

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-003790

08/30/2007

HON. RICHARD J. TRUJILLO

CLERK OF THE COURT
D. Pluff
Deputy

FOOTHILLS COMMUNITY ASSOCIATION,
THE

BOB J MCCULLOUGH

v.

MARTIN D LANTRY, et al.

STEVEN W CHEIFETZ

BRAD K KEOGH

RULING

RE: PLAINTIFF'S MOTION TO REURGE AN AWARD OF ATTORNEY'S FEES AND
COSTS

In February, 2006, the Court ruled that the Plaintiff was the prevailing party on Plaintiff's Motion for Summary Judgment. However, the Plaintiff's Application for Attorney's Fees and Costs was denied pending a resolution of the Defendants' Counterclaim.

A settlement of the Counterclaim, in the sum of \$20,000.00, in favor of the Defendants was entered on or about November 1, 2006.

The parties apparently had a fairly contentious ten year history prior to the filing of the Complaint. In any event, in October 2004, the Defendants were advised that item (3) "ground cover to hide the irrigation and electric lines", item (5) "tack down cable on west side of wall" and item (6) "plastic covers or shields on inside of coach lights in rear yard so light will not emanate to side and toward neighbors" needed to be completed in order to avoid legal action by the Plaintiff.

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During the course of the next six months or so, the legal action by the Plaintiff was swift and steady even though the Defendants advised the Plaintiff in October, 2004, that their home was on the market and believed the home would not sell unless all CC&R requirements were completed.

On July 14, 2005, the home sold. Therefore, the Defendants contend, the issues presented in the Complaint became "moot" as a matter of fact and law on July 14, 2005.

Prior to the close of escrow, on July 8, 2005, Plaintiff, through counsel, proposed a settlement of all issues, including the Defendants' Counterclaim, for the total sum of \$20,843.30, in favor of the Plaintiff. This sum apparently represented Plaintiff's attorney's fees and costs incurred through July 8, 2005.

Plaintiff is now requesting attorney's fees and costs in excess of \$75,000.00.

This Court has carefully reviewed 52 written exhibits containing letters, emails, pleadings, transcripts and photographs; literally hundreds of pages over seven inches thick.

Clearly, this case, the Complaint and Counterclaim, should have been presented to a settlement judge or mediator as suggested by the Defendants when they were pro per and by Defendants' counsel, after they were retained, in July 2005.

Given the nature of the allegations brought by the Defendants in their Counterclaim, and the position of the Plaintiff that the Counterclaim was "frivolous" and "without merit", and further, the apparent unwillingness of the Plaintiff to pursue a resolution via a settlement or mediation process,

IT IS ORDERED awarding the Plaintiff \$20,843.30, as and for attorney's fees and costs.