

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-055942

10/23/2020

HONORABLE ANDREW J. RUSSELL

CLERK OF THE COURT
J. Escarcega
Deputy

GENE D WATSON, et al.

FREDERICK E DAVIDSON

v.

LEISURE WORLD COMMUNITY
ASSOCIATION

KATHERINE J MEROLO

COMM. RUSSELL

MINUTE ENTRY

This Court has received and reviewed the following items:

- Plaintiffs' Motion to Alter or Amend Judgment to Include Attorneys' Fee Award
- Defendant Leisure World Community Association's Notice of Appeal
- Motion to Strike Defendant's Notice of Appeal
- Defendant Leisure World Community Association's Motion to Reconsider Plaintiff's Application for Attorneys' Fees and Response to Plaintiff's Motion to Alter or Amend Judgment to Include Attorneys' Fee Award

Plaintiffs' Request to Include an Additional Award of Attorneys' Fees

Plaintiffs ask the Court to award them the attorneys' fees they incurred in defending against Defendant's Motion for New Trial. The Court granted Defendant's Motion, in part. *See* September 14, 2020 Minute Entry. With both parties partially prevailing on portions of that Motion, and given the complexity and novelty of the issues raised, the Court does not believe that an additional award of attorneys' fees under § 12-341.01 is appropriate or reasonable at this time.

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IT IS ORDERED denying Plaintiffs' Motion to Alter or Amend Judgment to Include Attorneys' Fee Award.

Defendant's Notice of Appeal

Defendant filed a Notice of Appeal on October 15, 2020, purporting to appeal from "the amended judgment entered in this case on the 14th day of May 2020, as revised by the Minute Entry Order entered on the 14th day of September 2020." *See* Notice of Appeal, page 1. At the time Defendant filed its Notice of Appeal, Plaintiffs' Motion to Alter or Amend Judgment was pending before the Court. The filing of a Motion to Alter/Amend under Rule 59(d) tolls the time for filing a Notice of Appeal. *See* ARCAP 9(e)(1)(C). And a Notice of Appeal filed "while any party's time-extending motion is pending before the trial court, is 'ineffective' and a nullity." *See Craig v. Craig*, 227 Ariz. 105, 107, ¶ 13, 253 P.3d 624, 626 (2011).

IT IS ORDERED striking Defendant's Notice of Appeal, filed October 15, 2020.

Defendant's Motion to Reconsider Attorneys' Fee Award

Defendant asks this Court to reconsider the award of attorneys' fees entered as part of the Amended Judgment, given the Court's recent ruling that granted part of Defendant's Motion for New Trial. The Court sees no reason to reconsider the Amended Judgment's award of attorneys' fees to Plaintiff. Despite the Court's September 14, 2020 Ruling, Plaintiffs clearly remain the prevailing parties in this matter.

IT IS ORDERED denying Defendant Leisure World Community Association's Motion to Reconsider Plaintiff's Application for Attorneys' Fees.