

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000421-001 DT

01/14/2019

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT

C. Avena

Deputy

PALOMA PASEO HOMEOWNERS
ASSOCIATION

RODRIGO V SAUAIA

v.

DAVID FALK (001)
MELODY FALK (001)

GARY LEE HENMAN JR.

JUDGE STARR
MCDOWELL MOUNTAIN JUSTICE
COURT
REMAND DESK-LCA-CCC

HIGHER COURT RULING / REMAND

Lower Court Case No. CC2015241460.

Appellants David Falk and Melody Falk (“the Falks”) seek reversal of the trial court’s grant of attorneys’ fees and costs to Appellee Paloma Paseo Homeowners’ Association (“the Association”). Specifically, the Falks ask this Court to vacate an award of \$2,787.50 in attorneys’ fees and \$23.69 in costs awarded on June 25, 2018. For the following reasons, this Court vacates the decision of the trial court.

I. FACTS AND PROCEDURAL BACKGROUND

The Association filed a civil Complaint against the Falks, alleging breach of contract, indebtedness on an open account, and quantum meruit. (Complaint, filed December 30, 2015.) The Association sought damages for assessments and pre-litigation attorney fees and collection costs, late charges, attorney fees and costs, and interest. (*Id.*)

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The parties entered into a stipulation, and the trial court entered judgment as to the principal only. On January 31, 2018, the trial court awarded the Association \$8,376.25 in attorneys' fees and \$542.98 in costs and entered judgment for those amounts. The judgment made no reference to post-judgment attorneys' fees and costs.

On May 4, 2018, the Association filed another Application for Attorney's Fees, for for fees and costs incurred both before and after judgment fees. The Falks filed a timely response on May 18, 2018, but the trial court deemed it "moot" as attorneys' fees had previously been awarded on January 31, 2018. Despite earlier finding the issue "moot," the trial court later awarded the Association \$2,787.50 in additional attorneys' fees and \$23.69 in additional costs, in an order signed June 25, 2018.

The Falks filed a timely notice of appeal. This Court has jurisdiction pursuant to A.R.S. §§ 12-124(A) and 22-261.

II. LEGAL ANALYSIS

The Falks first argue that the Association waived its right to recover fees incurred pre-judgment when it failed to amend its prior application for attorneys' fees to include those amounts. Under the applicable rule, a party may make a claim for attorneys' fees to be included in a judgment:

If a party has made a claim for attorneys' fees in a pleading, the party may request that attorneys' fees be included in the amount of the judgment. The party must file a motion with the court stating the legal basis of the claim for fees, with an affidavit and supporting exhibits, including any contract that provides for attorneys' fees. If a contract is longer than three (3) pages, then at a minimum the first page, the relevant provision for fees, and the signature page, if any, must be attached to the affidavit. The motion must be filed no later than twenty (20) days after the court has made a decision that entitles the party to judgment. The opposing party may file a response to the motion within the time allowed by Rule 128(e). The court may set a hearing on the motion, but the court may not enter judgment until the issue of attorneys' fees has been resolved.

Rule 139(e), Justice Court Rules of Civil Procedure.

Rule 139(e) specifically provides that a motion for attorneys' fees must be filed within 20 days after the trial court makes a decision entitling the requesting party to judgment. Here, the Association filed its second Application months after judgment had been entered.

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The Association points out that it gave notice of its request for attorneys' fees and costs throughout the proceedings. However, the Association fails to explain why it did not provide a supplemental Application for fees and costs including all pre-judgment obligations prior to the trial court's entry of judgment on January 31, 2018, when it clearly could have done so. The Court finds that by failing to include those amounts, the Association waived its ability to recover them in the judgment.

Moreover, the trial court granted additional fees and costs without considering the Falks' opposition, after wrongly finding their timely response to be "moot." While any opposition would have been moot as to the amounts awarded on January 31, 2018, it was not moot as to the new application filed four months later.

The trial court also awarded post-judgment attorneys' fees and costs, although the judgment made no reference to such fees and costs. The Association cites the HOA provisions and A.R.S. § 33-1807(H) as support for the award of attorneys' fees and costs. Both of those provisions allow an award of attorneys' fees for the prevailing party in a judgment. And the Association received such an award in the judgment filed January 31, 2018. But the subsequent amounts were awarded pursuant to an "order," after a final judgment had already been entered. While the Association could have filed a timely motion to amend the judgment, it did not. In short, there is no basis for the trial court's award of attorneys' fees and costs entered June 25, 2018.

Lastly, the Falks argue that the trial court erred when it denied their request for sanctions against the Association. The Falks claim the Association brought its claim for additional attorneys' fees and costs to harass them. The Court finds that although the request for additional fees and costs was not well-taken, the Falks did not establish that it was brought in an effort to harass them. Thus, the trial court did not err by failing to award sanctions.

III. CONCLUSION

Based on the foregoing, this Court finds that the trial court erred when it granted attorneys' fees and costs five months after a final judgment had been entered.

IT IS THEREFORE ORDERED vacating the judgment of the McDowell Mountain Justice Court.

IT IS FURTHER ORDERED remanding this matter to the McDowell Mountain Justice Court for all appropriate further proceedings.

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IT IS FURTHER ORDERED signing this minute entry as a formal order of the Court.

/s/ Patricia A. Starr

THE HON. PATRICIA A. STARR
JUDGE OF THE SUPERIOR COURT

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