

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-011927

10/14/2011

JUDGE PRO TEM COLLEEN L. FRENCH

CLERK OF THE COURT
T. Melius
Deputy

DAVID B VANYO, et al.

JEFFREY D GROSS

v.

CAREFREE FOOTHILLS HOMEOWNERS
ASSOCIATION, et al.

KURT M ZITZER

BRIAN E DITSCH

MINUTE ENTRY

1:34 p.m. This is the time set for Oral Argument regarding Defendants' Motion for Attorney Fees. Plaintiffs are represented by counsel, Jeffrey D. Gross. Defendants are represented by counsel, Jordan Plitt, for Kurt M. Zitzer.

A record of the proceedings is made by audiotape in lieu of a court reporter.

Arguments are presented to the Court.

IT IS ORDERED taking the matter under advisement.

2:08 p.m. Hearing concludes.

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

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LATER:

The Court finds that Defendants' request for attorney's fees pursuant to the terms of the CC&R's, made for the first time at today's evidentiary hearing, to be untimely and that they have waived this claim by not including it in their previously briefed Application for Attorney's Fees. Additionally, Defendants have not demonstrated that attorney's fees and costs are, in fact, even available under these circumstances pursuant to the CC&R's. Therefore,

IT IS ORDERED denying Defendants' request for an award of attorney's fees and costs pursuant to the terms of the CC&R's.

Regarding Defendants' request for an award of attorney's fees and costs pursuant to A.R.S. § 12-341.01, the Court finds that, until this litigation is concluded, it is not possible to determine who is the prevailing party. Therefore,

IT IS ORDERED denying Defendants' Application for Attorney's Fees and Costs as premature, as it relates to A.R.S. § 12-341.01.

The Court of Appeals awarded Defendants attorney's fees on appeal totaling \$35,094.00, and costs in the amount of \$15,174.01.

IT IS ORDERED affirming the award of attorney's fees and costs to Defendants on appeal, and adopting that order.