

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-003577

05/05/2021

HONORABLE JOAN M. SINCLAIR

CLERK OF THE COURT

S. Motzer

Deputy

CLUB WEST CONSERVANCY

FRANCIS J SLAVIN

v.

FOOTHILLS CLUB WEST COMMUNITY
ASSOCIATION, et al.

CARLOTTA L TURMAN

JUDGE SINCLAIR

MINUTE ENTRY

By minute entry filed on March 24, 2021, the Court granted the Plaintiff's Cross-Motion for Summary Judgment filed on November 5, 2020. Based on that determination, the Plaintiff filed its Statement of Costs on April 13, 2021. The Plaintiff claims \$7,446.47 in costs. The Defendants filed their Objection to Plaintiff's Statement of Costs on April 22, 2021 and the Plaintiff then filed their Reply in Support of its Statement of Costs on April 29, 2021 ("Plaintiff's Reply"). By granting the Plaintiff's Cross-Motion for Summary Judgment the case is entirely resolved.

The Plaintiff requests costs for Westlaw charges; court filing charges; photocopy charges; court reporter fees; transcript fees; certified copies; mailing costs; service of process fees; and delivery fees. Plaintiff's Statement of Costs, p.2. The Defendants ask the Court to limit its order to taxable costs noted in A.R.S. Section 12-332 (officer and witness fees; depositions; referees; certified copies; surety bond; other payments made due to an order or agreement of the parties). The Defendants specifically object to photocopy charges, mailing costs and delivery fees and argue that there is insufficient documentation of all the listed charges.

The Court agrees with the Plaintiff that the requested costs have been verified by counsel. Rule 54(f) only requires that the request for costs be verified. There is nothing in the rule

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requiring specific documentation. Ariz.R.Civ.P. Rule 54(f). The Plaintiff further argues that the contract between the parties allows for costs and argues that this term includes all costs, not just those allowed by statute. Exhibit A to Plaintiff's Reply, CC&Rs Section 11.8.

While the Court has discretion to award costs, the Court is mindful that "[b]y enacting that statute [A.R.S. Section 12-332], the legislature clearly defined which categories of litigation expenses a prevailing party can recover from the opposing party." *Ahwatukee Custom Estates Management Ass'n, Inc. v. Bach*, 193 Ariz. 401, 402, 973 P.2d 106, 107 ¶ 7(1999). "A party to a civil action cannot recover its litigation expenses as costs without statutory authorization." *Reyes v. Frank's Service and Trucking, LLC*, 235 Ariz. 605, 608, 334 P.3d 1264, 1267 ¶ 6 (App. 2014)(quotation and citation omitted). The Plaintiff has not cited any authority to this Court that would allow "costs" noted in the contract between the parties to take precedence over statutory authority. The contract itself does not define costs. Furthermore, Section 11.5 of the contract states that the "provisions hereof shall be construed and interpreted with reference to the laws of the State of Arizona." Exhibit A to Plaintiff's Reply, CC&Rs Section 11.5. Therefore, the Court will not allow photocopy charges, mailing costs or delivery fees.

IT IS ORDERED granting the Plaintiff's request for all costs listed in their Statement of Costs with the exception of photocopy charges, mailing costs and delivery fees.

IT IS ORDERED entering judgment in favor of the Plaintiff and against the Defendants in the amount of \$5,108.83 for costs incurred in this case.

IT IS FURTHER ORDERED that this judgment is due immediately and shall incur interest at the statutory rate of 10% from the date of this judgment.

/s/ JOAN SINCLAIR
JUDGE JOAN SINCLAIR
JUDICIAL OFFICER OF THE SUPERIOR COURT