

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-006622

12/13/2022

HONORABLE KATHERINE COOPER

CLERK OF THE COURT

C. Ladden

Deputy

EDET EFFIONG ASUQUO

KEVIN R HARPER

v.

LA FUENTE CONDOMINIUM ASSOCIATION

LYDIA P LINSMEIER

DOCKET CV TX
JUDGE COOPER

RULING & JUDGMENT RE: ATTORNEYS' FEES AND COSTS

Pending before the Court is the Application for Attorneys' Fees and Costs filed by Defendant La Fuente Condominium Association ("the Association") October 27, 2022. The Court reviewed the Application, Plaintiff Edet Effiong Asuquo's ("Asuquo") Response, and the Association's Reply.

The Association is entitled to recover attorneys' fees under A.R.S. § 12-341.01 which gives the Court discretion to award the "successful party" in a "contested action arising out of a contract" to 'mitigate the burden of the expense of litigation to establish a just claim or a just defense.'" *Fulton Homes Corp. v. BBP Concrete*, 214 Ariz. 566, 569, ¶ 9, (App. 2007) (citing A.R.S. § 12-341.01(A), (B)). It is entitled to recover taxable costs pursuant to § 12-342.

In determining whether the fees requested are reasonable under A.R.S. § 12-341.01(A), the Court considers the factors identified in *Associated Indemnity. Corp. v. Warner*, 143 Ariz. 567, 570 (1985):

1. Whether the unsuccessful party's claims or defenses had merit.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-006622

12/13/2022

The filing of a lawsuit lacked merit and should not have been filed. Plaintiff entered into a binding prior Settlement Agreement whereby he agreed to submit any dispute arising from the Settlement Agreement or the repairs/damages related to the Settlement Agreement to a Judge Pro-Tem. The Court takes no position on the substantive merit of the claims themselves as the Court did not reach that issue.

2. Whether litigation could have been avoided or settled.

The Court lacks information on this factor. The Court dismissed the action for a procedural reason (the prior Settlement Agreement) and did not address the merit of the claims or whether the claims could or should have been resolved.

3. Whether assessing fees against the unsuccessful party would pose an unreasonable or undue hardship.

There is no information presented on this factor.

4. Whether the successful party prevailed as to all relief sought.

The Association prevailed in terms of dismissing a lawsuit. There is no information presented regarding the status of any proceeding before Judge Pro-tem Gillis.

5. Whether the claims involved complex or novel legal issues.

No. The enforcement of an ADR clause in a Settlement Agreement is not novel or complex.

6. Whether the claims or defenses at issue have been previously adjudicated in this jurisdiction.

There is no information presented on this issue.

7. Whether a fees award would unreasonably discourage litigants from pursuing or defending valid claims or defenses.

Yes, the relationship between a homeowners' association and homeowner is generally an uneven playing field in terms of resources, such as access to information and the financial ability to pursue a claim. The additional potential burden of paying an HOA's attorneys' fees could further deter homeowners from pursuing valid claims. The Court also considers, however that in this case, there was mechanism in place to avoid costly litigation and Plaintiff chose not to

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-006622

12/13/2022

implement it. In balancing these considerations, the Court finds that an award of fees under circumstances similar to this case – where the parties negotiated and agreed to an alternative dispute resolution process – would not discourage other litigants with valid claims.

The Court finds that the *Warner* factors favor an award of attorneys’ fees.

Reasonableness of Fees

Next, the Court considers the Declaration in Support of Application for Attorneys’ Fees and Costs. Requests for an award of fees must be supported by proof of their reasonableness. *Schweiger v. China Doll Rest., Inc.*, 138 Ariz. 183, 187 (App. 1983). The Court determines the billing rate charged by counsel, relying on the rate charged by the lawyer to the client “as the best indication of what is reasonable under the circumstances of a particular case.” *Id.* at 187. The Court must also decide whether the lawyer billed a reasonable number of hours for proper tasks. *Id.* at 188. A fee application must describe the type of legal services provided, the date the service was provided, the attorney providing the service, and the time spent in providing the service. *Id.* The description of the tasks performed should include enough detail to “allow the court to determine whether the hours claimed are justified.” *Orfaly v. Tucson Symphony Soc’y*, 209 Ariz. 260, 266 ¶ 23 (App. 2004). The party seeking an award of attorneys’ fees has the burden of establishing not only the time and effort incurred, but also that the time expended was reasonable and necessary. *Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Woerth v. City of Flagstaff*, 167 Ariz. 412, 419, (App. 1990).

Asuquo does not object to the rates charged for counsel or paralegals.

As to the time entries, the Court reviewed them and also considered Asuquo’s objections – that the amount of time billed was unreasonable and excessive because multiple timekeepers charged for the same work and/or for administrative, “form” type tasks; entries are vague; and the limited work necessary to defend the Association does not justify over \$18,000 in fees. This case did not involve discovery, disclosure statements, depositions, or hearings. It required a Motion to Dismiss.

The Court agrees. This matter did not require six timekeepers, and there is no explanation offered. Why did two timekeepers bill a total of 2.1 hours to prepare a one-sentence Notice of Appearance? Why were three timekeepers necessary to prepare a Statement of Costs listing only five filing fees? Or three timekeepers to prepare the Motion to Dismiss and Reply? The number of timekeepers on this file exacerbated the attorneys’ fees. Three timekeepers were routinely involved in tasks that could have been done by one timekeeper.

Statement of Costs

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-006622

12/13/2022

There is no objection to the costs of \$285.85 for the filing fees for the Answer, Motion to Dismiss, Good Faith Consultation Certificate and Reply.

CONCLUSION

For the reasons stated, **IT IS ORDERED** awarding the Association reasonable attorneys' fees of \$8,286.00 and costs of \$285.85.

IT IS FURTHER ORDERED entering Judgment in favor of La Fuente Condominium Association and against Edet Effiong Asuquo in the amount of \$8,571.85 plus interest at the legal rate of 8% accruing from the date that this Judgment is filed until paid.

IT IS FURTHER ORDERED that there are no issues or claims pending in this matter and entering this ruling as a final order pursuant to Rule 54(c), A.R.C.P. Because no further matters remain pending, the Court signs this minute entry as a final judgment.

/ s / KATHERINE COOPER

KATHERINE COOPER
JUDGE OF THE SUPERIOR COURT