

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2019-055353

03/15/2021

HONORABLE DANIEL G. MARTIN

CLERK OF THE COURT  
J. Eaton  
Deputy

JIE CAO, et al.

JOHN DOUGLAS WILENCHIK

v.

LORNE POLGER, et al.

STEPHANIE K GINTERT  
NICHOLAS C NOGAMI  
EDITH I RUDDER  
ROSS P MEYER  
JUDGE DANIEL MARTIN

MINUTE ENTRY

Plaintiffs filed their Complaint in this matter on November 20, 2019, a First Amended Complaint on March 27, 2020, and a Second Amended Complaint on July 6, 2020. On August 13, 2020, Defendant PFP Dorsey Investments, LLC (“PFP”) filed a Motion to Dismiss the Second Amended Complaint under Rule 12(b)(6), Ariz. R. Civ. P. Also on August 13, 2020, Defendant Dorsey Place Condominium Association (the “Association”) filed a Motion to Dismiss. The Court heard oral argument on December 15, 2020, and granted both motions, with prejudice.

On January 7, 2021, PFP filed an Application for Attorneys’ Fees and Costs. Also on January 7, 2021, the Association filed an Application for Attorneys’ Fees and Costs.

On January 19, 2021, Plaintiffs filed a response in opposition to PFP’s and the Association’s applications, urging, among other things, that pursuant to Rule 54(g), Ariz. R. Civ. P., both defendants had forfeited their right to seek an award of attorney’s fees by failing to make the requests in their respective motions to dismiss. On February 8, 2021, PFP filed a Reply by

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2019-055353

03/15/2021

which it contended that “Plaintiffs were on notice that Defendants intended to seek attorneys’ fees prior to the filing of the Motion to Dismiss, and thus, the purpose of Rule 54(g)(1) is met, allowing PFP to seek an award of its attorneys’ fees.” PFP Reply, at pages 1-2. Also on February 8, 2021, the Association filed a Reply urging that “Plaintiffs’ position is mistaken as the contractual documents between these Parties controls disposition of this issue and Plaintiffs were on notice of the same at all times relevant hereto.” Association Reply, at page 2. Plaintiffs requested oral argument; however, such argument would not assist the Court in resolving the matter at bar. *See* Rule 7.1(d), Ariz. R. Civ. P.

Having considered the positions of the parties, the Court agrees with Plaintiffs that by virtue of having failed to request an award of fees in their respective motions to dismiss, PFP and the Association are now barred from seeking such awards. Rule 54(g) unambiguously requires that “A claim for attorney's fees *must* be made in the pleadings or in a Rule 12 motion filed before the movant's responsive pleading.” (Emphasis added.) Neither defendant complied with this requirement; accordingly, each is deemed to have waived its right to seek an award of attorney’s fees. The applications for taxable costs will be granted.

IT IS ORDERED denying PFP’s and the Association’s applications for attorney’s fees.

IT IS FURTHER ORDERED awarding PFP costs in the amount of \$265.75.

IT IS FURTHER ORDERED awarding the Association costs in the amount of \$304.28.