

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-017523

11/08/2022

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
A. Meza
Deputy

ROWLAND SHORT, et al.

ROWLAND SHORT
4525 N 66TH ST UNIT 117
SCOTTSDALE AZ 85251

v.

CASA DEL MONTE INC

NICOLE PAYNE

PAMELA SHORT
4525 N 66TH ST UNIT 117
SCOTTSDALE AZ 85251
JUDGE WARNER

MINUTE ENTRY

Before the Court and fully briefed are Defendant's lodged Form of Judgment, Statement of Cost, and Application for Attorneys' Fees and Costs. Plaintiffs object to an attorneys' fees award, but not to the claimed costs or form of judgment.

Defendant is the successful party, having prevailed on all claims. Further, this matter arises out of contract. Defendant is therefore eligible for an award of attorneys' fees under A.R.S. § 12-341.01(A).

A fee award under A.R.S. § 12-341.01(A) is discretionary, and case law requires the Court to consider several factors. The Court has considered all relevant factors including those required by *Associated Indemnity Corp. v. Warner*, 143 Ariz. 567 (1985). It finds as follows.

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1. *The nature of homeowner's association litigation.*

This is not a factor listed in *Warner*, but it is relevant here. Homeowner's associations are like mini-governments, whose boards are elected by the homeowners to govern matters pertaining to the community. Their powers and duties are specified in statute, in the CC&R's, and to some extent in common law. *See* Restatement (Third) of Property (Servitudes) § 6.13 (2000). And within the limits of the CC&R's and legal requirements, they have broad discretion to make decisions concerning the community.

It is not uncommon for homeowners to disagree with how their association runs the community, or how its board runs the association. In most instances, the remedy is a democratic one: if homeowners do not like how the association is being run, they can elect new directors. Homeowners are entitled to run their own communities free from judicial oversight, as judges are neither equipped nor authorized to substitute their judgment for that of homeowners and those they elect. Only when the association or its board violate duties specified in statute or in the CC&R's (including those common law duties that are implied as part of the CC&R's) may judicial recourse be obtained.

This is a relevant factor because, when a homeowner seeks judicial recourse, it imposes a burden on the association, and one purpose of A.R.S. § 12-341.01(A) is to mitigate such burdens. *Hall v. Read Dev., Inc.*, 229 Ariz. 277, 282 (App. 2012). It was Plaintiffs' decision to sue the Association. They knew it would have to defend the lawsuit, knew that would cost money, and knew they bore the risk of a fee award if—as turned out to be the case—they had no evidence to support a valid claim.

2. *Whether the unsuccessful party's claim or defense was meritorious.*

Plaintiffs' claims were not meritorious. On summary judgment, they bore the burden of producing evidence to support any claim for trial and they were unable to do so.

3. *Whether the litigation could have been avoided or settled and the successful party's efforts were completely superfluous in achieving the result.*

It does not appear litigation could have been avoided. The parties tried to settle, and ultimately Defendant's efforts were necessary to achieve the result it achieved.

4. *Whether a fee award would be an extreme hardship.*

The evidence does not show that a fee award would be an extreme hardship.

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5. *Whether the successful party prevailed with respect to all of the relief sought.*

Defendant prevailed with respect to all the relief sought.

6. *Whether the matter presented a novel legal question.*

Although the facts of every homeowner's association case are different, the legal issues here were not novel. The duties Defendant owes to its homeowners are well-established in Arizona law, and the issue here was whether Plaintiffs could prove a violation of any duty.

7. *Whether the award would discourage other parties with tenable claims or defenses from litigating them.*

Any award of attorneys' fees against a plaintiff in a homeowners' association dispute may discourage those with tenable claims from filing suit. But this risk must be weighed against the risk that denying fees would encourage lawsuits by those with no tenable claim. If homeowners can assert meritless claims against their association without consequence, it may incentivize litigation over using democratic processes to resolve disputes concerning the association.

In this case, Plaintiffs had ample time and opportunity to adduce evidence supporting a viable claim. They did not do so, and the burden of their attempt should fall on them rather than on Defendant. For these reasons, the Court finds that an award of attorneys' fees is merited. It further finds that the attorneys' fees requested are reasonable.

IT IS ORDERED granting the Application for Attorneys' Fees and Costs, awarding Defendant its requested costs of \$493.53, and awarding Defendant its requested attorneys' fees of \$120,215.50.

IT IS FURTHER ORDERED entering judgment in the form lodged as modified.