

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-003790

02/23/2006

HONORABLE TIMOTHY J. RYAN

CLERK OF THE COURT
B. Navarro
Deputy

FILED: 02/28/2006

FOOTHILLS COMMUNITY ASSOCIATION,
THE

BOB J MCCULLOUGH

v.

MARTIN D LANTRY, et al.

MELANIE C MCKEDDIE

MINUTE ENTRY

The Court has reviewed the Plaintiff/Counterdefendant's Application for Attorneys' Fees, the Defendants/Counterclaimants' Objection, the Plaintiff/Counterdefendant's Reply, the Defendant/Counterclaimants' Supplemental Briefing, and the Plaintiff/Counterdefendant's Supplemental Briefing.

As to the underlying Statement of Facts of the original Motion for Summary Judgment which the Court deemed moot, the Court makes the following findings of undisputed fact for purposes of determining the prevailing party:

1. At the time the motion was filed, Martin D. Lantry and Ciobie Lantry (the "Lantrys") were the owners of the residence in question.
2. At the time the motion was filed, the Lantry's property was subject to certain assessments, covenants and restrictions.
3. At the time the motion was filed, the Lantry's property was part of a residential community known as the Foothills.
4. The Foothills Community Association served as the homeowners' association where the Lantrys lived.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-003790

02/23/2006

5. On September 21, 2004, the Association notified the Lantrys that they were in violation of the Association's Covenants, Conditions and Restrictions, namely:
 - a. Placement of an iron and wood bench in the center of the front yard without prior written approval of the Association's Design Review Committee.
 - b. Exposed irrigation lines and electrical conduits throughout the landscaping.
 - c. Installation of exterior lighting without written approval of the Design Review Committee.
6. The Lantrys agreed to correct the violations, but failed to do as it had promised, even after repeated requests from representatives of the Association to do so.
7. The Lantrys removed, but did not replace, some of the coach lights in the rear of the residence, which resulted in sizable holes in the house and exposed electrical boxes.
8. At the time the Plaintiff/Counterdefendant filed its Complaint, the Lantrys had not complied with the applicable Covenants, Conditions and Restrictions.
9. At the time the Plaintiff/Counterdefendant filed its Motion for Summary Judgment, the Lantrys had not complied with the applicable Covenants, Conditions and Restrictions.
10. The Lantrys do not sufficiently dispute the Statement of Facts set forth in paragraphs 5-9 in a way that allows this Court to do anything other than treat those as matters of uncontested fact.

The Court finds that, for purposes of the Motion for Summary Judgment, the Plaintiff Foothills Community Association is the prevailing party on the motion.

The Court further finds that Defendants Lantrys are liable for the Association's attorneys' fees and costs pursuant to Article 15, Section 15.12, of the Declaration of Covenants, Conditions and Restrictions.

The Court does not agree that it is appropriate to award \$60,110.80, at least at this time, for several reasons. First, the Court does not easily dismiss the argument that it may be inappropriate, as a matter of equity, to award \$60,000.00 in fees over a dispute which, if the Association had engaged in self help and covered the expense of bringing the residence into compliance, would be a fraction of the amount of attorneys' fees. This is not to say that the Association should have engaged in self help and waived its rights to seek injunctive relief, instead, it is a way of comparing and contrasting the claimed amount of fees against the estimation of what exactly is in controversy.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-003790

02/23/2006

Second, in making the determination, the Court should do so at a time when all claims have been dispositively addressed, and not just the original Complaint being deemed moot.

Third, the Court has candidly expressed its concerns about having to ultimately sanction the Lantry's conduct in relation to A.R.S. §§12-349 and 12-350. The Lantrys have intimated that the Association, and not the Lantrys, has acted in violation of those statutes. The consideration of those statutes is most appropriately made at the conclusion of the case, when the Court can weigh all of the factors, and hear everyone's assessment and evaluation as to who should be sanctioned, and why, if at all.

Fourth, the Court finds that it is more appropriate to consider an assessment of fees at the conclusion of the case, as there may be claims of offsetting fees, under possible several theories, in the event that the Defendants/Counterclaimants prevail on their Counterclaim.

Lastly, the Court finds that the hourly rate of \$250.00 to be reasonable, and that the listed amount of time accurately reflects the time expended on the professional services rendered.

IT IS ORDERED denying the application for attorneys' fees without prejudice, specifically for the Plaintiff to be able to re-urge upon the rendering of a verdict, final order or judgment on the Counterclaim.

Lastly, Defendants/Counterclaimants' counsel has repeatedly demonstrated what the Court considers sharp practice. If counsel chooses to disparage opposing counsel, or interrupt the Court during oral argument, or use pleadings or podiums as a pretext to demean and insult others, counsel is forewarned that each additional instance of misconduct will result in a sanction of \$1,000 against the Lantrys. Everyone is forewarned.