Michael K. Jeanes, Clerk of Court
*** Filed ***
03/28/2014 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2013-000664-001 DT 03/27/2014

CLERK OF THE COURT
COMMISSIONER MYRA HARRIS J. Eaton
Deputy

FAIRMONT VIEW HOMEOWNERS ASSOCIATION I N C
v.
CYNTHIA A MAY (001)

BETH MULCAHY

CYNTHIA A MAY
2929 N 37TH ST
#5
PHOENIX AZ 85018

ARROWHEAD JUSTICE COURT
REMAND DESK-LCA-CCC

HIGHER COURT RULING / REMAND

Lower Court Case No.CC2013–034164RC.

Defendant-Appellant Cynthia May (Defendant) appeals the Arrowhead Justice Court's determination that granted Plaintiff Fairmont View Homeowners Association, Inc. (Plaintiff) its requested summary judgment and attorneys' fees. Defendant contends the trial court erred. For the reasons stated below, this Court affirms in part and reverses in part the trial court's judgment.

I. FACTUAL BACKGROUND.

On March 28, 2012, Counsel for Plaintiff sent Defendant a letter alleging she owed the HOA assessments plus late fees, legal fees and other charges totaling $703.50. The letter included a demand that Defendant pay this sum or Plaintiff would sue and the attorneys' fees and costs for filing the lawsuit would result in a minimum fee of $1,000.00. This letter concluded by warning Defendant that unless she disputed the validity of the debt or any portion of the debt, counsel would assume the debt was valid. Defendant responded to this letter and asserted this was the first notice she received since the trustee's sale of her home in July, 2011, and claimed (1) she should have received some communication if she was expected to pay fees following the auction of her home; and (2) she was not able to pay the demanded $703.50.

Plaintiff's counsel sent a second letter dated May 1, 2012, asserting Defendant owed the Association $796.00 for past due assessments, late fees, legal fees, and other charges, and offered that the Association was willing to work with her if she was unable to pay the requested amount. This letter repeated the prior claim that the cost of Plaintiff filing a lawsuit would be a minimum of $1,000.00 in costs and attorneys' fees. Defendant (1) responded to this letter within the 10 day time limit Plaintiff's counsel set; and (2) offered to pay $411.00 at a rate of $68.50 for six months.

On May 21, 2012, Plaintiff's counsel wrote and rejected Defendant's proffered $411.00 and counteroffered a settlement amount of $600.00 with a payment plan of up to six months. This letter asserted the current balance was $761.50. Defendant did not respond to this letter[1] and, in her response to Plaintiff's Motion For Summary Judgment, asserted she did not receive a copy of the May 21, 2012, letter until she received Plaintiff's disclosure statement.

Plaintiff's counsel followed this letter with a demand for $899.02 on October 5, 2012.

Plaintiff's counsel filed suit on February 22, 2013 and requested past due assessments of $249.52; late fees of $60.00, collection costs of $106.00 for the Associations' costs in attempting to collect the delinquent assessments, and attorneys' fees of $1,011.30. Defendant responded to the Complaint and agreed she owed past due assessments of $249.52 as of the time her home went into foreclosure but claimed she received no communication from the HOA for 18 months thereafter. She asserted she offered to pay the HOA the amount of $411.00 to settle the claim and maintained the $411.00 represented the unpaid HOA dues plus late fees through July 2011, when the home was auctioned.

The trial court granted Plaintiff's summary judgment motion on July 12, 2013. On July 26, 2013, Plaintiff filed a "Request and Affidavit For Entry of Judgment Without A Trial" and requested the total amount of $5,096.22. The trial court signed a Judgment awarding Plaintiff $285.52 in unpaid assessments and late fees plus $130.00 for unpaid administrative courts. In addition, the trial court awarded Plaintiff "reasonable" attorneys' fees of $3,834.35 plus costs of $169.20 for a total judgment of $5,096.20 plus interest at the rate of 4.25% on the unpaid balance.[2]

Defendant filed a timely appeal.[3] Plaintiff Fairmont View Homeowners Association, Inc., filed a responsive memorandum. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

. . . .

. . . .

. . . .

[1] Defendant denied receiving this letter in her Response to Motion for Summary Judgment.

[2] The arithmetic in the Judgment does not add. The trial court adjusted the attorneys' fees awarded from the requested $4,511.50 to $3,834.35 but did not adjust the total amount awarded.

[3] Defendant failed to comply with Rule 8(a)(3) of the Superior Court Rules of Appellate Procedure—Civil (SCRAP—Civ.) re the format of an appellate brief which provides as follows:

> Memoranda shall include a short statement of the facts with reference to the record, a concise argument setting forth the legal issues presented with citation of authority, and a conclusion stating the precise remedy sought on appeal.

Defendant failed to provide citations to proper legal authority. However, Rule 2, SCRAP—Civ. allows this Court to waive strict compliance with these rules. In the interest of justice, this Court will waive strict compliance with SCRAP—Civ. Rule 8(a)(3).

II. ISSUES:

A. Did The Trial Court Err By Granting Plaintiff Summary Judgment.

Standard of Review[4]

Appellate courts review the granting of a summary judgment motion by giving the appellants the benefit of all reasonable inferences which may be drawn from the record and viewing the evidence in the light most favorable to the party against whom the summary judgment was entered. Therefore, this Court must view the evidence in the light that most favors Defendant. *State ex rel. Corbin v. Sabel*, 138 Ariz. 253, 255, 674 P.2d 316, 318 (Ct. App. 1983). In addition, this court will only sustain a summary judgment if the record shows there was no genuine dispute as to any material fact and the moving party—Plaintiff—was entitled to judgment as a matter of law. *Chanay v. Chittenden*, 115 Ariz. 32, 38, 563 P.2d 287, 293 (1977). The review is de novo. *Aranki v. RKP Investments, Inc.*, 194 Ariz. 206, 979 P.2d 534, ¶ 6 (Ct. App. 1999); *Strojnik v. Gen. Ins. Co. of Am.*, 201 Ariz. 430, 36 P.3d 1200 ¶ 10 (Ct. App. 2001). As the Court of Appeals stated:

> Summary judgment should only be granted in cases where there is no genuine issue of material fact and the case may therefore be decided on the pleadings. We view the facts in the light most favorable to the non-moving party.

Kiley v. Jennings, Strouss & Salmon, 187 Ariz. 136, 139, 927 P.2d 796, 799 (Ct. App. 1996). (Citations omitted.)

Facts in Dispute

At the time Plaintiff filed its summary judgment motion, Defendant disputed the total sum demanded but admitted she owed $249.52 in HOA association dues. Plaintiff based its claim on Article IC, Section 4.1(b) of the Declaration which states the assessment is the personal, joint, and several obligation of each person who was the owner of the lot at the time when the

[4] Plaintiff, on page 4 of Plaintiff/Appellee's Response Memorandum, incorrectly asserts that cases appealed from a Justice Court to the Superior Court "shall be tried de novo." A.R.S. § 22–261(C) details the review of a Justice Court judgment and states:

> An appeal shall be on the record of the proceedings if such record includes a transcript of the proceedings. De novo trials shall be granted only when the transcript of the proceedings in the superior court's evaluation is insufficient or in such a condition that the court cannot properly consider the appeal. A trial de novo shall not be granted when a party had the opportunity to request that a transcript of the lower court proceedings be made and failed to do so. At the beginning of each proceeding the judge shall advise the parties that their right to appeal is dependent on their requesting that a record be made of the justice court proceedings. Any party to an action may request that the proceedings be recorded for appeal purposes. The cost of recording trial proceedings is the responsibility of the court. The cost of preparing a transcript, if appealed, is the responsibility of the party appealing the case. The Supreme Court shall establish by rule the methods of recording trial proceedings for record appeals to the superior court, including electronic recording devices or manual transcription.

Ariz. Rev. Stat. Ann. § 22-261

assessment became due, was incurred, or arose. Plaintiff initially sought to collect much more than the past assessments by first demanding in excess of $700.00. Plaintiff later sued on February 22, 2013, and claimed $249.52 in past due assessments plus late fees of $60.00, collection costs of $106.00 for the Association's costs in attempting to collect the delinquent assessments, and attorneys' fees of $1,011.30. By May 31, 2013, when Plaintiff filed its request for summary judgment, these sums had changed into a demand for assessments of $195.52, late fees of $90.00, collection costs of $130.00 and attorneys' fees and costs of $2,804.20 for a total demand of $3,219.72. This sum exceeded Plaintiff's initial demand by more than a factor of four and the amount of past due assessments by a factor of approximately eleven in a case where the Defendant agreed she owed the demanded past due assessment of $249.52.

Defendant claimed she had no contact with the HOA for the approximate eighteen month period between the time when her home was sold at auction in July, 2011, and the date when she received the initial demand for payment of past due assessments from Plaintiff's counsel in the letter dated March 28, 2012. Yet, according to the CC&R's submitted by Plaintiff as an attachment to their summary judgment motion, the Board of Directors was required to send written notice of the annual assessment and any special assessments. Provision 4.7(a) re Commencement and Verification of Assessments stated in relevant part:

> Written notice of the annual assessment and any special assessments must be sent to every Owner subject to the assessment. The due dates for assessments will be established by the Board of Directors.

To support its requested summary judgment motion, Plaintiff provided an Affidavit from Jenny Owen, the Community Manager for the HOA. This Affidavit stated Defendant received "repeated notice and demand" to "pay validly charged and now delinquent assessments and charges owed to the Association." Defendant, however, in her Response to Motion for Summary Judgement [sic.] stated—in her statement of facts—she failed to receive at least two of the letters sent by Plaintiff's counsel—the letters dated May 21, 2012, and October 5, 2012. Whether these letters were properly sent is a disputed fact but not one that would militate against a summary judgment for the underlying assessment as Defendant agreed she owed the $249.52.

Response To Summary Judgment Using Court Form

Admittedly, Defendant's Response to Motion for Summary Judgement [sic.] did not follow the required form for a response to a motion for summary judgment. However, Defendant used a Justice Court Motion form for her response. Her responsive motion (1) failed to include numbered paragraphs in her Statement of Facts; and (2) arguably failed to supply the needed affidavit to challenge Plaintiff's facts because Defendant failed to sign the statement that the foregoing information was true and correct under penalty of perjury. According to Rule 129 JCRCP, affidavits must meet the requirements of Rule 109(d). Per JCRCP, Rule 109(d), a party may, instead of swearing before an official, provide a signed statement under oath which is showing by adding the following words at the end of the statement: "I declare under penalty of perjury that the foregoing is true and correct. Signed on the __ day of _____, 20__."

As stated, Defendant's Response to Motion for Summary Judgement [sic.] was created using a Maricopa County Justice Court form, which substantially contained the penalty of perjury language but Defendant did not sign on the line immediately below this statement. The court approved form—CV 8150–124 R 1/1/13 for motions—has fillable fields for the litigant to fill out online and indicate if the party is the Plaintiff or Defendant; as well as four additional fields: (1) a field headed "I would like the court to:" [sic.]; (2) Statement of facts: [sic.]; (3) Legal support including Statute or Rule that applies:[sic.]; and (4) "I state under penalty of perjury that the forgoing is true and correct."[sic.]. These fields are all highlighted. In addition to the sections listed above, the form contains highlighted fields for the litigant to include the names of the parties, the names for counsel, the case number, and the specific trial court. The trial court field has a drop down box so the name for the correct court can be selected. The "Motion To:" field has a place where a litigant is able to include the particular kind of motion the litigant is filing. There are two places where a litigant might sign. Only one of these places—the one on the mailing certificate—is highlighted and includes the word "Signature." The other possible place for signature is immediately beneath the "penalty of perjury" language. However, this line is not highlighted, is not able to be electronically signed, and lacks any instruction or indication that it should be signed.

Plaintiff informed Defendant of the requirements for a proper summary judgment response in its Motion for Summary Judgment by including the mandated language from JCRCP Rule 129(c). The trial court needed to balance the requirement that Defendant respond using numbered paragraphs with Defendant's right to rely on the use of a court-approved form. Generally, litigants should not be penalized for failing to conform to the specifics of a summary judgment motion when the litigant (1) utilized a court form approved by the Justice Courts; and (2) completed all of the highlighted areas on the form. Nothing in the Justice Court website advises litigants they should not be using the generic Motion form to respond to a Motion For Summary Judgment. As stated above, although Defendant failed to sign under the "penalty of perjury" statement, this signature line is not highlighted and there is no verbal instruction—such as using the word "signature"—to indicate a signature might be needed. Since all of the other portions of the form that a litigant is expected to complete are highlighted and fillable fields, Defendant should not be faulted for following the court approved form when no other Motion form is readily available on the Justice Court's website and no instruction indicates the form should not be used when responding to a summary judgment motion. Furthermore, the instructions accompanying the use of these forms do not educate litigants about the need to follow additional requirements when responding to a motion for summary judgment. Instead, the instructions merely notify litigants to (1) complete the form and make copies; (2) file the form with the court clerk; and (3) mail a copy to other party.

The rules for Justice Court actions have been simplified. This is partly the result of the recognition on the part of our justice system that the majority of litigants at Justice Court are self-represented. Our new Justice Court Rules reflect this. Indeed, the Introduction to the Justice Court Rules of Civil Procedure states:

> The Justice Court Rules of Civil Procedure ("JCRCP") promote a goal of the Supreme Court's Justice 2020 Strategic Agenda to strengthen the administration of justice. The Justice 2020 Strategic Agenda noted that the legal system can be difficult for people who do not have an attorney and that simplifying the rules for less complicated cases should make court proceedings more understandable for many people and increase their trust and confident in the legal system.

Court Review of Requested Summary Judgment

The recognized standard for summary judgment is that summary judgment is granted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law JCRCP, Rule 129(d). As the Court of Appeals stated:

> We review a grant of summary judgment de novo. *Strojnik v. Gen. Ins. Co. of Am.,* 201 Ariz. 430, ¶ 10, 36 P.3d 1200, 1203 (App.2001). A motion for summary judgment should be granted if "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Ariz. R. Civ. P. 56(c)(1), 16 A.R.S., Pt. 2; *see also Orme Sch. v. Reeves,* 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). We view the facts in the light most favorable to the party against whom summary judgment was entered. *Link v. Pima County,* 193 Ariz. 336, ¶ 12, 972 P.2d 669, 673 (App.1998).

Emmett McLoughlin Realty, Inc. v. Pima Cnty., 212 Ariz. 351, 132 P.3d 290, ¶ 2 (Ct. App. 2006).[5]

Defendant failed to comply with the requirement that she challenge the Statement of Facts with specifically numbered paragraphs. However, Defendant did not necessarily need to challenge the facts where the record before the trial court indicated summary judgment—at least on the issue of the past due assessment—was justified. This is not the same, however, where the amount of attorneys' fees (1) is at stake; and (2) greatly exceeds the amount indicated in the Plaintiff's Complaint.

Plaintiff had the burden of proof. As the Court of Appeals stated—after relying on the U.S. Supreme Court decision in *Celotex Corp. v. Cantrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986).

> The party seeking judgment bears the burden of satisfying this standard and demonstrating both the absence of any factual conflict and his or her right to judgment.

United Bank of Arizona v. Allyn, 167 Ariz. 191, 195, 805 P.2d 1012, 1016 (Ct. App. 1990). Accord, *Schwab v. Ames Constr*., 207 Ariz. 56, 83 P.3d 56 ¶¶ 15–16 (Ct. App. 2004). The Court of Appeals continued and held:

[5] Pursuant to JCRCP, Rule 101(d), case law interpreting the A.R.C.P is generally authoritative in interpreting the JCRCP.

> Any evidence or reasonable inference contrary to the material facts-i.e., the facts which the moving party needs to show his entitlement to judgment-will preclude summary judgment. Mere speculation or insubstantial doubt as to the facts will not suffice, but where the evidence or inferences would permit a jury to resolve a material issue in favor of either party, summary judgment is improper.

United Bank of Arizona v. Allyn, id., 167 Ariz. at 195, 805 P.2d at 1016. Persuasively, A.R.C.P. allows the trial court to grant a summary judgment motion on grounds not raised by the party. Courts have the ability to examine the entire record. As the Arizona Supreme Court stated:

> Summary judgment should not be granted if, on examination of the entire record, there are any disputed fact questions which, if resolved adversely to the moving party, could affect the final judgment.

Krumtum v. Burton, 111 Ariz. 448, 451, 532 P.2d 510, 513 (1975). Accord, *Sarti v. Udall*, 91 Ariz. 24, 25, 369 P.2d 92, 93 (1962). The rationale behind examining the entire record is to afford litigants a trial where there is doubt as to the facts. *Peterson v. Valley Nat. Bank of Arizona*, 90 Ariz. 361, 362, 368 P.2d 317, 318 (1962). Here, the requested summary judgment asked the trial court to not only find Defendant liable for the admitted past due assessment of $249.52, but also to find Plaintiff's attorneys were entitled to fees almost quadrupling the amount requested in the Complaint.

This Court has reviewed the entire record in the light favoring the Defendant and finds there are no material facts in controversy about the underlying past due assessment. Defendant admitted to owing the past due assessments of $249.52. There is little controversy about the Defendant's responsibility for paying the collection costs and interest. However, as will be addressed in the following section, there is a dispute about the awarded amount of attorneys' fees. Plaintiff was only entitled to "reasonable attorneys' fees."

B. Did The Trial Court Err By Awarding Attorneys' Fees That Greatly Exceeded The Amount At Issue.

At the time Plaintiff filed its Complaint, it requested sums for the following charges: past due assessments of $249.52; late fees of $60.00; and costs for attempts at collection of $106.00. These sums totaled $415.52. In addition, Plaintiff demanded attorneys' fees of $1,011.30 for drafting a simple one count breach of contract complaint. The demanded attorneys' fees exceeded the amount at issue by a minimum of approximately two and a half times. By the time the trial court awarded Plaintiff summary judgment, the requested attorneys' fees had risen to $4,511.50 on an underlying claim where the trial court ultimately awarded $285.52 for the combined total of past due assessments and late fees. The requested attorneys' fees are almost sixteen times the amount of the underlying claim. The trial court awarded Plaintiff $3,834.35 as attorneys' fees. These fees are more than thirteen times greater than the awarded judgment for the past due assessment. If the amount for the unpaid administrative costs were to be added in, the amount of requested fees still exceeded the total amount awarded by more than a factor of nine.

A.R.S. § 33–1807 provides for reasonable attorneys' fees. The CC&Rs also included a provision for reasonable attorneys' fees. That provision—§ 10.19 of the CC&Rs—states:

> Without limiting the power and authority of the Association to incur and assess attorney fees as part of the creating or enforcement of any assessment, in the event an action is instituted to enforce any of the provisions contained in the Project Documents, the party prevailing in any action will be entitled to recover from the other party **all reasonable attorneys' fees** and court costs. In the event the Association is the prevailing party in the action, the amount of attorney [sic.] fees and court costs may be deemed all or part of a special assessment against the Lot and Owner involved in the action.

(Emphasis added) The awarded fees, however, were not reasonable in light of the work actually performed.

On appeal, Defendant challenged the trial court's award of Plaintiff's requested attorneys' fees as unreasonable. The standard for reviewing an attorneys' fee award is to evaluate the award for an abuse of discretion and, absent finding an abuse of discretion, to confirm the amount awarded. When reviewing an attorneys' fee award, the Arizona Court of Appeals decided:

> "The determination of whether the amount of attorney's fees is reasonable is a matter peculiarly within the discretion of a trial court, and will not be disturbed absent a showing of abuse of that discretion." In reviewing for an abuse of discretion, "[t]he question is not whether the judges of this court would have made an original like ruling, but whether a judicial mind, in view of the law and circumstances, could have made the ruling without exceeding the bounds of reason. We cannot substitute our discretion for that of the trial judge." In reviewing a trial court's fee award, we view the record in the light most favorable to sustaining the trial court's decision.

Solimeno v. Yonan, 224 Ariz. 74, 82, 227 P.3d 481, 489 (Ct. App. 2010) (citations omitted).

A request for attorney fees is subject to an analysis about the reasonableness of the fees. Our Arizona Supreme Court discussed the factors a court should consider prior to making an award. These include:

1. whether the unsuccessful party's position or defense had merit;
2. whether the litigation could have been avoided, or settled and how the successful party's efforts influenced the result;
3. whether assessing fees against the unsuccessful party would cause extreme hardship;
4. whether the successful party prevailed with respect to all of the relief sought;
5. whether the legal question was novel;
6. whether a similar claim had been previously adjudicated in this jurisdiction;
7. whether the particular award would discourage other parties with tenable claims or defenses from litigating or defending for fear of incurring liability for substantial amounts of attorney fees.

Assoc. Indem. Corp. v. Warner, 143 Ariz. 567, 570, 694 P.2d 1181, 1184 (1985); *Moedt v. General Motors Corp*., 204 Ariz. 100, 60 P.3d 240 ¶ 19 (Ct. App. 2003). In this case, attorneys' fees are subject to the contract—the CC&Rs—which provide for a reasonable attorney's fee award. What is reasonable is open to question and can be viewed through the factors elucidated by our Supreme Court. This Court cannot determine which, if any—or all—of the factors the trial court considered in arriving at the appropriate amount of attorney fees as the trial court awarded the aatorneys' fees without any comment.

In determining if the amount awarded was reasonable, this Court is guided by the underlying purpose behind the attorney fees statute—to mitigate the burden of the expense of litigation. *Fousel v. Ted Walker-Mobile Homes, Inc*. 124 Ariz. 126, 602 P.2d 507 (Ct. App. 1979). The trial court must review the amount requested. In *Schweiger v. China Doll*, 138 Ariz. 183, 188, 673 P.2d 927, 932 (Ct. App. 1983) the Court of Appeals reviewed the types of services which may be included in a fee application but cautioned if "a particular task takes an attorney an inordinate amount of time, the losing party ought not be required to pay for that time." Fees that exceed the underlying claim are not inherently unreasonable. Indeed, in *Wagner v. Casteel*, 136 Ariz. 29, 32, 663 P.2d 1020, 1023, (Ct. App. 1983) the Court of Appeals stated:

> The fact that the attorney's fees are in excess of the amount in dispute does not mean they are unreasonable. Appellants took the risk of having to pay such an amount by its refusal to agree to a proper adjustment of the taxes.

This Court must determine if (1) a reasonable person would incur an attorneys' fee award that exceeded the amount at issue by a multiplicand greater than nine and (2) if the amounts charged were reasonable in light of the complexity of the case and the work performed. Here, the case was not complex, particularly since Defendant admitted to owing the requested past due assessment in her Answer. Persuasively, in *Metro Data Systems, Inc. v. Durango Systems, Inc*., 597 F. Supp. 244, 245 (D. Ariz. 1984) the federal district court engaged in an extensive analysis of an attorney's fee request and quoted with approval from *Johnson v. Georgia Highway Express, Inc*., 488 F.2d 714, 717–19 (5th Cir. 1974)[6] the following:

> The trial judge should weigh the hours claimed against his own knowledge, experience, and expertise of the time required to complete similar activities. If more than one attorney is involved, the possibility of duplication of effort along with the proper utilization of time should be scrutinized … It is appropriate to distinguish between legal work, in the strict sense, and investigation, clerical work, compilation of facts and statistics and other work which can often be accomplished by non-lawyers but which a lawyer may do because he has no other help available. Such non-legal work may command a lesser rate. Its dollar value is not enhanced just because a lawyer does it.

[6] This case was abrogated on other grounds by *Blanchard v. Bergeron*, 489 U.S. 87, 109 S. Ct. 939 (1986).

The contract provision does not support Plaintiff's attorneys' fee claim since the contract terms provided for "reasonable" fees. The contract did not give carte blanche to a prevailing party to claim whatever fees the party may have incurred or chosen to incur as the plain meaning of the provision incorporates a reasonableness standard. Otherwise, Plaintiff's position—when taken to a logical extreme—would encourage no-holds barred litigation because the prevailing party would be able to receive full reimbursement for the work done—whether reasonable or not. Here, the contract's terms specified reasonable fees.

Courts have reduced requested attorney fee amounts. In *ABC Supply, Inc. v. Edwards*, 191 Ariz. 48, 52, 952 P.2d 286, 290 (Ct. App. 1996), the Court of Appeals allowed an almost ninety percent (90%) reduction in the awarded amount. The current case, like *ABC Supply Inc., id.*, illustrates a situation where the attorney fees greatly exceeded the amount at issue. Here, this Court notes Plaintiff's Complaint was a relatively standard short breach of contract claim. The Statement of Facts in support of Plaintiff's Motion For Summary Judgment was a four page document with a total of 16 numbered paragraphs. One and a half of these pages were devoted to quoting from the CC&Rs. The Jenny Owen Affidavit has nine numbered paragraphs and takes less than three pages. Plaintiff's Certificate of Mailing of Rule 121 Initial Disclosure Statement is a separate document—with less than five lines of text, all of which is essentially boilerplate. Finally, as previously stated, Defendant admitted to owing the requested past due assessment. The legal question involved in this case was not novel.

Before awarding attorneys' fees, the trial court must evaluate the requested sums in light of the factors discussed by our Supreme Court. Because (1) the requested attorneys' fees so far exceed the amount at stake in this case; (2) Defendant admitted to owing the past due assessment;, and (3) there is no evaluation of the tasks performed as well as the amount charged for these tasks as required by *Assoc. Indem. Corp. v. Warner, id.;* this Court finds the trial court abused its discretion by awarding almost all of Plaintiff's requested attorneys' fees without analyzing the requested fee amounts in light of the mandatory factors required by our case law. Therefore, this case is remanded to the trial court for it to determine if the awarded attorney fees are reasonable in light of the factors elucidated by our Supreme Court.

C. Did Appellant Err By Citing To CV2005–015360.

On appeal, Defendant referenced a Superior Court case, CV2005–015360. This is a Superior Court case which creates no law and has no precedential value. Our Court of Appeals commented on the value of Minute Entries from Superior Court cases and found these rulings carry no weight as precedent. See *Walden Books Co. v. Dep't of Revenue*, 198 Ariz. 584, 12 P.3d 809, ¶ 23 (Ct. App. 2000) stating:

> We hold that ARCAP 28(c) applies to memorandum decisions from any court.

ARCAP, Rule 28(c) states:

. . . .

> Memorandum decisions shall not be regarded as precedent nor cited in any court except for (1) the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case or (2) informing the appellate court of other memorandum decisions so that the court can decide whether to publish an opinion, grant a motion for reconsideration, or grant a petition for review. Any party citing a memorandum decision pursuant to this rule must attach a copy of it to the motion or petition to which such decision is cited.

This concept extends to appeals before the Superior Court. Rulings from unrelated Maricopa County Superior Court cases have no legal authority. Neither opinions expressed at the trial court stage nor Lower Court of Appeals decisions may be cited.

Maricopa County Lower Court Appeals decisions are governed by the Superior Court Local Rules—Maricopa County, Rule 9. Rule 9.1(b) of these rules states the following—in relevant part—about the scope of these rules:

> The Appeals Department shall exercise the appellate and special action jurisdiction of the Superior Court over all criminal, civil (including Orders of Protection and Injunctions Against Harassment), and civil traffic cases from the limited jurisdiction courts within Maricopa County.

Rule 9.11 allows the Appeals Department, on its own motion or the motion of any party to designate its decisions for publication in the manner prescribed by Rule 111, Rules of the Supreme Court. Rule 111 defines memorandum decisions as separate from those intended for publication. According to Rule 111, a memorandum decision is a "written disposition of a matter not intended for publication." Rule 111(c) provides that memorandum decisions shall not be regarded as precedent and shall not be cited except for two limited purposes: (1) establishing the defense of res judicata, collateral estoppel, or the law of the case or (2) informing the appellate court of other memorandum decisions so the court can decide whether to issue a published opinion, grant a motion for reconsideration, or grant a petition for review. This rule effectively parallels the standard used in the ARCAP. Both of these rules follow a tradition that has been long held in Arizona about not using decisions from trial court cases as precedent. In *Kriz v. Buckeye Petroleum Co., Inc.*, 145 Ariz. 374, 701 P.2d 1182, n. 3 (1985) the Arizona Supreme Court chastised one of the litigants—Black Corporation—for its use of a memorandum decision as authority and said: "We will give no consideration to the memorandum decision Black Corporation has cited." The Arizona Court of Appeals expanded on this holding and ruled out-of-state memorandum decisions are no more citable than in-state memorandum decisions and refused to grant these decisions any credence. *Walden Books Co. v. Dept. of Revenue*, *id.*, ¶¶ 21–23. The prohibition was extended to federal district court memorandum decisions in *Hourani v. Benson Hosp.*, 211 Ariz. 427, 122 P.3d 6 ¶ 27 (Ct. App. 2005). Persuasively, Ariz. R. Civ. App. P., Rule 28(c) states memorandum decisions shall not be regarded as precedent or cited in any

court except for the two limited purposes described above. Although other jurisdictions[7] do allow the use of memorandum decisions, our Courts and our procedural rules do not allow for the use of memorandum decisions except for the limited purposes cited in Rules of the Supreme Court, Rule 111 and Ariz. R. Civ. App. P., Rule 28(c). Because this trial court determination is not a written opinion and has not been designated for publication, it forms no precedent for this or any court and Defendant erred by citing to this case.

D. Is Plaintiff Entitled To Attorneys' Fees On Appeal.

Plaintiff prevailed on the issue re affirming the underlying summary judgment. However, Plaintiff did not prevail on the second issue—whether the awarded attorneys' fees were reasonable or were—in Defendant's words—"a weapon to be used to generate leveraged fee awards." On appeal, the Superior Court has the discretion to award fees pursuant to SCRAP—Civ. Rule 13(b). That rule states:

> When attorneys' fees are recoverable by statute or contract, the claim for such fees in connection with the prosecution or defense of an appeal may be included in the statement of costs prescribed by this rule. The claim for attorneys' fees for the prosecution or defense of the case in the trial court may also be included provided that the trial court has not previously awarded such fees.

In the exercise of its discretion, this Court elects to deny any attorneys' fee award for the appeal.

III. CONCLUSION.

Based on the foregoing, this Court concludes the Arrowhead Justice Court erred by not evaluating the requested amount of attorneys' fees but did not err in granting summary judgment for the underlying past due assessment claim.

IT IS THEREFORE ORDERED affirming in part and reversing in part the judgment of the Arrowhead Justice Court.

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

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

/s/ Myra Harris
THE HON. MYRA HARRIS
Judicial Officer of the Superior Court 032720141423

[7]For example, Texas, Utah, and West Virginia allow unpublished decisions to be used as authority. TX R APP Rule 47.7. Citation of memorandum decisions**.** All opinions and memorandum opinions in civil cases issued after the 2003 amendment have precedential value. W. Va. R. App. P. 21. Memorandum decisions may be cited in any court or administrative tribunal in this State; provided, however, that the citation must clearly denote that a memorandum decision is being cited, *e.g. Smith v. Jones*, No. 11-098 (W.Va. Supreme Court, January 15, 2011) (memorandum decision). Memorandum decisions are not published in the West Virginia Reports, but will be posted to the Court's website. UT R RCRP Rule 37. Published decisions of the Supreme Court and the Court of Appeals may be cited as precedent in all criminal proceedings. Unpublished decisions may also be cited as precedent, so long as all parties and the court are supplied with accurate copies at the time the decision is first cited.