

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000210-001 DT

03/12/2019

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT

C. Avena

Deputy

TOWN SQUARE HOMEOWNERS
ASSOCIATION

LORI L VOEPEL

v.

ROBERT A TOMICZEK (001)

CHRISTOPHER J BERRY

JUDGE STARR

MOON VALLEY JUSTICE COURT

REMAND DESK-LCA-CCC

MINUTE ENTRY

Lower Court Case No. CC2015-144356RC.

Pending before the Court are two matters: Appellee Robert A. Tomiczek's Motion for Reconsideration, which the Court will treat as a Motion for Rehearing pursuant to Rule 14(a), Superior Court Rules of Appellate Procedure-Civil, and Appellant Town Square Homeowners Association's Application for Attorneys' Fees and Costs. The Court has considered all the related papers for each motion as well as the record in this matter.

Motion for Rehearing

Tomiczek seeks rehearing regarding this Court's previous finding that the trial court erred when it ruled in his favor on his Counterclaims D and E. According to Tomiczek, this Court wrongly found that on appeal, Tomiczek argued his claims as negligence claims, while at the trial court level, he presented those claims as contract claims. But regardless of the label put on the arguments, on appeal, Tomiczek essentially made a claim based on negligence. Moreover, this Court specifically stated that it would address the claims in the context of breach of contract, not negligence.

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Tomiczek also argues that this Court “refused to analyze the merits” of his argument. (Motion for Reconsideration at 3.) But the Court did analyze the merits of the claims; it simply disagreed with Tomiczek’s argument and characterization of the claims.

Thus,

IT IS ORDERED denying the Motion for Reconsideration/Rehearing.

Application for Attorneys’ Fees and Costs

Town Square seeks an award of attorneys’ fees in the amount of \$59,690.00 and costs in the amount of \$4,816.90. Tomiczek opposes that request.

A.R.S. § 12-341.01 allows a court to award a successful party reasonable attorney fees “to mitigate the burden of the expense of litigation . . .” § 12-341.01(B). The award “need not equal or relate to the attorney fees actually paid or contracted, but the award may not exceed the amount paid or agreed to be paid.” *Id.* Moreover, the Declaration upon which this suit was based provides that “[i]n the event an action is instituted to enforce any provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto, as part of the judgment, reasonable attorneys’ fees and costs of such suit.” Declaration, Article IVI, Section 8. Here, the Association is the prevailing party. As the prevailing party, the Association is entitled to an award of reasonable attorneys’ fees.

And although Tomiczek opposes an award of attorneys’ fees incurred in the trial of the Counterclaims, the Association was entitled to include those fees in its claim, “provided that the trial court has not previously awarded such fees.” Rule 13(b), Superior Court Rules of Appellate Procedure – Civil.

The Court has considered all relevant factors in relation to A.R.S. 12-341.01 and finds that an award of attorneys’ fees is appropriate. *Associated Indemnity Corp. v. Warner*, 143 Ariz. 567 (1985). Specifically, the Court has considered: (1) whether the unsuccessful party’s claim or defense was meritorious; (2) whether the litigation could have been avoided or settled and the successful party’s efforts were completely superfluous in achieving the result; (3) whether a fee award would be an extreme hardship; (4) whether the successful party prevailed with respect to all of the relief sought; (5) whether the matter presented a novel legal question; and (6) whether the award would discourage other parties with tenable claims or defenses from litigating them.

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The Court finds the fee affidavit submitted meets the requirements set forth in *Schweiger v. China Doll Rest., Inc.*, 138 Ariz. 183, 188 (1983). Specifically, the affidavit indicates the agreed upon hourly rate, the attorney providing service, the time spent, and has sufficient detail to enable the court to assess the reasonableness of the time expended.

The Court also finds that the Association is entitled to an award of reasonable attorneys' fees pursuant to the Declaration.

Considering all those factors, the Court finds the amount of the reasonable attorneys' fees to be \$14,000.00.

The Court also finds Town Square is entitled to an award of \$4,816.90 in costs.

Accordingly,

IT IS ORDERED awarding attorneys' fees in the amount of \$14,000.00

IT IS FURTHER ORDERED awarding costs in the amount of \$4,816.90.

IT IS FURTHER ORDERED confirming this Court's previous ruling remanding this matter to the Moon Valley Justice Court.

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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