

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-001777

03/20/2020

HON. TERESA SANDERS

CLERK OF THE COURT
A. Walker
Deputy

JOSH CLARK FAMILY TRUST DATED MAY 9 2013, et al. JONATHAN A DESSAULES

v.

RUSSELL RANCH HOMEOWNERS
ASSOCIATION INC

CARLOTTA L TURMAN

JUDGE SANDERS

MINUTE ENTRY

The Court has considered Defendant's *Application for Attorneys' Fees and Costs* filed December 9, 2019, Plaintiffs' Objection filed February 14, 2020, and Defendant's reply filed March 13, 2020. Defendant seeks an order for \$73,871.00 in attorneys' fees, and \$1,730.41 in costs. Defendant asserts that an award of attorneys' fees is mandated pursuant to the Declaration, and also appropriate pursuant to A.R.S. § 12-341.01. Plaintiffs contend that attorneys' fees are not mandated pursuant to the Declaration, and urge to Court to exercise its discretion and deny Defendant's request for an award of attorneys' fees.

The Court has reviewed Article 14, Section 14.8, of the Declaration, which is the provision relied upon by Defendant to support its argument that an award of attorneys' fees is mandated pursuant to the Declaration. Although the Court agrees with Plaintiffs that a plain

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reading of the provision cites circumstances that are not applicable to this lawsuit, Defendant is also correct in that both parties contended, in their respective Complaint and Answer, that they were mandated pursuant to the provisions of the Declaration.

The Court has considered the factors set forth in *Associated Indemnity Corp. v. Warner*, 143 Ariz. 585, 589, 694 P.2d 1199, 1203 (App.1983), and finds as follows:

1. Whether the unsuccessful party's claim or defense was meritorious.

Although the Court believes Plaintiffs asserted their claims in good faith, their positions were ultimately rejected by the Court for the reasons set forth in its minute entry dated November 7, 2019.

2. Whether the litigation could have been avoided or settled and the successful party's efforts were completely superfluous in achieving the results.

The litigation could have been avoided. The successful party did not bring the lawsuit, and was required to incur substantial attorneys' fees and costs in connection with defending it. The successful party made a settlement offer to Plaintiffs, which was rejected, and thereafter defended the lawsuit in its entirety. Defendant's efforts were necessary to achieve the results.

3. Whether a fee award would be an extreme hardship.

The Court has not been provided with sufficient information to determine whether or not an award of attorneys' fees would not present an extreme hardship to any of the Plaintiffs.

4. Whether the successful party prevailed with respect to all of the relief sought.

Defendant prevailed with respect to all relief sought by Plaintiffs.

5. Whether the matter presented a novel legal question.

The matter did not present novel legal questions.

6. Whether the award would discourage other parties with tenable claims or defenses from litigating them.

An award would not discourage parties with tenable claims from pursuing them.

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The Court finds that an award of fees is appropriate under A.R.S. § 12-341.01(A).

The next issue is to determine the amount of reasonable attorney's fees. The Court has reviewed the entries contained in Plaintiff's application for reasonableness. Considering the length of time that this lawsuit remained pending, and the efforts involved with respect to reviewing and drafting pleadings and other memoranda, client consultations, attending court appearances, and preparing for and participating in a settlement conference, the Court cannot find that the fees incurred by Defendant are unreasonable.

Based upon the matters presented, and for the reasons set forth above, the Court finds that Defendant's request for attorney's fees of \$73,871.00 is reasonable, as well its request for \$1,730.41 in costs.

The above-referenced attorneys' fees and costs shall be borne by Plaintiffs as follows:

- (1) The fees and costs shall be divided equally by each LOT that each Plaintiff owns.
- (2) As among a particular lot, each owner of that lot is jointly and severally liable for the total amount of that lot's fees and costs.

Counsel for Defendant is directed to submit a form of order, including language pursuant to Rule 54(c) within thirty (30) days of the date of this minute entry.