

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2013-000334-001 DT

02/07/2014

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT
J. Eaton
Deputy

SUNDANCE RESIDENTIAL HOMEOWNERS
ASSOCIATION INC

JASON N MILLER

v.

GEISEL JARVIS (001)
JOSEPH JARVIS (001)

GEISEL JARVIS
1894 S 216TH LN
BUCKEYE AZ 85326
JOSEPH JARVIS
1894 S 216TH LN
BUCKEYE AZ 85326

REMAND DESK-LCA-CCC
WHITE TANK JUSTICE COURT

MINUTE ENTRY

Lower Court Case No.CC2011-064291RC.

Plaintiff-Appellee Sundance Residential Homeowners Association, Inc. (Plaintiff) requested attorneys' fees for its successful defense of Defendants-Appellants' (Geisel and Joseph Jarvis') appeal. Plaintiff bases its request on provision 10.19 of the CC&Rs, as well as A.R.S. § 12-341.01 and Rule 13, Superior Court Rules of Appellate Procedure—Civil (SCRAP—Civ.). Plaintiff provided a China Doll affidavit and requested attorneys' fees of \$6,262.00 plus court costs of \$93.75. Section 10.19 of the CC&Rs as well as A.R.S. § 12-341.01 allow for reasonable attorneys' fees.

This Court has reviewed counsel's China Doll affidavit as well as counsel's appellate memorandum and notes counsel filed an appellate brief addressing seven issues and referencing more than a dozen cases. The requested hourly billing rate is within an acceptable rate in the community. Although Defendants decry the amount of the attorneys' fees for the underlying litigation, this Court is not now considering the attorneys' fees for the trial court action: instead, it is evaluating the attorney' fees requested for the appeal.

This Court has reviewed counsels' requested fees in light of the prior awarded fees and the research and preparation done in the trial court and declines to award counsel all of its requested fees. Much of the work (1) needed for the appeal; and (2) opposing Defendants' Response on the attorneys' fee issue; is duplicative. Therefore, this Court declines to award Plaintiff the additional 1.5 hours for its two and a half page Reply. In addition, this Court has cross-compared counsel's work on the appeal with its work for trial court preparation and finds the total amount of

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requested fees is not reasonable. For example, pp. 7–8 of Plaintiff’s appellate memorandum repeats verbatim Plaintiff’s arguments in its March 12, 2012 Summary Judgment pleading and April 25, 2012, Plaintiff’s Reply In Support Of Its Motion For Summary Judgment, Plaintiff has already received compensation for this work from the trial court.

This Court shall discount counsel’s requested fees. The Arizona Court of Appeals addressed the authority of the court to reduce the amount of requested attorneys’ fees and stated:

Boden claims in his cross-appeal that the trial court abused its discretion when it reduced their award of attorneys’ fees by \$2,000. A.R.S. § 12-341.01(B) provides that “the award need not be equal or relate to the attorneys’ fees actually paid. The award should mitigate the burden of the expense of litigation to establish a just claim or a just defense.” The trial court has broad discretion in fixing the amount of attorneys’ fees actually awarded. *See Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 570, 694 P.2d 1181, 1184 (1985). Again, there is absolutely no indication that the trial court abused its discretion in reducing the amount of the award.

Haldiman v. Gosnell Dev. Corp., 155 Ariz. 585, 591-92, 748 P.2d 1209, 1215-16 (Ariz. Ct. App. 1987). The Arizona Court of Appeals also held:

ABC argues that the trial court abused its discretion by not correctly applying the guidelines as set forth in *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 673 P.2d 927 (App.1983) for recovery of attorneys’ fees pursuant to a contractual provision. The fundamental rule set forth in *Schweiger* for determining attorneys’ fees is that the trial court must determine: (1) reasonable billing rate, and (2) hours reasonably expended. *Id.* at 187-88, 673 P.2d at 931-32. *Schweiger* noted that “just as the agreed upon billing rate between parties may be considered unreasonable, likewise the hours claimed may also be unreasonable.” *Id.*

ABC Supply, Inc. v. Edwards, 191 Ariz. 48, 52, 952 P.2d 286, 290 (Ariz. Ct. App. 1996). This Court finds the hours expended for the appeal were unreasonable. This Court awards Plaintiff a reasonable attorneys’ fee of \$3,276.00 plus its costs of \$93.75.

IT IS THEREFORE ORDERED awarding Plaintiff its attorneys’ fees of \$3,276.00 plus its costs of \$93.75 in accordance with the written judgment signed this date.

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NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.