

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-017609

03/17/2014

JUDGE DOUGLAS L. RAYES

CLERK OF THE COURT
T. Springston
Deputy

PENELOPE JOHNSON

CHRISTOPHER A LAVOY

v.

POINTE SOUTH MOUNTAIN RESIDENTIAL
ASSOCIATION, THE

BRIAN W MORGAN

PAUL R NEIL

UNDER ADVISEMENT RULING

This matter was taken under advisement following the oral argument of March 14, 2014, on the parties' Cross Motions for attorneys' fees and on Plaintiff's Proposed Form of Judgment. The Court has considered Plaintiff's Motion for an Award of Attorneys' Fees and Costs, Defendant's Response, Defendant's Supplemental Response, Plaintiff's Reply, Defendant's Motion for Attorneys' Fees and Costs, Plaintiff's Response, Defendant's Reply, Plaintiff's Proposed Form of Judgment, Defendant's Objection, Defendant's Objection to Plaintiff's Statement of Costs, Plaintiff's Response to Defendant's Objection to Form of Judgment and the arguments of counsel.

On the issue of attorneys' fees, the parties disagree as to who was the prevailing party. Both parties prevailed on some claims and did not prevail on others. The Court has considered the totality of the litigation and finds that the most significant issue in the case, the heart of the case, was the question of whether the Declaration provided for the courthome assessment fees to be used to pay common area landscaping, watering and road maintenance expense. The Court ruled in the Plaintiff's favor on that issue and ordered the Defendant to discontinue the misuse of the courthome assessments.

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Having considered the factors set forth in *Associated Indemnity Corporation v. Warner*, 143 Ariz. 567, 694 P.2d 1181 (1985),

IT IS ORDERED granting Plaintiff's Motion for an Award of Attorneys' Fees pursuant to A.R.S. § 12-341.01.

IT IS FURTHER ORDERED awarding Plaintiff her attorneys' fees in the amount of \$56,000 and costs in the amount of \$2,889.15

IT IS FURTHER ORDERED denying Defendant's Motion for Attorneys' Fees and Costs.

IT IS FURTHER ORDERED overruling Defendant's Objection to Plaintiff's Amended Form of Judgment.

No further matters remain pending and the Judgment is entered pursuant to Rule 54(c).

FILED: Judgment

Effective April 15, 2014 new civil rules and forms are in effect for managing cases moving to trial. Be sure to review the new Civil Rules 16, 26, 37, 38, 72 through 74 and 77.