

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-036734

01/28/2011

HONORABLE EILEEN S. WILLETT

CLERK OF THE COURT
J. Rutledge
Deputy

NICK COONS, et al.

CARRIE ANN SITREN

v.

HUGH HALLMAN, et al.

CLARENCE E MATHERSON JR.

CASE DISMISSED

The Court has received Plaintiffs' *Motion to Voluntarily Dismiss Claim and Recover Attorneys' Fees*, filed December 3, 2010; Defendants' *Response to Motion to Voluntarily Dismiss Claim and Recover Attorneys' Fees*, filed December 27, 2010; Plaintiffs' *Corrected Motion to Voluntarily Dismiss Claim and Recover Attorneys' Fees*, filed January 18, 2011; Plaintiffs' *Reply on Motion to Voluntarily Dismiss Claim and Recover Attorneys' Fees*, filed January 7, 2011; authorities cited; and all information presented.

Oral argument has been requested. However, the parties have thoroughly briefed their respective positions. Oral argument is unnecessary to a determination of the issues presented. The request for oral argument is denied.

Plaintiffs request an award of attorneys' fees under the private attorney general doctrine. The private attorney general doctrine is an equitable rule which permits the Court in its discretion to award reasonable attorneys' fees to a party who has "vindicated a right that: (1) benefits a large number of people; (2) requires private enforcement; and (3) is of societal importance." Arnold v. Dept. of Health Services, 160 Ariz. 593, 609 (1989). The purpose of the rule is to promote the protection of important public rights. Id.

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In the case sub judice, Plaintiffs filed suit to effect the result achieved: a fair contract between the government and private business which did not violate the gift clause of the Arizona Constitution and other statutory provisions. As business owners and tax paying citizens, Plaintiffs directly benefited from the ultimate outcome of the city of Tempe's remedial measures to correct any possible violations arising from the original contract entered. In short, Plaintiffs were successful in securing the relief requested. The triable issues upon which the Plaintiffs filed their Complaint are, indeed, moot. Now having accomplished a fair result not only for themselves but also for the citizens of this County by vindicating an important right, Plaintiffs seek no further redress and are content to voluntarily dismiss their case. Plaintiffs' efforts resulted in the City's remedial measures and required the assistance of counsel. Counsel's efforts ultimately resulted in a benefit to the greater public good. Important rights have been vindicated on behalf of Arizona tax payers. Success on the merits was likely.

In the Court's discretion,

IT IS ORDERED dismissing this case with prejudice and awarding Plaintiffs their reasonable attorneys' fees in the amount of \$21,449.50.

Defendants' Motion for Summary Judgment, filed December 3, 2010, and previously stayed, is now moot.

**HONORABLE EILEEN S. WILLETT
MARICOPA COUNTY SUPERIOR COURT
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This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>