

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-095508

09/17/2015

HON. ROBERT H. OBERBILLIG

CLERK OF THE COURT
I. Ostrander
Deputy

MICHAEL MCMULLEN

DAVID E JOHNSON

v.

VAL VISTA LAKES COMMUNITY
ASSOCIATION, THE

J GARY LINDER

RULING

The Court has read the following:

- Defendant's *Motion to Strike Attorney-Client Privileged Communication and Request for Sanctions* electronically filed on August 11, 2015;
- Plaintiff's *Response in Opposition to Motion to Strike and Request for Sanctions* electronically filed on September 1, 2015;
- Defendant's *Reply to Plaintiffs' Response to Defendant's Motion to Strike* electronically filed on September 15, 2015;
- Defendant's *Application for Attorneys' Fees* electronically filed on July 24, 2015;
- Plaintiff's *Opposition to Defendant's Application for Attorneys' Fees and Costs* electronically filed on August 24, 2015;
- Defendant's *Reply to Plaintiffs' Opposition to Defendant's Application for Attorneys' Fees and Costs* electronically filed on September 11, 2015;

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-095508

09/17/2015

- Plaintiff's *Application for Attorneys' Fees and Costs* electronically filed on July 24, 2015;
- Defendant's *Opposition to Plaintiffs' Application for Attorneys' Fees and Costs* electronically filed on August 12, 2015; and
- Plaintiff's *Reply in Support of Plaintiff's Application for Attorneys' Fees and Costs* electronically filed on August 27, 2015.

The Court is of the opinion that the parties have fully and adequately briefed the issue(s) in their pleadings and therefore oral argument would not assist the Court. Consequently, pursuant to Rule 7.1(c), Arizona Rule of Civil Procedure, the Court will resolve the motions without oral argument.

As to Defendant's *Motion to Strike Attorney-Client Privileged Communication and Request for Sanctions*, the Court finds that the letter was privileged and the issue of waiver is a close call on both sides of the issue. Plaintiff's counsel should have requested this Court's permission to use the letter or disclose it to the Court only under seal. Nevertheless, this Court does not believe a sanction is warranted.

IT IS ORDERED granting Defendant's Motion to Strike and denying Defendant's Request for Sanctions.

As to the competing fee applications, the Court finds Plaintiff prevailed on the breach issue and Defendant prevailed on the issue of specific performance and damages. The Plaintiff refused to settle the case without an admission in the release. The record does not demonstrate any substantive to be gained by Plaintiff insisting on an admission following a new election in November or any reason by Defendant for not admitting the breach. Neither side has unclean hands on this issue.

The Court finds that the Plaintiff was the prevailing party for purposes of A.R.S. § 12-341.01. In its discretion, the Court awards Plaintiff \$12,000.00 in attorneys' fees.

The Court further finds no basis to award fees per A.R.S. § 12-349.

IT IS ORDERED that Plaintiff's counsel shall submit for the Court's review and signature an appropriate form of Judgment by **October 7, 2015**. Any responses/objection thereto shall be filed in accordance with the Arizona Rules of Civil Procedure.

IT IS FURTHER ORDERED vacating telephonic Status Conference set for October 14, 2015, at 8:45 a.m.