

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-090547

12/18/2009

HONORABLE KAREN POTTS

CLERK OF THE COURT
M. Scott
Deputy

MAXWELL & MORGAN P C

CHARLES E MAXWELL

v.

VILLA GREEN HOMEOWNERS
ASSOCIATION

JONATHAN A DESSAULES

MINUTE ENTRY

The Court has considered Plaintiff's Motion for Summary Judgment, Defendant's Response thereto, Plaintiff's Reply, Defendant's Sur-Reply, and the oral argument of counsel.

The Court first finds that Defendant's Response was timely filed and Plaintiff has miscalculated the response time.

In regard to the Motion, the Court views the evidence in the light most favorable to the non-moving party and may make reasonable inferences from those facts. The Court further finds that there is a dispute of material fact as to the reasonableness of the fees for which Plaintiff seeks judgment. While Plaintiff argues that Defendant has failed to offer admissible evidence of the unreasonableness of the fees, the Court disagrees. Plaintiff offered evidence of the total fees charged which state, in summary fashion, the fees which it now seeks. Defendant offered under seal (due to attorney/client concerns as the underlying litigation is on-going) the details of the very fees charged by Plaintiff. Plaintiff's redaction of said invoices and submission of summaries of the fees opened the door to the admission of the details supporting those fees as submitted by Defendant; Plaintiff may not now object to the admission of evidence on this very subject. Thus, the details of the time spent by Plaintiff as submitted by Defendant is admissible evidence for the purpose of this Motion. Defendant's reliance on the content of said

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invoices to argue that the fees are unreasonable is also proper. Reasonableness arguments need not be the subject of direct testimony but may be argued from the underlying facts. Moreover, a defense that the fees are not reasonable arises not only from the mandates set forth in the ethical rules governing billing practices of attorneys licensed in this state, but also from the express language of the fee agreement in this case. (*See* Plaintiff's Statement of Facts, Exhibit 1, at pages 1, 4.) Defendant's argument that the fees are excessive is supported by the time descriptions in the invoices. Having reviewed the invoices, the Court cannot conclude as a matter of law that the fees were not unreasonable in this case and the issue of reasonableness is thus properly reserved for the trier of fact.

IT IS ORDERED denying Plaintiff's Motion for Summary Judgment.

/ s / HONORABLE KAREN POTTS

JUDICIAL OFFICER OF THE SUPERIOR COURT