

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-050453

07/25/2022

HONORABLE ALISON BACHUS

CLERK OF THE COURT

C. Lett

Deputy

VILLAGE AT GRAYHAWK OWNERS  
ASSOCIATION

JOSHUA M BOLEN

v.

ALAN JONES, et al.

KATHRYN MARIE JONES  
1610 W ALOE VERA DR  
PHOENIX AZ 85085  
DOCKET - NE  
JUDGE BACHUS

MINUTE ENTRY

Pending before the Court is Plaintiff/Counterdefendant's Amended Application for Attorneys' Fees and Costs, filed May 2, 2022, which is fully briefed. After reviewing all filings associated with the application, as well as applicable Rules and law, the Court makes the following findings and enters the following orders:

Fees

The Court previously concluded that fees under A.R.S. § 12-341.01 may be awarded. 4/18/22 Minute Entry at 10. Per A.R.S. § 12-341.01(A), "In any contested action arising out of a contract, express or implied, the court may award

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the successful party reasonable attorney fees.” Because Plaintiff’s motion for summary judgment was granted, Plaintiff is the successful party.

The Court has considered the factors set forth in *Associated Indemnity Corp. v. Warner*, 143 Ariz. 585, 589 (App. 1983), and finds as follows:

1. Whether the unsuccessful party’s claim or defense was meritorious. The Court does not make a finding on whether Defendant’s claims were meritorious. The Court granted Plaintiff’s motion for summary judgment under Rule 56(e) of the Arizona Rules of Civil Procedure. The Court notes that to the extent Defendant’s opposition to the instant application for fees and costs is a motion for reconsideration, that motion is denied.

2. Whether the litigation could have been avoided or settled and the successful party’s efforts were completely superfluous in achieving the results. Based on its review of the extensive filings in this case, the Court concludes litigation could have been settled years ago. Some actions by Defendant actions unnecessarily prolonged the matter. Plaintiff’s efforts were not superfluous to achieving the results. Indeed, Plaintiff’s motion for summary judgment was filed as the parties continued to disagree as to the fundamental issues in the case. Ultimately, the Court concluded in its Order filed April 18, 2022 that Defendant failed to comply with Rule 56(c) and summary judgment was appropriate.

3. Whether a fee award would be an extreme hardship. In her Opposition, Defendant claimed she only has access to her modest Social Security income. Plaintiff disagreed. After considering the filings, the Court does not conclude an extreme hardship would result from a fee award.

4. Whether the successful party prevailed with respect to all of the relief sought. Plaintiff prevailed in the litigation, as its motion for summary judgment was granted. Again, the motion was granted under Rule 56(e) as a result of Defendant’s failure to comply with Rule 56(c).

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5. Whether the matter presented a novel legal question. The matter did not present particularly novel legal questions. The Court also finds the issues were not complex.

6. Whether the award would discourage other parties with tenable claims or defenses from litigating them. The Court does not find that an award would discourage parties with tenable claims or defenses from pursuing them.

The Court finds that an award of fees is appropriate under A.R.S. § 12-341.01(A). The Court does not conclude that a fees award is appropriate under any other theory claimed by Plaintiff.

The next issue is to determine the amount of reasonable attorney's fees. Although Defendant did not contest the reasonableness of any of the fees requested, and instead devoted her Opposition to other issues (including whether fees should be awarded at all), the Court has reviewed the entries in counsels' affidavits for reasonableness.

In support of its amended application for fees, Plaintiff provided the Court with an affidavit by each of its counsel (Mssrs. Bolen and Humble, respectively). Mr. Bolen's amended affidavit covered the six-year period of this entire litigation, including appeals and special actions brought by Defendant, and the total contained at the end was \$139,131.50. Mr. Humble's affidavit began in 2019 and ended in 2022, with a total "billable" at the end of \$96,857.60. However, in the amended application, the requested for "counterclaims" was \$93,117.00. There was no explanation as to the difference in the figures. When the Court added the amount of requested fees at the end of Bolen's affidavit (\$139,131.50) and the amount of fees for counterclaims (\$93,117.00), the total amount of requested fees came to \$232,248.50.<sup>1</sup>

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<sup>1</sup> Unfortunately, the amended application contained no breakdown for how counsel arrived at the total, sought amount of fees and costs. Specifically, the body of the amended application first asked for a total of \$242,034.75, then went on to request \$93,117.00 in fees and \$7,637.33 in costs for the counterclaims brought by

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At the outset, the Court observes that the total requested amount of fees is substantial – nearly a quarter of a million dollars billed by multiple lawyers and paralegals for litigation that was not particularly novel or complex. That being said, the litigation has gone on for years and Defendant has been, at times, less than cooperative in moving the matter forward. The Complaint was filed in February 2016. A previous judicial officer denied a request for a “stay” after Defendant’s then-counsel was disbarred, which led to another judicial officer entering default judgment against Defendant in December 2017. Defendant’s appeal of that sequence of events was successful. Upon remand in January 2019, the current round of litigation commenced. The successful motion for summary judgment, which concerned both Plaintiff’s claims and Defendant’s counterclaims, was filed in September 2021 and granted in April 2022.

“[W]here a party has accomplished the result sought in the litigation, fees should be awarded for time spent even on unsuccessful legal theories. Where a party has achieved only partial or limited success, however, it would be unreasonable to award compensation for all hours expended, including time spent on the unsuccessful issues or claims. For example, when the plaintiff sues on a note, and the defendant successfully counterclaims, fees awarded to the plaintiff may be reduced to reflect the defendant’s success.” *Schweiger v. China Doll*

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Defendant. There was no mention of fees and costs for Plaintiff’s affirmative claims, and there was no explanation as to how or why the fees and costs were delineated in that fashion. Then, in its conclusion, the application requested \$242,034.75 in fees and costs. The application gave no breakdown for that number. Instead, the application referred the Court to “Exhibit A.” Exhibit A began with a Declaration by Mr. Humble and his billing entries, but the entries did not total the sought amount of \$93,117.00. The Court went on to read the billing entries for Mr. Bolen, which totaled \$139,131.50. Therefore, the Court was able to piece together that \$242,034.75 represents \$139,131.50 in fees for Mr. Bolen + \$93,117.00 in fees for Mr. Humble + \$2,148.92 in costs for Mr. Bolen + \$7,637.33 in costs for Mr. Humble. A clear breakdown in an application for fees and costs would conserve judicial resources.

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*Restaurant, Inc.*, 138 Ariz. 183, 189 (App. 1983) (citing *Pioneer Constructors v. Symes*, 77 Ariz. 107, 112 (1954)). “There is no precise rule or formula for making these determinations.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (quoted in *Schweiger*, 138 Ariz. at 189).

Here, Plaintiff was successful in the totality of the litigation, despite its initial default judgment being reversed by the Court of Appeals.<sup>2</sup> However, the Court finds it appropriate to reduce the requested fees.

First, the fees award should not reward Plaintiff for its lack of success before the Court of Appeals on Defendant’s second appeal. Nor will the Court award fees expended by Plaintiff for the aspects of the litigation that were ultimately reversed on appeal.<sup>3</sup> Consequently, the Court disallows the following entries, for a total of \$38,320.00:

- Bolen affidavit: All entries between April 4, 2017 (beginning with the entry “Review and Analyze Notice Regarding Defendant Kathryn Jones’s Request for a Stay in the Proceedings”) and August 30, 2017 (ending with the entry “Leave detailed voicemail with J. Graves discussing the Notice of Appeal from K. Jones”), with the exception of two entries on April 12, 2017. Those two entries are “Review and analyze minute entry from the court striking letters filed my (sic) K. Jones from the record” (for counsel) and “Receive and review Minute Entry from Court striking Jones’ letters” (for a paralegal). The Court finds the latter two entries are duplicative and the Court does not find that .4 hours by two people was

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<sup>2</sup> Defendant filed two appeals. Although Defendant did not prevail on her first appeal, Defendant did obtain a reversal of the default judgment against her in her second appeal (filed in December 2017 and reversed and remanded in January 2019).

<sup>3</sup> In so doing, the Court recognizes that a handful of entries reflect that settlement efforts were made during that period of time. However, those efforts were made against the backdrop of Plaintiff’s ultimately unsuccessful position on appeal, and the Court declines to award fees for that period of time.

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required to analyze that Order, given the Order's simplicity. The paralegal's time is disallowed. The total amount of fees disallowed for this period is \$8,784.50.

- Bolen affidavit: All entries from September 8, 2017 through October 5, 2017, for a total of \$1,812.50.
- Bolen affidavit: All entries from December 11, 2017 through January 2, 2019, with the exception of one entry on December 11, 2017 labeled "Analyze letter from Court of Appeals dismissing appeal." The Court allows the latter entry because it pertains to an appeal by Defendant that was unsuccessful. The total disallowed for this period is \$27,723.00.

Next, the Court disallows fees expended for Plaintiff's reply to its motion for summary judgment because the Court struck the reply upon Defendant's successful motion to do so. The Court further disallows fees associated with both of Defendant's motions to strike because those motions were granted by the Court. It is baffling to the Court why Plaintiff claimed these fees given its reply was stricken and the motions to strike were granted. The total disallowed is \$8,183.50. This figure represents the exclusion of the following fees claimed:

- Bolen affidavit: All entries from November 30, 2021 through December 16, 2021 (entry labeled "Email exchanges with Scott Humble and Norm Sagon regarding Reply to Motion for Summary Judgment"), with the exception of a December 6, 2021 entry labeled "Call with Scott Humble regarding Reply to Motion to Preclude Alan Jones."
- Bolen affidavit: All entries from February 4, 2022 through March 3, 2022, with the exception of a March 3, 2022 entry labeled "Receipt and review disclosure regarding Jones selling her Unit."
- Bolen affidavit: The March 8, 2022 entry labeled "Review and modify second motion to strike response."

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- Humble affidavit: December 2, 2021 entries labeled “Review and analyze portion of Jones’ 151 page response with exhibits to motion for summary judgment in preparation for reply” and “Review and analyze potential caselaw to support argument regarding non-material facts in preparation for reply in support of motion for summary judgment.”
- Humble affidavit: December 3, 2021 entry labeled “Review and analyze additional exhibits from Jones’ response to motion for summary judgment in preparation for reply.”
- Humble affidavit: Entries beginning on December 7, 2021 through December 16, 2021.
- Humble affidavit: January 28, 2022 entry labeled “Communicate (other outside counsel) by telephone with co-counsel T. Butterfield regarding possible motion to strike” through January 31, 2022 entry labeled “Review and analyze options relating to Jones’ request for motion to strike in preparation for possible withdrawal of reply.”
- Humble affidavit: February 15, 2022 entry labeled “Review and analyze court docket to determine any filings by Jones.”
- Humble affidavit: Entries beginning on February 15, 2022 labeled “Draft/revise email to co-counsel J. Bolen regarding response to pending motion to strike from Jones” through March 4, 2022 entry labeled “Draft/revise email to co-counsel J. Bolen regarding strategy.”

The Court further disallows fees regarding the sale of Defendant’s condominium after the Court issued its ruling on the motion for summary judgment. Whether the unit was sold had no bearing on the outcome of the

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litigation at that point.<sup>4</sup> Thus, the fees for the entry on April 20, 2022 labeled “Receipt and review new owner information” (\$174.00) on the Bolen affidavit are disallowed.

After considering each entry in the affidavits, the case history, the number and qualifications of counsel, the hours expended, the nature of the claims, and the relevant case law, the Court finds attorney’s fees in the amount of \$150,000.00 to be reasonable and appropriate.

Costs

Plaintiff has requested a total of \$9,786.25 in costs, which represents \$2,148.92 in costs incurred by Mr. Bolen’s firm and \$7,637.33 in costs incurred by Mr. Humble’s firm. The Court has reviewed the statements of costs filed pursuant to A.R.S. § 12-346. Defendant did not object to specific costs; as noted above, Defendant argued other points in her Opposition, including whether the Court should award costs at all. She did not challenge specific line items. However, upon review of the Bolen statement of costs, the Court finds that certain costs should be excluded. Those costs are:

- Filing fees for documents filed in support of Plaintiff’s ultimately unsuccessful default judgment will not be awarded. These fees are: TurboCourt \$6.70 on 4/18/17 + TurboCourt \$6.70 on 4/18/17 + TurboCourt \$6.70 on 4/26/17 + TurboCourt \$6.70 on 8/23/17 + TurboCourt \$6.70 on 8/23/17 = \$33.50.
- Similarly, filing fees for Plaintiff’s unsuccessful position on Defendant’s second appeal will not be awarded. These fees are: Clerk of the Arizona \$140.00 on 2/13/18 + TurboCourt \$6.70 on 5/24/18 + TurboCourt \$10.61 on

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<sup>4</sup> The Court disagrees with Defendant’s assertion in her Opposition that because she sold the property in question, the case is “moot.” The sale of the property in 2022 does not reverse the course of the litigation and what transpired between 2016 and 2022.

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6/28/18 + TurboCourt \$6.70 on 10/1/18 + TurboCourt \$10.61 on 10/31/18 + TurboCourt \$10.61 on 11/1/18 + TurboCourt \$10.61 on 11/1/18 = \$195.84.

- It also appears Plaintiff is attempting to recoup its costs for the reply that was stricken and its responses to unsuccessful motions to strike. The Court does not find those costs should be awarded. These costs are TurboCourt \$6.70 on 12/16/21 + TurboCourt \$6.70 on 2/22/22 + TurboCourt \$6.70 on 3/8/22 = \$20.10.
- The process server fee, postage, and courier service fees that were incurred in support of the proceedings that were reversed in Defendant's second appeal will not be awarded. Those fees are \$65.40 Nationwide Legal Ser on 5/31/17 + \$30.00 Nationwide Legal Ser on 6/26/17 + \$40.00 Nationwide Legal Ser on 9/22/17 + \$12.84 UPS on 6/23/17 + \$6.71 Postage on 4/26/17 + \$6.71 Postage on 4/26/17 + \$6.71 Postage on 4/26/17 + \$6.92 Postage on 9/28/17 + \$6.92 Postage on 9/28/17 + \$6.92 Postage on 9/28/17 + \$6.92 Postage on 9/28/17 = \$196.05.
- Certified copy and judgment costs for the default judgment that was reversed on appeal will not be awarded. Those costs are \$29.50 Clerk of the Superior on 9/29/17 + \$10.00 Maricopa County Recorder on 10/5/17 = \$39.50.
- Transcript costs incurred in support of Plaintiff's unsuccessful position on appeal will not be awarded. Plaintiff listed that total cost as \$135.30.
- Finally, "legal fees" payable to "Ahwatukee Legal Office" in the amount of \$841.52 on March 11, 2019 were billed. No further explanation was provided, and the Court cannot determine what those additional "legal fees," when Plaintiff had multiple counsel at that point, would be.

Thus, the total amount of fees disallowed from the Bolen statement of costs is \$1,461.81 (\$33.50 + \$195.84 + \$20.10 + \$196.05 + \$39.50 + \$135.30 +

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\$841.52). After subtracting the amount of disallowed fees (\$1,461.81) from Mr. Bolen's requested fees (\$2,148.92), the amount to be awarded vis-à-vis Mr. Bolen is \$687.11.

The Court does not disallow any costs listed by Mr. Humble.

Thus, the total amount of costs to be awarded in this matter is \$8,324.44 (\$687.11 + \$7,637.33).

Conclusion

Finally, the Court declines to change, at this extremely late stage of the litigation, its description of Defendant from "Kathryn Jones" to "Kathryn Jones, Trustee of the KMJ Trust," as Plaintiff suggested in its application for fees and proposed form of judgment. While it may be true that Ms. Jones is the trustee and sole beneficiary of the KMJ Trust, the KMJ Trust is not a named party to this case. Indeed, a trust may not even represent itself in litigation. Plaintiff sued Defendant Kathryn Jones in her personal capacity. The Court will enter judgment against Kathryn Jones.

Therefore, based on the foregoing,

**IT IS ORDERED** that Plaintiff shall be awarded \$150,000.00 in reasonable attorney's fees, and \$8,324.44 in recoverable costs, for a total amount of \$158,324.44.

No matters remain pending in this case. This is a final judgment under Ariz. R. Civ. P. 54(c). **IT IS THEREFORE ORDERED** granting Plaintiff's Amended Application for Attorneys' Fees and Costs, filed May 2, 2022.

**IT IS FURTHER ORDERED** entering judgment against Plaintiff and in favor of Plaintiff and its counsel, Joshua Bolen and Scott Humble, in the amount of \$158,324.44, plus interest at the legal rate of 6.75% as of this date, for Plaintiff's

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contributions to Defendants' reasonable attorney fees and costs as ordered in this Court's orders.

/ s / ALISON S. BACHUS

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