

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2004-001341

12/20/2005

HONORABLE BARRY C. SCHNEIDER

CLERK OF THE COURT
D. Raybon
Deputy

FILED: 12/21/2005

AHWATUKEE CUSTOM ESTATES
MANAGEMENT ASSOCIATION

JAMES H HAZLEWOOD

v.

JAMES M RAST, et al.

ROGER R FOOTE

MINUTE ENTRY

A bench trial was held on December 19, 2005. This matter has been under advisement.

Defendant Rast's position regarding his interpretation of the February 2004 settlement agreement is revealing. The agreement provides that Defendant shall complete construction by a given date. It does not say that Defendant shall use his best efforts. It is disingenuous to say it does. That Defendant has such a position, by itself, signifies to the court that a penalty is appropriate.

It is also significant to the court that from a public policy perspective, it is important for the Plaintiff that its monetary fine policy be enforceable. If you take the May 2003 date as the reasonable start date, and if you allow 18 months for completion, the project should have been completed by December of 2004. It is now approximately one year later. If the Plaintiff is to be effective in enforcing construction deadlines on other homeowners, it must be able to enforce the monetary fine policy. The purpose of the monetary fine policy is not only to motivate the homeowner who is the subject of enforcement, but to set an example so that others will also comply.

In determining a reasonable amount of the penalty, the court has also considered that, at least since January 2005, Defendant appears to have made reasonable efforts to complete the project.

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Considering all these factors, the court finds that a reasonable monetary penalty is \$15,000.00.

The court recognizes that the issue of entitlement to attorney's fees has not been litigated. Nevertheless, in determining that a monetary penalty is to be awarded, the court has essentially declared Plaintiff to be the prevailing party both on the complaint and the counterclaim. In the exercise of its discretion, and for reasons similar to those given in support of imposing a penalty, the court is of the opinion that Plaintiff is entitled to recover its attorney's fees pursuant to A.R.S. §12-341.01.

In the hope of shortening the amount of fees yet to be incurred, it is suggested that Plaintiff file a China Doll affidavit together with a proposed judgment. Defendant can, for the record, and perhaps to persuade the court, set forth its position as to why Plaintiff should not be entitled to attorney's fees, as well as contest the amount. Plaintiff may then file a reply addressing all issues raised by Defendant in the response.

Lastly, the court declines to enter an order authorizing the imposition of future monetary penalties. The proposed judgment should provide that the court retains jurisdiction for this purpose.

FILED: Exhibit Worksheet