

02/15/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MARK R. SANTANA

D. Glab
Deputy

CV 2001-006415

FILED: _____

SUN CITY TAXPAYERS ASSOCIATION
INC, et al.

JEFFREY C ZIMMERMAN
BRAD K KEOGH

v.

RECREATION CENTERS OF SUN CITY
INC, et al.

CHARLES I KELHOFFER

TODD C WILEY

RULING OF THE COURT

Defendants' applications for awards of attorney's fees

The court has considered the defendants' applications for attorney's fees, the response and reply.

1. Are defendants eligible for an award of attorney's fees?

The court determines that this matter arises out of a contract action within the meaning of A.R.S. § 12-341.01. The defendants are eligible for an award of attorney's fees.

2. Amount of fees to be awarded

Associated Indemnity v. Warner, 143 Ariz. 567, 694 P.2d 1181 (1985) requires the trial court to examine six factors in determining whether attorney's fees should be granted under A.R.S. § 12-341.01. Id. at 570, 694 P.2d at 1183. The court will examine these factors below.

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- (1) *The merits of the claim or defense presented by the unsuccessful party* - While the plaintiff's claims were dismissed pursuant to A.R.C.P. Rule 12(b), the court finds that the plaintiffs arguments were not frivolous. But the court also finds that the plain language of A.R.S. § 45-1001, 45-1006 and 45-1052(2) as well as other applicable statutes and the water exchange contract were dispositive of most of plaintiffs' claims.
- (2) *The litigation could have been avoided or settled* - given the nature of the dispute and the position of the parties, the court finds that this matter could not have been avoided or settled.
- (3) *Assessing fees against the plaintiff would cause an extreme hardship* - the plaintiffs offered no evidence that a fee award would impose an extreme hardship.
- (4) *The successful party did not prevail on all of the relief sought* - defendants did prevail on all of the relief sought.
- (5) *Novelty of the legal question* - the court finds that the legal question presented was novel, but the novelty of the question must be weighed against the plain language of A.R.S § 45-1001, 45-1006 and 45-1052(2) as well as other Arizona statutes and the water exchange contract, which were dispositive of most of plaintiffs claims.
- (6) *Whether the claim had been previously adjudicated in this jurisdiction* - the claim appears not to have been previously adjudicated in this jurisdiction.

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The court finds that four of the six factors, either totally or in part, support an award of attorney's fees. The court determines however, that given that not all of the factors support an award and that there was at least some duplication in the defendants pleadings, adjustments to the requested fees should be made.

IT IS ORDERED:

- (1) Awarding defendant Sun City Water Company attorney's fees in the amount of \$8,757;
- (2) Awarding defendant Recreation Centers of Sun City attorney's fees in the amount of \$14,327.

Form of Judgment

The court has considered the defendants' proposed form of judgment and the objection thereto.

The objection is sustained in part.

IT IS ORDERED:

- (1) Proposed paragraph 2 of the order shall be deleted from the form of judgment;
- (2) Defendants shall submit a form of judgment that reflects the awards of attorney's fees and modification.