

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-055942

04/03/2020

HONORABLE CYNTHIA J. BAILEY

CLERK OF THE COURT
A. Wood
Deputy

GENE D WATSON, et al.

FREDERICK E DAVIDSON

v.

LEISURE WORLD COMMUNITY
ASSOCIATION

KATHERINE J MEROLO

JUDGE BAILEY

MINUTE ENTRY

The Court has read and reviewed Plaintiffs' Application for Attorney's Fees and Statement of Costs, filed February 24, 2020, Defendant's Response to Plaintiff's Application for Attorneys' Fees and Statement of Costs, filed March 16, 2020 and Plaintiffs' Reply in Support of Application for Attorneys' Fees and Costs, filed March 29, 2020.

An award of attorneys' fees under A.R.S. §§ 12-341 and 12-341.01 is permissive; there is no requirement that the trial court grant fees to the prevailing party in a contested contract action. *Title Ins. Co. of Minn. v. Acumen Trading Co.*, 121 Ariz. 525, 526 (1979). The trial court has broad discretion to determine whether a party is entitled to an award of attorneys' fees under A.R.S. § 12-341.01(A). *Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 570 (1985).

The Court has considered the merits of the Defendant's claims, whether Plaintiffs' efforts were completely superfluous in achieving the ultimate result, whether the assessing fees against Defendant would cause extreme hardship, whether Plaintiffs prevailed with respect to all relief sought, whether the legal question(s) presented was/were novel or had been previously adjudicated and whether a fee award would discourage other parties with tenable claims from litigation. The Court has also considered the reasonableness of the billing rate, the hours expended and the amount

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of the attorney fees requested. See A.R.S. §12-341.01, A.R.S. § 12-349, Rule 54 (g)(2), Ariz. R.Civ.P., *Berry v. 352 E. Virginia, L.L.C.*, 228 Ariz. 9, 13, 261 P.3d 784, 788 (App. 2011), and *ABC Supply, Inc. v. Edwards*, 191 Ariz. 48, 51, 952 P.2d 286, 290 (App. 1996), and *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 673 P.2d 927 (App. 1983). The Court has also considered Defendant's objections. See *Geller v. Lesk*, 230 Ariz. 624, 628 (App. 2012) (once the party requesting fees makes a prima facie case the fees are reasonable, the burden shifts to the opposing party to establish the amount requested is clearly excessive), *Canon School Dist. No. 50 v. W.E.S. Constr. Co.*, 177 Ariz. 431, 443, 868 P.2d 1014, 1026 (App. 1993)(opposing party must make specific objections with factual detail pointing out which particular billing entries are unreasonable) and *Smith v. American Express Travel Related Servs. Co.*, 179 Ariz. 131, 140, 876 P.2d 1166, 1175 (App. 1994)(an opponent must make more than sweeping and conclusory allegations to demonstrate unreasonableness of a fee request).

The Court finds that Plaintiffs are entitled to an award of attorney's fees pursuant to A.R.S. §§ 12-341 and 12-341.01.

The Court further finds the billing rates set forth in the Plaintiffs' application were reasonable and the hours expended were reasonably expended.

The Court further finds that Plaintiffs are entitled to an award of attorney's fees pursuant to A.R.S. §§ 12-1103 and 33-420. Defendant's argument regarding the statute of limitations barring relief pursuant to A.R.S. §33-420 is unpersuasive for the reasons set forth in Plaintiffs' Reply and pursuant to A.R.S. §12-550 which allow a four-year statute of limitations for causes arising out of statutes that contemplate a penalty.

The Court finds attorney's fees in the amount of \$116,482.00 are reasonable and were incurred for the reasons set forth above.

Accordingly,

IT IS ORDERED awarding attorney's fees to Plaintiff in the amount of \$116,482.00 and costs in the amount of \$4,003.32 as reflected in the Judgment signed on April 2, 2020.