

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011316

05/23/2016

HON. ROGER E. BRODMAN

CLERK OF THE COURT
S. LaFontaine
Deputy

MATTHEW HILLEBRAND, et al.

MARK BAINBRIDGE

v.

CAMELBACK GARDEN FARMS
HOMEOWNERS ASSOCIATION, et al.

JAY J HALL
MARK E LINES

RULING ON APPLICATION FOR ATTORNEYS' FEES

The Court reviewed defendants' Application for Award of Attorney's Fees, the Response and Reply. The Court reviewed the supporting China Doll affidavit.

It is indeed unfortunate that neighbors got into this expensive dispute with one another. The case was intently litigated. It appears that the parties deposed at least five witnesses (Vaccaro, Freeman, Luttrell, Leatherman and Gallardo) and attended a settlement conference. The parties filed cross motions for summary judgment complete with detailed statements of fact.

There is no question that defendants prevailed. The Court granted defendants' Motion for Summary Judgment and denied plaintiffs' motion. Not only did defendants have a purely legal defense to plaintiffs' complaint (i.e., plaintiffs had no standing to sue), but the Court was not impressed with plaintiffs' factual arguments, either. *See* Minute Entry dated April 12, 2016 at p. 6-7. The Court rejects plaintiffs' suggestion that the Court is at fault because they added the defendants in response to Judge Brain's December 4, 2014 ruling. Judge Brain specifically noted that the non-party homeowners are not indispensable parties. More importantly, Judge Brain had not been presented with the argument that the CC&Rs did not allow an action against the non-

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011316

05/23/2016

party homeowners in this case. Indeed, suits by one homeowner against another are authorized under some CC&Rs. *See Johnson v. Pointe Community Ass'n*, 205 Ariz. 485, 486, n.1 (App. 2003).

This case arises out of contract. A.R.S. § 12-341.01 provides that the court “may award the successful party reasonable attorney fees.” The Court finds that defendants are the successful party and are entitled to reasonable attorneys’ fees. In *Associated Indemnity Co. v. Warner*, 143 Ariz. 567 (1985), the supreme court set forth a number of factors for the trial court to consider in determining whether to award fees. The Court will address those factors.

As noted above, defendants’ position was meritorious while plaintiffs’ position was not. Plaintiffs argue that “this litigation could have been avoided if Defendants properly applied to build the buildings.” Response at 4:11-12. The Court rejects this argument. To be sure, defendants did not properly apply in advance to build their buildings. They should have done so. But the situation was remedied and the Association retroactively approved the structures, holding that they conformed with the CC&Rs. In other words, defendants cured the situation long before plaintiffs brought suit.

There is no evidence that plaintiffs made any effort to resolve this matter without litigation; indeed, plaintiffs initiated the action even though the Association’s Board found that defendants’ structures did not violate the CC&Rs. The Court finds that assessing fees against plaintiffs would not cause extreme hardship; having brought this litigation, plaintiffs bear the risk of losing it. The defendants prevailed with respect to all of the relief sought. The Court does not believe that the issues presented were novel. There is no evidence that this claim has been previously adjudicated in this jurisdiction. Finally, an award of fees is socially beneficial because it may discourage other parties from litigating non-meritorious claims against their neighbors. As noted by defendants in the reply, an award of fees “would improve adherence to and enforcement of the CC&Rs while also encouraging everyone involved to consider alternative methods of dispute resolution, such as those remedies specifically prescribed by the CC&Rs and other governing documents.” Reply at 5:11-13.

In *Fulton Homes Corp. v. BBP Concrete*, 214 Ariz. 566, 570 (App. 2007), courts were additionally instructed to determine whether a claim was properly brought, or whether it was unduly expanded or delayed. In addition, the Court should address potential outcomes against the cost of litigation in pursuing a claim or defense. Here, the Court has no quarrel with defendants waiting until discovery was completed before filing the motion for summary judgment. Other than unnecessarily objecting to Mr. Freeman’s deposition, the Court was not persuaded that defendants’ actions unduly expanded the case. There is no bar against recovering fees for time spent on unsuccessful legal theories. *Ofaly v. Tucson Symphony Society*, 209 Ariz. 260, 266, ¶ 24 (App. 2005).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011316

05/23/2016

In general, the Court finds that some time devoted to opposing Mr. Freeman's deposition and some time spent on the cross motions was unnecessary. In addition, the Court notes that the attorney's affidavit indicates \$45,205 in legal fees has been charged. There is no indication of what has been paid.

The Court finds that \$35,000 in attorneys' fees is a fair and reasonable amount for the litigated issues.

IT IS ORDERED that defendants are awarded reasonable attorneys' fees in the amount of \$35,000.