as his original Complaint." *Chauvin v. Terminix Pest Control, Inc.,* No. 22-3673, 2024 WL 3742686 at *2 (E.D. La. Aug. 7, 2024) (Milazzo, J.) and *Picou v. Terminix Pest Control, Inc.,* No. 22-3700, 2024 WL 3742724 at *2 (E.D. La. Aug. 8, 2024) (Milazzo, J.).

Additionally, in *Louisiana Community Development Capital Fund, Inc. v. The Grambling Legends Square Taxing District*, Judge James in the Western District, granted, in part, and denied in part, the prevailing defendant's Motion for Attorneys' Fees in a civil rights action pursuant to 42 USC 1983 after the plaintiffs were provided the opportunity to amend and specifically instructed by the Magistrate "the requirements for alleging and proving an Equal Protection claim." No. 14-2212, 2015 WL 6554469 at *1 (W.D. La. Oct. 29, 2015) (James, J.). However, the

[16] Applying the same standard as 1988 - "Under the ADA's fee-shifting provision, "a prevailing defendant may not receive fees 'unless a court finds that [the plaintiff's] claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so.' *No Barriers, Inc. v. Brinker Chili's Tex., Inc.,* 262 F.3d 496, 498 (5th Cir. 2001) (*Christiansburg Garment Co.* at 422. (alterations in original). The Supreme Court has emphasized that district courts should not find a plaintiff's action unreasonable or groundless simply because he did not prevail." *See Christiansburg Garment Co.* at 421-422.

court refused to award fees for the entirety of the litigation "to avoid a chilling effect on civil rights litigation, [and] limit[ed] the award to the time period of the filing of the Amended Complaint forward." *Id.* at *5. *(See also No Barriers, Inc. v. Brinker Chili's Texas, Inc*, 262 F.3d 469 (5th Cir. 2001) where fees awarded after "repeated protestations" of the defendant and a "strong suggestion" by the court itself that Plaintiff was pursuing a groundless claim; *Whiten v. Ryder Truck Lines, Inc.*, 520 F.Supp. 1174 (M.D. La. 1981) where the plaintiff was strongly condemned and admonished for pleadings, yet continued to litigate).

As seen in the above referenced cases, simply because a suit initially cannot meet the pleading standard under Rule 12 without amendment, does not mean that it is frivolous and that attorneys' fees are warranted. However, applying the guidance in *Christiansburg*, multiple attempts weigh in favor of frivolity. Woodward Harbor respects this Court's decision to deny an amendment to its pleadings, however, the fact that the pleadings were not amended should be considered assessing whether a suit is frivolous. This is not a situation where Woodward Harbor "continued such a claim in bad faith" resulting in a "stronger basis for charging [. . .] with the attorneys' fees incurred by the defense." *Christiansburg,* 434 U.S. at 422. Indeed, courts have limited the award of attorneys' fees to the post-amendment actions of the plaintiff. While not binding, the above referenced cases are instructive and provide a relevant framework and Woodward Harbor respectfully requests that the Court consider that its pleadings were not amended and exercise its discretion and decline to award attorneys' fees to Mr. Zuckerman.

ii. Woodward Harbor's Claims Did Not Lack a Basis in Fact.

Courts award attorneys' fees to prevailing defendants "where the plaintiff's civil rights claim lacks a basis in fact or relies on an undisputably meritless legal theory." *Silsbee Indep. Sch. Dist.*, 440 F. App'x at 425. However, "a losing claim is not frivolous if it has legal and factual

undergirding." *Id.* In fact, Judge Milazzo denied attorneys' fees to prevailing defendants in a 1983 claim even when plaintiffs made factual allegations that turned out to be false. *Bailey v. Normand*, No. 12-2795, 2015 WL 1268325 (E.D. La. Mar. 19, 2015) (Milazzo, J.) Woodward Harbor submits that if fees were not warranted in *Bailey*, where discovery uncovered the false factual allegations of the plaintiff, they should not be awarded in the present matter. Woodward Harbor did not stretch the facts or withhold information in an effort to pursue this litigation.

Moreover, the fact that the Planning Commission approved the Development after a detailed review speaks volumes as to why the instant litigation is not frivolous. There is no question that Woodward Harbor alleged that its Development met the requirements of the CLURO, was recommended for approval by the Planning Commission, and was subsequently denied by the City Council, with Mr. Zuckerman taking the lead, despite all reasonable efforts by Woodward Harbor to tailor the development for final approval.

In its Complaint, Woodward Harbor detailed the events leading up to the denial, with specific dates and actions taken by the City and Mr. Zuckerman. Further, Woodward Harbor alleged that Mr. Zuckerman deprived Woodward Harbor of its opportunity to be heard or revise its proposal to reduce the number of apartments and this his actions were motivated by personal animus, as opposed to a legitimate governmental basis. Again, while not successful, there was a factual "undergirding" to the allegations made. Woodward Harbor respectfully requests this Honorable Court deny Mr. Zuckerman's Motion.

iii. Awarding Attorneys' Fees Will Result in a Chilling Effect.

As this Court is aware, the standard for awarding attorneys' fees to a prevailing defendant under 1988 is a high bar. An award of attorneys' fees to a prevailing defendant under 1988 is "presumptively unavailable," and is proper only upon a finding that the plaintiff's suit is "frivolous,

unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly becomes so," *Christiansburg* 421-22. As stated in *Myers*, the "stringent standard applicable to defendants is intended to ensure that plaintiffs with uncertain but arguably meritorious claims are not altogether deterred from initiating litigation by the threat of incurring onerous legal fees should their claims fail." *Myers* at 292, citing *Aller v. New York Bd. of Elections,* 586 F.Supp. 603, 605 (S.D.N.Y.1984).

Property owners and developers should not be dissuaded from seeking judicial relief whenever they reasonably believe they have been deprived of their constitutional rights. Indeed, while this Honorable Court did not find the Complaint colorable, it is a matter of fact that the City of Mandeville litigated similar issues related to Port Marigny. Moreover, there are no egregious or aggravating circumstances here, like continuing to pursue a claim after multiple attempts to amend or after being provided with information that the claim is not legitimate. Further, in situations where a proposed development or project meets all requirements of the applicable law and receives a recommendation of approval from a planning commission, owners and developers should not be afraid to challenge a governmental entity when it appears that the ultimate denial from the council is arbitrary, capricious, or not legitimately related to its police powers.

As the court did in *Louisiana Community Development Capital Fund, Inc. v. The Grambling Legends Square Taxing District*, Woodward Harbor respectfully requests this Honorable Court to consider the potential chilling effect of awarding attorneys' fees to prevailing defendants in this context, along with the other mitigating circumstances presented herein and deny Mr. Zuckerman's Motion.

IV. CONCLUSION

Woodward Harbor's suit against Mr. Zuckerman may have been unsuccessful, but it was neither frivolous, unreasonable, nor groundless. Woodward Harbor had a colorable basis for its lawsuit and attempted to overcome Mr. Zuckerman's presumed immunity through good faith arguments and the facts as known to it at the time of filing. However, as the Court noted, "Sucette fails to plead facts sufficient to overcome the "clearly established" prong of Zuckerman's qualified-immunity defense. The 'clearly established' prong is difficult to satisfy." *Id.* at 191 (citing *Morrow v. Meachum*, 917 F.3d 870, 874 (5th Cir. 2019))." Simply because Woodward Harbor did not prevail, does not mean that attorneys' fees are warranted. Woodward Harbor respectfully requests this Honorable Court exercise its discretion and deny Mr. Zuckerman and the City of Mandeville's Renewed Motion for Attorneys' Fees.[17]

Respectfully submitted:
RIESS LEMIEUX, LLC

/s/ Michael R. C. Riess

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CERTIFICATE OF SERVICE

I hereby certify that all parties have been served with this pleading via ECF on this 24th day of February, 2026.

/s/ Michael R. C. Riess
Michael R. C. Riess

[17] Woodward Harbor does not challenge the amount of Flannigan Partners LLP's fees.