

1
2 **E-Filed 1/18/11**
3
4
5
6
7

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11
12 CHIN-LI MOU,

13 Plaintiff,

14 v.

15 CITY OF SAN JOSE, et al.,

16 Defendants.
17

Case Number C 07-5740 JF (RS)

ORDER¹ AWARDING COSTS

18 On September 29, 2009, the Court granted Defendants' motion for summary judgment.
19 On October 22, 2009, the Clerk of the Court taxed costs in the amount of \$1,029.90. On April
20 13, 2010, the Court overruled Plaintiff's objections to the bill of costs.

21 On April 19, 2010, Plaintiff, proceeding *pro se* as she has since summary judgment was
22 granted, sent the Court a copy of her 2009 federal income tax return to support her argument that
23 she is unable to pay costs. In an order dated April 26, 2010, the Court indicated that in light of
24 Plaintiffs' *pro se* status, it would treat Plaintiff's communication of April 19, 2010, as a motion
25 for reconsideration, and it requested a response from Defendants. On June 6, the Court ordered
26 Plaintiff to appear for a debtor's examination, deferring its decision on Plaintiff's motion for
27

28 ¹ This disposition is not designated for publication in the official reports.

1 reconsideration pending the outcome of the examination. The examination took place on
2 September 1, 2010.

3 Federal Rule of Civil Procedure 54(d)(1) provides that, “[e]xcept when express provision
4 therefor is made either in a statute of the United States or in these rules, costs other than
5 attorneys’ fees shall be allowed as of course to the prevailing party unless the court otherwise
6 directs.” This rule creates a “presumption for awarding costs to prevailing parties” and thus
7 requires the losing party to show why costs should not be awarded. *Save Our Valley v. Sound*
8 *Transit*, 335 F.3d 932, 944-45 (9th Cir. 2003).

9 The Court may consider a variety of factors in deciding whether to award costs, including
10 whether the losing party has limited financial resources, *see Ass’n of Mexican-American*
11 *Educators v. California*, 231 F.3d 572, 592 (9th Cir. 2000); *Stanley v. Univ. of S. Cal.*, 178 F.3d
12 1069, 1079 (9th Cir. 1999) (stating that indigency is a factor district courts may properly
13 consider when deciding whether to award costs), whether an award of costs would “chill” future
14 civil rights litigation, *see Save Our Valley*, 335 F.3d at 946 (holding that imposition of the
15 “relatively small sum” of \$5,310.55 would not result in injustice where a community group lost
16 its race-based civil rights claim against a government agency), and whether the prevailing party
17 has engaged in misconduct such that costs should not be awarded, *see Ass’n of Mexican-*
18 *American Educators*, 231 F.3d at 592. However, “[n]oble intentions alone do not relieve an
19 unsuccessful litigant of the obligation under Rule 54(d) to compensate his opponent for
20 reasonable costs.” *Nat’l Info. Servs., Inc. v. TRW, Inc.*, 51 F.3d 1470, 1472 (9th Cir. 1995)
21 (holding that the district court abused its discretion when it “refused to award costs on the
22 ground that Plaintiffs brought their case in good faith and with meritorious intentions when in
23 fact they brought a case so devoid of merit that they were twice rejected by the district court on
24 summary judgment”).

25 Plaintiff’s debtor’s examination revealed that she currently is unemployed and that a
26 large portion of her monthly expenses of \$1,500 are paid by her former husband. *See Burchfiel*
27 *Decl.*, Ex 1; *Mou Decl.* ¶ 6. These payments are made directly to the third-party creditors. *Yang*
28 *Decl.* ¶ 2. Plaintiff also is the sole owner of a condominium at 4141 Boneso Circle, San Jose.

1 Mou Decl. ¶ 4. The Santa Clara County Assessor's Office Property indicates that the current
2 assessed value of the property is \$246,223.00. Burchfiel Decl., Ex. 4. A professional property
3 value comparison indicates that the current value of the property is more than \$400,000. *Id.*, Ex.
4 5. This amount comports with Plaintiff's statement in the San Francisco Superior Court that the
5 fair market value of the property is \$400,000. *Id.*, Ex 1.

6 While Plaintiff points to the potential chilling effect of a cost award, Defendants observe
7 correctly that multiple suits against public entities depreciate resources that could be used for the
8 broader benefit of the community. The Court concludes that in this instance it is appropriate to
9 hold Plaintiff accountable for the relatively modest amount of costs at issue.

10 In order to diminish any hardship on Plaintiff, Defendants propose that the Court allow
11 the City to file a lien against Plaintiff's property that would be satisfied when there is a
12 conversion of the property to Plaintiff's benefit. Because the Plaintiff has substantial assets and
13 receives significant support despite her present lack of income, the Court concludes that
14 Defendant's proposal is a fair resolution of the present dispute.

15 IT IS SO ORDERED.

16
17 DATED: 1/18/2010

18 
19 _____
20 JEREMY FOGEL
21 United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

This Order has been served upon the following person:

Ms. Chin-Li Mou
4141 Boneso Circle
San Jose, CA 95134