

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-003636

07/28/2015

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT
B. Roberts
Deputy

CHAUNCEY RANCH OFFICE
CONDOMINIUM ASSOCIATION

AUGUSTUS H SHAW IV

v.

NORTH SCOTTSDALE PAIN CENTER L L C, JOHN A BURIC
et al.

MINUTE ENTRY

The Court has considered the Proposed Form of Judgment, Application for Award of Attorneys' Fees, Costs, and Expert Witness Fees, and Statement of Costs filed by Defendant North Scottsdale Pain Center ("NSPC") on May 20, 2015, the Objection filed by Plaintiff Chauncey Ranch Office Condominium Association ("Chauncey Ranch") on May 22, 2015, the Response filed by Chauncey Ranch on June 1, 2015, and the Reply filed by NSPC on June 15, 2015.¹ The Court also notes that while NSPC originally requested a hearing, it withdrew that request on June 18, 2015.

NSPC seeks an award of attorneys' fees under the terms of the Condominium Declaration for Chauncey Ranch Office Condominium ("the Declaration") and A.R.S. § 12-341.01, an award

¹ The Court notes that the Application, Response and Reply all fail to comply with Rule 3.2(f), Local Rules of Practice for Maricopa County. The Court has considered the documents as filed, in the interest of avoiding further cost for the parties. Counsel are advised to be aware of and comply with the Local Rule in future matters.

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of fees and expenses pursuant to A.R.S. § 12-349, an award of costs pursuant to A.R.S. § 12-341, and expert witness fees and double its costs pursuant to Rule 68, Ariz. R. Civ. P.

The Declaration

Section 12.1 of the Declaration provides that the prevailing party in an action such as this one shall be entitled to recover “all attorney fees incurred by the prevailing party in the action.” When a contract includes an attorneys’ fees provision, a court must award fees in accordance with the terms of the contract; the court lacks the discretion to refuse an award under the contractual provision. *A. Miner Contracting, Inc. v. Toho-Tolani, County Imp. Dist.*, 233 Ariz. 249, 261, ¶ 40, 311 P.3d 1062, 1075 (App. 2013).

Here, the Court finds that NSPC is the prevailing party, and thus the Court must, under the terms of the parties’ contract, award reasonable attorneys’ fees to NSPC. The Court finds the Indemnification provision cited by Chauncey Ranch to be inapplicable here.

The Court agrees with Chauncey Ranch that the fees incurred in relation to the injunction against harassment matter are not recoverable in this action, and they will not be awarded.

Fee Affidavit

The Court also finds the fee affidavit submitted meets the requirements set forth in *Schweiger v. China Doll Rest., Inc.*, 138 Ariz. 183, 188, 673 P.2d 927, 932 (1983). Specifically, the affidavit indicates the agreed upon hourly rate, the attorneys providing service, the time spent, and has sufficient detail to enable the court to assess the reasonableness of the time expended.

The Court finds that fees requested are not clearly excessive.

IT IS ORDERED awarding NSPC attorneys’ fees in the amount of \$276,666.14.

A.R.S. § 12-341.01

Because the action arose out of contract, A.R.S. § 12-341.01 also applies. A.R.S. § 12-341.01 allows a court to award a successful party reasonable attorney fees “to mitigate the burden of the expense of litigation . . .” § 12-341.01(B). The award “need not equal or relate to the attorney fees actually paid or contracted, but the award may not exceed the amount paid or agreed to be paid.” *Id.* As noted above, however, the Declaration specifically provides that the prevailing party is entitled to “all attorneys’ fees.”

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Rule 68, Ariz. R. Civ. P.

Rule 68(g) provides that if an offer is rejected, and the offeree does not later obtain a more favorable judgment, “the offeree must pay, as a sanction, reasonable expert witness fees and double the taxable costs . . . incurred after the making of the offer . . .”

Here, NSPC made an offer of judgment on April 18, 2014. Thus, NSPC is entitled to double the taxable costs incurred after that date, as well as reasonable expert witness fees.

IT IS FURTHER ORDERED awarding NSPC costs in the amount of \$8,555.30.

The Court finds that the expert witness fees incurred for the standard of care expert, Mr. Wood, are not reasonable, and NSPC is not entitled to reimbursement for those fees.

IT IS FURTHER ORDERED awarding NSPC expert witness costs in the amount of \$8,621.24.

Fees & Costs under A.R.S. § 12-349 & Rule 11, Ariz. R. Civ. P.

Defendants also seek an award of fees and expert witness costs as a sanction under A.R.S. § 12-349, arguing Plaintiff brought its claims without substantial justification. The term “without substantial justification” is defined as a claim of defense that is groundless and not made in good faith. A.R.S. § 12-349(F). “Groundless” is equivalent to “frivolous.” *Rogone v. Correia*, 236 Ariz. 43, 49, ¶ 22, 335 P.3d 1122, 1128 (App. 2014). A claim is frivolous “if the proponent can present no rational argument based upon the evidence or law in support of that claim.” *Id.*, quoting *Evergreen W., Inc. v. Boyd*, 167 Ariz. 614, 621, 810 P.2d 612, 619 (App. 1991). The fact that the claims did not survive summary judgment does not mandate an award of sanctions. *Sallomi v. Phoenix Newspapers, Inc.*, 160 Ariz. 144, 149, 771 P.2d 469, 474 (App. 1989).

The Court finds that Chauncey Ranch did not bring or maintain its claims without substantial justification, nor did it unreasonably expand the proceedings. Therefore, the Court finds sanctions under A.R.S. § 12-349 inappropriate and declines to make such an award.

The Court further finds that NSPC has not established that an award of attorneys’ fees and/or costs is appropriate under Rule 11, Ariz. R. Civ. P.

IT IS FURTHER ORDERED denying the request for attorneys’ fees and costs pursuant to A.R.S. § 12-349 and/or Rule 11, Ariz. R. Civ. P.

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IT IS FURTHER ORDERED entering judgment as modified by the Court and as indicated on the form of judgment signed this date.