Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2013-000086-001 DT 04/29/2013

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT
J. Eaton
Deputy

COLONY BILTMORE-GREENS HOMEOWNERS ASSOCIATION INC

BETH MULCAHY

v.

SUSAN H GRANT (001)

SUSAN H GRANT
5301 N 25TH PL
PHOENIX AZ 85016

ARCADIA BILTMORE JUSTICE COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case No. CC2012004442 RC.

Defendant-Appellant Susan H. Grant (Defendant) appeals the Arcadia Biltmore Justice Court's determination that she was responsible for Plaintiff's attorneys' fees. Defendant contends the trial court erred. For the reasons stated below, the court affirms in part and reverses in part the trial court's judgment.

I. FACTUAL BACKGROUND.

On January 9, 2012, Plaintiff—Colony Biltmore-Greens HOA—filed a complaint alleging Defendant failed to pay all of her mandatory expenses and delinquent assessments to the association. Plaintiff alleged Defendant owed assessments and late fees totaling $773.00 plus attorneys' fees of $897.18. Defendant responded to the Complaint and denied owing the money. She claimed she lacked sufficient information and belief to identify the charges Plaintiff claimed. For several months the parties engaged in e-mail and mail correspondence about the alleged debt. Defendant contested the original $773.00 Plaintiff claimed and asserted the assessments were a combination of four unknown charges: (1) $345.00 listed on September 1, 2011, as a balance forward after the balance forward was listed as $0.00 for August 31, 2011; (2) the payment records for September 1, 2011; (3) a $150 late notice fee; and (4) an additional $279.18 for legal fees. Plaintiff requested attorneys' fees pursuant to the CC&Rs as well as A.R.S. §12–341.01.

The parties disputed assessment payments for the next several months. Defendant asserted she made several payments by electronic transfer and Plaintiff claimed not to have timely received those payments. The lawsuit continued during this time and Plaintiff posted its ongoing legal charges to Defendant's account as further charges for Defendant. Defendant provided disclosure to Plaintiffs and included copies of bank records showing electronic payments of monthly assessments during 2011–2012.

In April, 2012, the trial court scheduled a pre-trial conference. Although both parties appeared at the courthouse, a mix-up occurred and each party waited in a separate area, unaware of the adverse party's appearance. The trial court dismissed the action after Plaintiff failed to appear at the courtroom. Because Plaintiff was able to demonstrate its representative was at the courthouse, the matter was re-instated. Plaintiff's counsel then filed an application for attorneys' fees and costs—despite having no judgment and no finality for the case—requesting fees of $1,947.50 and $191.68 for costs.

Thereafter, on July 12, 2012, the trial court set the matter for trial on October 19, 2012. On August 15, 2012,—less than 90 days prior to trial—Plaintiff filed a Motion for Summary Judgment. Defendant opposed this motion and asserted (1) it was not timely; and (2) Plaintiff was not entitled to judgment as a matter of law because Plaintiff had not demonstrated it followed the mandatory requirements for fixing the annual assessments or notifying the owners/members of the Association. Plaintiff also filed a motion to continue the trial. The trial court denied Plaintiff's requested summary judgment on October 2, 2012. In its ruling, the trial court said:

> Case will proceed to trial.
>
> Trial date will remain as scheduled. The Court reviewed Plaintiffs [sic.] motion for continuance, however, since summary judgment was denied the trial can still proceed as scheduled unless another continuance is requested.

On October 12, 2012, Defendant paid the principal amount Plaintiff claimed. On October 16, 2012,—three days before the scheduled trial—Plaintiff filed "Plaintiff's Expedited Motion for Determination of Damages" and requested the trial court determine damages because Defendant paid the contested principal amount. Plaintiff alleged the only matter to be resolved was the award of attorneys' fees and costs pursuant to the amended CC&Rs. Plaintiff argued the provision of Article VII, Section 8 required the Owner and Member to pay reasonable attorneys' fees and costs and claimed the law firm's fees and costs were "necessary and just" under the circumstances.[1]

In granting Plaintiff's requested "Expedited Motion for Determination of Damages", the trial court stated:

> In the interests of justice, this trial is hereby vacated. Defendant, Susan Grant, paid principal amounts owed to Plaintiff & therefore a trial is unnecessary.

[1] Plaintiff's Expedited Motion For Determination of Damages, filed October 16, 2012 at p.5, l.1,

> The only matter left before the Court is the reasonableness of Plaintiff's requested attorney's [sic.] fees & costs. Defendant is hereby given ten (10) judicial days to respond to Plaintiff's Motion for Damages.

Defendant responded (1) she had always been open to settlement despite her belief the HOA's claims were improper; (2) the "sticking point" was the ever mounting attorneys' fees; (3) Plaintiff's counsel filed unwarranted motions including an untimely motion for summary judgment and motion to continue trial; (4) Plaintiff was not the successful party to the lawsuit; (5) Plaintiff voluntarily dismissed its case which the trial court granted without allowing Defendant the opportunity to respond; (6) the trial court dismissed the case and thereby lost jurisdiction over the matter so it could no longer award attorneys' fees; (7) the amended CC&Rs did not provide for an award of attorneys' fees as Plaintiff failed to prove any breach of the CC&Rs or any delinquency in payment; (8) the requested fees were unreasonable as Plaintiff's counsel engaged in unnecessary work; (9) the requested fees of $8,250.18 exceeded the amount claimed in the lawsuit by more than a factor of nine; (10) the claimed fees exceeded the amount Plaintiff's counsel published in its webpage for an uncontested delinquent assessment lawsuit; and (11) Plaintiff's counsel failed to comply with all of the mandates *of Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, P.2d (Ct. App. 1983).[2]

Counsel, in its Affidavit is Support of Attorneys' Fees and Costs, alleged its hourly rate was between $185.00 and $245.00 and claimed it was a reasonable and competitive fee when compared with other attorneys in the Phoenix area who practiced in the area of condominium and association law. In Plaintiff's Reply In Support Of Its Motion For Determination of Damages and Award of Attorney fes [sic.] counsel asserted: "This firm exclusively practices in the area of community association law and therefore all attorneys have specialized knowledge in this area."[3]

On November 29, 2012, the trial court signed a judgment awarding Plaintiff $9,057.00 for attorneys' fees and $336.50 for costs plus interest at the rate of 4.25% on the unpaid balance. On December 12, 2012, Defendant filed a Motion and Memorandum with the trial court asking the trial court to explain its ruling and claiming (1) there was no trial to determine if she owed any money to the Association; (2) the Association never proved it had the authority to assess monthly fees of $233.00; (3) she had no opportunity to prove she had made every monthly assessment; and (4) there was no proof that "$9,000+ attorney fees was required throughout the case." The trial court summarily denied Defendant's requested explanation and ruled its order of judgment remained. The trial court added Defendant "still has the right to appeal" on December 11, 2012. The following day, Plaintiff filed "Plaintiff's Motion To Strike Defendant's Motion To Court To Provide Explanation of Ruling."

[2] Susan H. Grant's Declaration in Lieu of Affidavit In Answer to Plaintiff's Expedited Motion for the Determination of Damages and In Opposition to Plaintiff's Application for Attorneys' Fees and Costs, filed November 1, 2012.
[3] Plaintiff's Reply In Support Of Its Motion For Determination of Damages and Award of Attorney fes [sic.] at p. 6, l.26 and p. 7, l. 1.

Defendant filed a timely appeal. Plaintiff—Colony Biltmore–Greens HOA—filed a responsive memorandum. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES:

A. Is A Party Successful For Purposes Of Attorneys' Fees Awards When The Underlying Claim Ends Prior To Trial.

Introduction

Defendant alleged there were three issues for the appellate court to resolve: (1) is an HOA entitled to recover attorneys' fees when the trial is vacated because the underlying claim has been resolved; (2) when the plaintiff HOA withdraws its breach of contract claim prior to trial because the issue has been resolved, is the HOA the successful party for the purposes of an attorneys' fee award; and (3) is the HOA entitled to all of its claimed fees when Defendant alleged some of the work performed was not necessary. The first two of these claims will be combined into a single issue because both relate to whether the Plaintiff was entitled to an award of attorneys' fees in this case. The second issue relates to the amount of attorneys' fees the trial court awarded.[4]

Plaintiff's claim for attorneys' fees emanates from A.R.S. §12–341.01 as well as the First Amendment to Declaration of the Covenants, Conditions and Restrictions for Colony Biltmore-Greens (Amended CC&Rs), Article VII, Section 8 which states—in relevant part:.

> In the event the Association employs an attorney or attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration each Owner and Member agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner or Member. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein, or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:. . .

The CC&Rs provide for enforcement by suit or by lien.

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[4] This Court recognizes Defendant argued the trial court erred by (1) vacating the scheduled trial without her input; (2) failing to rule on issues about the Association's right to fix the annual assessments; and (3) failing to interpret the provisions of the Declaration. Defendant filed no counterclaim and the trial court was not required to address these issues.

Standard of Review

Attorneys' fees are reviewed under a combination of *de novo* review as well as a review for an abuse of discretion. In *Summers Grp., Inc. v. Tempe Mech., LLC*, 1 CA-CV 12-0086, 2013 WL 1136417, ___ Ariz. ___, ¶ 9, ___P.3d___, ¶ 9, 656 Ariz. Adv. Rep, 15 (Ct. App. Mar. 19, 2013) the Arizona Court of Appeals held:

> The grant or denial of a request for attorney fees is within the discretion of the trial court and will not be overturned if it is reasonably supported by the record. *West v. Salt River Agric. Improvement & Power Dist.*, 179 Ariz. 619, 626, 880 P.2d 1165, 1172 (App.1994). When the application of an attorney fees statute involves statutory interpretation, we review the trial court's ruling de novo. *Keystone Floor & More, LLC v. Ariz. Registrar of Contractors*, 223 Ariz. 27, 29, ¶ 7, 219 P.3d 237, 239 (App.2009) (stating that the standard of review is de novo when reviewing statutory attorney fees awards arising out of a contract dispute).

Questions of contract interpretation are reviewed *de novo*. In *Burke v. Voicestream Wireless Corp. II*, 207 Ariz. 393, 395-96, ¶ 11, 87 P.3d 81, 83-84, ¶ 11 (Ct. App. 2004) the Arizona Court of Appeals said:

> The interpretation of a contract is generally a matter of law, and we are not bound by the trial court's conclusions of law. *Scholten v. Blackhawk Partners*, 184 Ariz. 326, 328, 909 P.2d 393, 395 (App.1995). Likewise, whether a contract is ambiguous is a question of law that we review *de novo. Hartford v. Indus. Comm'n*, 178 Ariz. 106, 111, 870 P.2d 1202, 1207 (App.1994).

The HOA Contract

To analyze Plaintiff's claim under its HOA contract, this Court will perform a *de novo* review but look to the plain meaning of the contract. See, *ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 290–91, ¶ 15, 290-91, 246 P.3d 938, 941-42, ¶ 15 (Ct. App. 2010) where the Arizona Court of Appeals held:

> We review issues of contract interpretation *de novo. Ahwatukee Custom Estates Mgmt. Ass'n v. Turner*, 196 Ariz. 631, 634, ¶ 5, 2 P.3d 1276, 1279 (App.2000). Our purpose in interpreting a contract is to ascertain and enforce the parties' intent. *U S West Commc'ns, Inc. v. Ariz. Corp. Comm'n*, 185 Ariz. 277, 280, 915 P.2d 1232, 1235 (App.1996). To determine the parties' intent, we "look to the plain meaning of the words as viewed in the context of the contract as a whole." *United Cal. Bank v. Prudential Ins. Co.*, 140 Ariz. 238, 259, 681 P.2d 390, 411 (App.1983). When the terms of a contract are plain and unambiguous, its interpretation is a question of law for the court. *Chandler Med. Bldg. Partners v. Chandler Dental Grp.*, 175 Ariz. 273, 277, 855 P.2d 787, 791 (App.1993). If the contract language is reasonably susceptible to more than one meaning, extrinsic evidence may be admitted to interpret the contract. *Taylor v. State Farm Mut. Auto. Ins. Co.*, 175 Ariz. 148, 158–59, 854 P.2d 1134, 1144–45 (1993).

The HOA contract provided for attorneys' fees when the HOA employed an attorney to collect an assessment. Here, the HOA employed counsel to collect an assessment which the HOA maintained was owed. Ultimately, Defendant paid this assessment. The plain meaning of the attorneys' fees provision is that if the Association employs the attorney to collect an assessment, the Owner or Member agrees to pay reasonable attorneys' fees and costs in addition to any other amount due. The exact language of the relevant language in the provision is that "each Owner and Member agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner or Member." This Court notes the use of the disjunctive "or" in the provision. The Owner/Member agrees to pay the attorneys' fees incurred in addition to (1) "any other amounts due"; or (2) any other relief or remedy obtained against said Owner or Member. In this case, Defendant voluntarily paid the underlying assessment of $773.00. Because Defendant paid the "other amount due", Defendant became responsible for attorneys' fees under Article VII, Section 8.

A.R.S. §12–341.01

In addition to the contract provisions, a successful party to a contract action may be awarded attorneys' fees according to A.R. S. §12–341.01 which states:

> **A.** In any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney fees. If a written settlement offer is rejected and the judgment finally obtained is equal to or more favorable to the offeror than an offer made in writing to settle any contested action arising out of a contract, the offeror is deemed to be the successful party from the date of the offer and the court may award the successful party reasonable attorney fees. This section shall not be construed as altering, prohibiting or restricting present or future contracts or statutes that may provide for attorney fees.
>
> **B.** The award of reasonable attorney fees pursuant to this section should be made to mitigate the burden of the expense of litigation to establish a just claim or a just defense. It 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.
>
> **C.** The court and not a jury shall award reasonable attorney fees under this section.

To determine if Plaintiff was entitled to attorneys' fees under A.R.S. § 12-341.01, this Court must first find Plaintiff was a successful party despite never receiving a trial verdict for the underlying claim. In *Sanborn v. Brooker & Wake Prop. Mgmt., Inc.*, 178 Ariz. 425, 430, 874 P.2d 982, 987 (Ct. App. 1994) the Arizona Court of Appeals addressed the concept of successful party and said:

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> The decision as to who is the successful party for purposes of awarding attorneys' fees is within the sole discretion of the trial court, and will not be disturbed on appeal if any reasonable basis exists for it. *Schwartz v. Farmers Ins. Co.*, 166 Ariz. 33, 800 P.2d 20 (App.1990). While the award of money is an important item to consider when deciding who is the prevailing party, the fact that a party does not recover the full measure of relief it requests does not mean that it is not the successful party. *Ocean West Contractors, Inc. v. Halec Constr. Co.*, 123 Ariz. 470, 473, 600 P.2d 1102, 1105 (1979). In Arizona, "a party [is] 'successful' if he obtains judgment for an amount in excess of the setoff or counterclaim allowed." *Id*. Here, appellee was awarded $8,589.05, an amount far in excess of the setoff of $1,387.60 allowed by the court on appellants' illegality defense. Given that, we cannot say that the trial court acted unreasonably in deeming appellee the successful party.

While often the defendant is considered to be the successful party when a plaintiff voluntarily dismisses a lawsuit, this is not always the case. Here, Plaintiff dismissed its case because Defendant voluntarily paid the underlying assessment. Consequently, Plaintiff prevailed in its original intent—obtaining its assessment. Neither party provided binding precedent addressing whether a defendant is the successful or prevailing party when the trial for the underlying claim is voluntarily dismissed because the defendant paid the claim just prior to the scheduled trial date. However, and persuasively, in *Scatcherd v. Love*, 166 F. 53, 56 (6th Cir. 1908) the Sixth Circuit Court of Appeals held:

> To entitle the defendant to recover costs against the plaintiff under sections 4938 and 4942, Shannon's Code, it must appear that he was the 'successful party' within the meaning of these sections. The learned attorney for the plaintiff in error insists that this appears from the fact that there was no judgment against the defendant upon the merits, and that the only judgment rendered was one dismissing the plaintiff's suit and taxing defendant with the costs. From this it is argued that the case is one of 'dismissal' under the provisions of section 4942. This method of stating the case eliminates the important fact that, after a new trial had been awarded, the defendant, in recognition of his liability and in settlement of the claim, paid to the plaintiff $5,000 and that there was no agreement as to costs accrued. Upon this state of facts the court found that the defendant had thereby acknowledged a liability to the plaintiff which entitled the plaintiff to recover his costs. It is true that the judgment does 'dismiss' the suit and award costs to the plaintiff; but the court did this because the sum received by the plaintiff had been received in satisfaction of his claim, and not because the suit had not been properly brought. The dismissal was solely because there was nothing more at issue by reason of this settlement pending suit. In a very true sense the plaintiff was the 'successful party,' for his suit had brought about a satisfaction of the claim by the defendant. When a defendant, after suit begun,

> acknowledges his liability by the payment of the claim upon which he is sued, and makes no agreement about the costs accrued, the plaintiff is the 'successful party' within the meaning of the Tennessee Code provision, and the costs should be awarded to him. This is the view taken by the Supreme Court of Tennessee, and is the law of the state, which was followed by the court below. State v. Dail, 3 Heisk. 272; Woodward v. Alston, 12 Heisk. 581.

Although Defendant argued *Britt v. Steffen*, 220 Ariz. 265, 205 P.3d 357 (Ct. App.) controlled, this Court finds *Britt, id*., to be distinguishable. The *Britt, id.*, holding, 220 Ariz. at 268, ¶ 11, 205 P.3d at 360 ¶ 11 addressed a situation where the case against the defendant was dismissed for lack of prosecution. That is not the situation in the current case. Here, Plaintiff informed the trial court there was no longer a need for trial because the Defendant paid the underlying assessment. Defendant had not filed any counterclaim. Because Defendant paid the claim prior to trial, there was no need for a further trial to establish Defendant's need to pay the claimed assessment.

This Court does not find the trial court abused its discretion in awarding Plaintiff its attorneys' fees. In *Grand Real Estate, Inc. v. Sirignano*, 139 Ariz. 8, 14, 676 P.2d 642, 648 (Ct. App. 1983) our Court of Appeals discussed some factors militating toward an award of attorneys' fees and referenced the following:

> 1. The merits of the claim or defense presented by the unsuccessful party.
>
> 2. The litigation could have been avoided or settled and the successful party's efforts were completely superfluous in achieving the result.
>
> 3. Assessing fees against the unsuccessful party would cause an extreme hardship.
>
> 4. The successful party did not prevail with respect to all of the relief sought.

These factors—and others—will be more fully addressed in the following section. However, and based on at least the first two of these factors, the trial court did not err by awarding Plaintiff attorneys' fees for the action as Defendant essentially demonstrated Plaintiff's underlying claim had merit and the action could have been avoided or settled earlier. To the extent this Court must conduct a *de novo* review of this issue, this Court concurs with the trial court's decision.

B. Did The Trial Court's Abuse Its Discretion When It Awarded Plaintiff All Of Its Requested Attorneys' Fees.

Defendant's second claim is that the amount of attorneys' fees awarded was excessive and the trial court abused its discretion when (1) it awarded the full amount of requested fees; and (2) those fees exceeded—by more than a factor of ten—the underlying claim. Here, this Court first notes the trial court provided no explanation as to how the amount of awarded fees was determined. However, Defendant did not request a finding of fact and a trial court is not required to set forth the basis for its decision absent such request. In *Ellingsen v. Fuller*, 20 Ariz. App. 456, 459, 513 P.2d 1339, 1342 (Ct. App. 1973) our Arizona Court of Appeals held: "A court is only required to make findings of 'ultimate facts.' "

Attorney fee award amounts are reviewed under an abuse of discretion standard. *Chase Bank of Arizona v. Acosta*, 179 Ariz. 563, 574, 880 P.2d 1109, 1120 (Ct. App. 1994). In reviewing a case for an abuse of discretion, this Court must determine if there was sufficient evidence for the trial court's determination. The appellate court must not re-weigh the evidence to see if it would reach the same conclusion as the original trier-of-fact. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2 1185, 1189 (1989). Instead, the appellate court must find if the trial court could find sufficient evidence to support its decision. Normally, appellate courts do not adjust the attorney fee award determined by the trial court because (1) the trial court has a "superior understanding of the litigation" and (2) appellate review of primarily factual matters is not desirable. *Chase Bank of Arizona v. Acosta, id.*, 179 Ariz. at 574, 880 P.2d at 1120.

Where this Court reviews the trial court's actions based on an abuse of discretion standard, this Court will not change or revise the trial court's determination if there is a reasonable basis for the order. A court abuses its discretion when there is no evidence supporting the court's conclusion or the court's reasons are untenable, legally incorrect, or amount to a denial of justice. *Charles I. Friedman, P.C. v. Microsoft Corp*., 213 Ariz. 344, 141 P.3d 824 ¶ 17 (Ct. App. 2006). In discussing discretion, the Arizona Supreme Court, in *State v. Chapple*, held:

> Something is discretionary because it is based on an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge, who has a more immediate grasp of all the facts of the case, an opportunity to see the parties, lawyers, and witnesses, and who can better assess the impact of what occurs before him. Where a decision is made on that basis, it is truly discretionary and we will not substitute our judgment for that of the trial judge; we will not second-guess. Where however, the facts or inferences from them are not in dispute and where there are few or no conflicting procedural, factual or equitable considerations, the resolution of the question is one of law or logic. Then it is our final responsibility to determine law and policy and it becomes our duty to "look over the shoulder" of the trial judge and, if appropriate, substitute our judgment for his or hers.

State v. Chapple, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n. 18 (1983) (citation omitted). In this case, the "factual and equitable considerations which vary from case to case" are in dispute as the parties contest if the amount of awarded attorneys' fees were excessive in light of the underlying claim. If the trial court had sufficient evidence to sustain its determination, this Court must affirm the trial court's decision. This Court will not reverse the trial court's ruling in favor of Plaintiff because a trial court judgment will not be disturbed if there is any substantial legal evidence to support it. *Corn v. Branche*, 74 Ariz. 356, 357, 249 P.2d 537, 538 (1952).

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However, this does not mean the Justice Court should blindly adopt whatever fee counsel charged or requested. Instead, the trial court should review the requested fee to insure that it is not an unreasonable one. In *McDowell Mountain Ranch Community Ass'n Inc. v. Simons*, 216 Ariz. 266, 165 P.3d 667 ¶ 18 (Ct. App. 2007), the Court ruled that while a defendant may be obligated to pay the full amount of the attorneys' fees, that obligation may not be enforced when the requested amount for the fees is "obviously excessive."

In determining if the award of attorney fees is 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). Before determining any award, this Court notes (1) the attorney must provide a China Doll affidavit detailing the work performed, *Schweiger v. China Doll Restaurant, Inc*., 138 Ariz. 183, 673 P.2d 927 (Ct. App. 1983) and (2) any award of attorney fees under A.R.S. 12–341.01 is subject to an analysis about the reasons for the shifting of responsibility for fees. In *Schweiger v. China Doll, id*., 138 Ariz. at 188, 673 P.2d at 932 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."

The 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 establishing these factors, the Arizona Supreme Court considered the language of A.R.S. 12–341.01 and cited subsection B which states the award

> ". . . should be made to mitigate the burden of the expense of litigation to establish a just claim or a just defense. It need not equal or relate to the attorney's fees actually paid or contracted. . ."

Assoc. Indem. Corp. v. Warner, 143 Ariz. at 569, 694 P.2d at 1183. Here, however, there is no indication that the trial court considered these factors in determining the reasonableness of the awarded amount. The $9,057.00 awarded fee is over ten times greater than the requested past due assessments of $773.00. This does not mean that Plaintiff cannot expect to recover attorney fees that exceed the amount of its judgment. Defendant has not produced any law indicating an attorney fee award cannot exceed the amount of the debt. In *Wagner v. Caster*, 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.

The determination of the amount of attorney fees—according to A.R.S. § 12–341.01—is subject to the court's discretion. "The trial court has broad discretion in determining whether to award attorneys' fees under A.R.S. section 12–341.01(A)." *State Farm Mut. Auto Ins. Co. v. Arrington*, 192 Ariz. 255, 963 P.2d 334 ¶ 27 (Ct. App. 1998). "[The] trial court abuses its discretion as to attorneys' fees only when its view would not be taken by a reasonable man." *Moser v. Moser*, 117 Ariz. 312, 315, 572 P.2d 446, 449 (Ct. App. 1977). Here, however, this Court must determine if a reasonable person would allow an attorneys' fee award that exceeded the amount at issue by a multiplicand of ten or more. In this case, Plaintiff's counsel charged an hourly rate between $185.00 and $245.00 per hour. That is not unreasonable for attorney work provided the time the attorney takes to perform a task is not excessive or unwarranted. Counsel is certainly at liberty to run its office as it chooses. 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)[5] 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.

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

Counsel's China Doll indicated it spent 0.7 hours in drafting a Notice and Claim of Lien for a charge of $129.50. This is a form document. Similarly, counsel spent an equivalent amount of time—and money—in drafting a "Pre-foreclosure Notice"—another form document. These fees are excessive. Counsel requested 2 hours of time for drafting its Complaint—a three page document which is essentially a form for any firm—such as this one—that regularly deals with condominium law. This claimed amount is excessive. Counsel also charged for the "missed" April conference. Since Defendant had no responsibility for the missed conference, this Court fails to see why Defendant should be responsible for the full charge for the error. Similarly, Plaintiff did not prevail on its requested summary judgment yet Defendant was assessed the full charge for Plaintiff's untimely motion. This is another example of an unwarranted charge. Additionally, this Court notes hundreds of dollars in charges for preparing counsel's billing statement for the trial court despite (1) the amounts having been assessed to Defendant as part of the monthly assessment; and (2) the likelihood counsel already had its basic China Doll statements readily available. The amounts awarded for these charges were unreasonable.

From the record before this Court, it appears the trial court adopted counsel's billing statement without analyzing the specific charges and without considering the factors required by *Assoc. Indem. Corp. v. Warner*, *id*., 143 Ariz. at 570, 694 P.2d at 1184. That is not reasonable. 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. Having reviewed the Plaintiff's billing statement, this Court finds the awarded fees are excessive when compared with the complexity of the case and the result achieved.

C. Is Either Party Entitled To Attorneys' Fees On Appeal.

Neither party prevailed on appeal. Although Plaintiff was successful in its claim that it was entitled to attorneys' fees for the trial court action, Defendant established the amount of awarded fees was excessive. Therefore, each party is responsible for its own costs and fees for the appeal.

III. CONCLUSION.

Based on the foregoing, this Court concludes the Arcadia Biltmore Justice Court did not err in finding Defendant responsible for attorneys' fees but abused its discretion and erred in assessing the amount of attorneys' fees.

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

IT IS FURTHER ORDERED remanding this matter to the Arcadia Biltmore Justice Court for all further appropriate proceedings consistent with this Minute Entry and so the Justice Court can consider the appropriate amount of attorneys' fees in light of (1) the factors expressed in *Assoc. Indem. Corp. v. Warner*, *id.;* and (2) this opinion.

IT IS FURTHER ORDERED each party shall be responsible for its own costs and fees for this appeal.

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 042920121700