

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-081952

12/05/2012

HON. MARK F. ACETO

CLERK OF THE COURT
M. Scott
Deputy

CRESCENT HILLS NORTH HOMEOWNERS
ASSOCIATION

JASON E SMITH

v.

JOSEPH D ROMERO

JOSEPH D ROMERO
6125 W FETLOCK TRAIL
PHOENIX AZ 85085

ORDER OF DISMISSAL

FEE APPLICATION

On October 31, 2012, Plaintiff filed an "Application for Award of Attorneys' Fees". The Court has reviewed this application and the Court file. The Court makes note of the following:

- In civil litigation, A.R.S. §12-341 mandates an award of taxable costs to the successful party.
- Plaintiff suggests in its "Application for Award of Attorneys' Fees" that Plaintiff is entitled to an award of costs based on the CC&Rs. In support of this suggestion, Plaintiff has not cited any specific portion of the CC&Rs.
- In an action arising out of contract, the Court may award attorney fees to the successful party.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-081952

12/05/2012

- Throughout the entirety of this case, Plaintiff has alleged that Defendant violated the applicable CC&Rs. It is possible that this allegation is true; however, Plaintiff has not proved and the Court has not found this allegation to be true.
- Neither Plaintiff nor Defendant has obtained relief from the Court in this case. Neither Plaintiff nor Defendant is the successful party in this case.
- Plaintiff seeks an award of attorney fees pursuant to §4.1 of the CC&Rs.
- Some CC&Rs include a provision mandating an award of attorney fees to the “party prevailing” in an action to enforce CC&Rs. *See Heritage Heights Homeowners Ass’n v. Esser* 115 Ariz. 330 (App. 1977). While Plaintiff in this case alleges that it forced Defendant to comply with the CC&Rs, Plaintiff has not established this to be true.
- Some CC&Rs include a provision mandating an award of “all attorney fees and court costs”. When CC&Rs include such a provision, all fees and costs must be awarded absent an evidentiary showing that the amount requested is clearly excessive. *See McDowell Mountain Ranch Community Association, Inc., v. Simons*, 216 Ariz. 266 (App. 2007). The CC&Rs in this case do not contain such a provision.
- Plaintiff seeks an award of attorney fees based on §4.1 of the CC&Rs. This section provides, for example, if fees are awarded, that the fee award may be asserted as a lien against the lot and shall also be the personal obligation of the lot owner. However, this section in no way mandates that fees be awarded to the homeowners association in the context of litigation such as this.
- In this case, Plaintiff has not established that the fees it seeks to recover are reasonable.

Under the circumstances,

IT IS ORDERED denying Plaintiffs “Application for Award of Attorney’s Fees”.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-081952

12/05/2012

MOTION TO CONTINUE ON THE INACTIVE CALENDAR

On November 1, 2012, Plaintiff filed a "Motion to Continue on the Inactive Calendar". Through the motion, Plaintiff sought a continuance on the inactive calendar until after the Court ruled on the above referred to "Application for Award of Attorneys' Fees". The Court has now ruled on the subject motion and,

IT IS ORDERED denying Plaintiff's "Motion to Continue Case on the Inactive Calendar".

DISMISSAL

Through an order file on June 28, 2012, the Court continued this case on the inactive calendar until November 1, 2012. Under the circumstances presented,

IT IS NOW ORDERED dismissing this case off of the inactive calendar.

/ s / HON. MARK F. ACETO

JUDICIAL OFFICER OF THE SUPERIOR COURT

ALERT: The Arizona Supreme Court Administrative Order 2011-140 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.