

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA**

**BUTTE DIVISION**

KX ENERGY, INC., a Virginia Corporation,

Plaintiff,

vs.

GREGORY PETER PANIS,  
NUTRITION EXPENSE CORPORATION, INC., a dissolved Oregon corporation, NUTRITION CLUBSTORES, INC., a dissolved Oregon corporation, and JOHN DOES 1-99,

Defendants.

No. CV 15-25-BU-SEH

**ORDER**

On April 13, 2016, the Court entered judgment in this case in favor of Plaintiff, KX Energy, Inc., in the amount of \$127,609.00, with post-judgment interest and allowable costs of suit.<sup>1</sup> On April 27, 2016, Plaintiff filed its Motion for Award of Attorneys' Fees.<sup>2</sup>

The Montana Supreme Court has recognized an equitable exception to the American Rule regarding attorneys' fees stating, "an award of attorney's fees in the absence of a contract or statutory basis will be narrowly applied, and will be

<sup>1</sup> Doc. 32.

<sup>2</sup> Doc. 35.

limited to those cases in which the prevailing party has been forced to defend against a frivolous or malicious action.<sup>3</sup>


In this case, Defendant, Gregory Peter Panis, filed two motions. First, a motion to dismiss,<sup>4</sup> and second, after default was entered,<sup>5</sup> an Affirmation in Opposition for Default Fed.R.Civ.P. 55(a).<sup>6</sup> Both were denied.<sup>7</sup> On April 13, 2016, Plaintiff was awarded the judgment as requested.<sup>8</sup>

Plaintiff has not demonstrated that it was forced to defend against frivolous or malicious actions by Defendants. No recovery of attorneys' fees is warranted.

ORDERED:

Plaintiff's Motion for Award of Attorney's Fees<sup>9</sup> is DENIED.

DATED this 29<sup>th</sup> day of April, 2016.

  
SAM E. HADDON  
United States District Judge

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<sup>3</sup> *El Dorado Heights Homeowners' Ass'n v. Dewitt*, 186 P.3d 1249, 1255 (Mont. 2008) (citing *Pankratz Farms, Inc. v. Pankratz*, 95 P.3d 671, 687 (Mont. 2004)).

<sup>4</sup> Doc. 14.

<sup>5</sup> Doc. 18.

<sup>6</sup> Doc. 22 (The Court construed the affirmation as a motion to set aside default, addressed it as such and denied it. (*See* Doc. 24)).

<sup>7</sup> Docs. 16 and 24.

<sup>8</sup> Doc. 32.

<sup>9</sup> Doc. 35.