

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-090015

04/14/2014

HONORABLE EMMET RONAN

CLERK OF THE COURT
T. Galindo
Deputy

DYNAMITE MOUNTAIN RANCH
HOMEOWNERS ASSOCIATION

CHRISTINA N MORGAN

v.

KAY E LARSON, et al.

KAY E LARSON
6127 E CAROLINA DRIVE
SCOTTSDALE AZ 85254

CONSTANCE JEAN GOETZ-
KIRCHNER
NO ADDRESS ON RECORD

UNDER ADVISEMENT RULING

The parties to this case entered an agreement that resolved all issues except for attorney's fees. The Court held oral argument on the issue of attorney's fees. The Court has considered the pleadings submitted by the parties, the arguments of counsel and the history of this case, all of which as occurred before this Court.

Plaintiff is entitled to an award of their reasonable attorney's fees under the terms of the CC&R's. In addition, the Court has previously awarded them their reasonable attorney's fees based on Defendant's conduct during the course of the litigation (see Minute Entry June 24, 2013). Plaintiff is requesting an award of attorney's fees and costs of no less than \$141,735.50.

The Court is unable to accurately assess the merits of Defendant's claims against the Association because the parties reached a resolution on all issues in the middle of the Evidentiary Hearing. The mid-Trial resolution was largely the result of Defendant's conduct prior to, and

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during, the Evidentiary Hearing. However, it appeared to the Court, based on the pleadings and the testimony that was presented at the Evidentiary Hearing, that there may have been some merit to Defendant's claims that Plaintiff had acted unreasonably in their dealings with her.

It has been the Court's experience that most litigation between homeowners and Home Owners Association (HOA) could have been avoided or resolved. This case is no different. There were no novel legal questions involved. The issues were all factual: Did the property manager/HOA give Defendant permission to operate a business in her home and did the HOA act reasonably in dealing with the Defendant in this case. The agreement ultimately reached between the parties was essentially the relief that had been sought by Plaintiff in their Complaint. Unlike most HOA/homeowner cases, Defendant had the benefit of experienced counsel from a large Phoenix law firm representing her "pro bono" for much of the case. The litigation was intensive including several depositions. The legal efforts undertaken by Plaintiff were completely necessary to obtain the ultimate resolution that was reached in this case.

The legal fees incurred by Plaintiff in this case are significant and are certainly a burden to the members of the HOA. On the other hand, ordering Defendant to pay \$141,000 in fees would cause an extreme hardship to her and her mother. An award of fees of this magnitude would likely discourage other homeowners from pursuing or defending claims against their HOA. However, in this particular case, a significant award of fees is appropriate as a sanction to these Defendants for their egregious conduct during the course of this litigation. Hopefully the award would deter other parties from engaging in similar tactics.

IT IS ORDERED awarding Plaintiff their reasonable attorney's fees in the total amount of \$35,000.00.

IT IS FURTHER ORDERED that Plaintiff shall submit a form of judgment for the Court's signature.