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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 GERALD PETERS GALLERY, INC., a
7 New Mexico corporation, and GERALD
8 PETERS,

Case No. 3:17-cv-00273-MMD

ORDER

Plaintiff,

v.

9
10 PETER STREMMEL, STREMMEL
11 GALLERIES, LTD., a Nevada corporation,
12 MIKE OVERBY, and COEUR D'ALENE
13 ART AUCTION OF NEVADA, L.L.C., a
14 Nevada corporation,

Defendants.

14 The Court granted summary judgment in Defendants'¹ favor on the three state law
15 tort claims alleged in the First Amended Complaint. (ECF No. 59 at 10-12.) Defendants
16 moved for attorneys' fees and costs.² (ECF No. 64.) The Court will deny Defendants'
17 motion for fees and costs ("Motion") because the Court disagrees with Defendants that
18 the claims were brought or maintained in bad faith or without reasonable grounds.

19 Defendants seek an award of attorneys' fees and costs under the Court's inherent
20 authority and under NRS § 18.010(2)(b). (ECF No. 64 at 7.) "When a losing party has
21 acted in bad faith, vexatiously, wantonly, or for oppressive reasons, sanctions under the
22 court's inherent powers may take the form of attorney's fees." *Primus Auto. Fin. Servs.,*
23 *Inc. v. Batarse*, 115 F.3d 644, 648 (9th Cir. 1997) (internal citation and quotation marks
24 omitted). Section 18.010(2)(b) of the Nevada Revised Statutes gives the court discretion
25

26 ¹Defendants are Peter Stremmel; Stremmel Galleries, Ltd.; Mike Overby; and
27 Coeur d'Alene Art Auction of Nevada, LLC.


28 ²The Court has reviewed Plaintiffs Gerald Peters and Gerald Peters Gallery, Inc.'s
response (ECF No. 66) as well as Defendants' reply (ECF No. 70).

1 to award attorney's fees to a prevailing party where the claim "was brought or maintained
2 without reasonable ground or to harass the prevailing party." NRS § 18.010(2)(b). The
3 court must determine if evidence in the record exists to support "the proposition that the
4 complaint was brought without reasonable grounds or to harass the other party." Kahn v.
5 Morse & Mowbray, 117 P.3d 227, 238 (Nev. 2005) (quoting Semenza v. Caughlin Crafted
6 Homes, 901 P.2d 684, 687 (Nev. 1995)).

7 The Court agrees with Plaintiffs that Defendants have not demonstrated that
8 Plaintiffs initiated or pursued their claims in bad faith or without reasonable grounds. The
9 Court granted summary judgment based primarily on the finding that it would not have
10 been reasonable for the recipients of the first two statements to understand that
11 Defendant Peter Stremmel intended to refer to Plaintiffs and to disparage Plaintiffs, and
12 that the third statement cannot reasonably be understood to refer to Plaintiffs under the
13 circumstances here. (ECF No. 59 at 8-9.) However, the Court's finding that the disputed
14 statements are not defamatory as a matter of law is not the same as concluding that
15 Plaintiffs' claims are frivolous or lack reasonable grounds, which the Court did not find. In
16 fact, the statements at issue required careful analysis by the Court. Accordingly, the Court
17 will deny Defendants' Motion.

18 It is therefore ordered that Defendants' motion for attorneys' fees and costs (ECF
19 No. 64) is denied.

20 DATED THIS 21st day of February 2019.

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23 _____
24 MIRANDA M. DU
25 UNITED STATES DISTRICT JUDGE
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