

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2014-000179-001 DT

08/12/2014

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT

J. Eaton

Deputy

VELDA ROSE ESTATES HOME OWNERS
ASSOCIATION

CHARLES E MAXWELL

v.

EDITH POGGI (001)

KENT S BERK

MESA JUSTICE CT-EAST
REMAND DESK-LCA-CCC

NUNC PRO TUNC ORDER

Lower Court Case No. CC2012-132551.

Plaintiff-Appellee Velda Rose Estates HOA and their attorneys Maxwell & Morgan, P.C. requested—pursuant to Rule 14(a) Superior Court Rules of Appellate Procedure—Civil (SCRAP—Civ.)—requested that this Court (1) reconsider its ruling in this matter; and (2) strike that portion of this Court’s June 10, 2014, Record Appeal Ruling/Remand to remove any allegation about “Fraud On The Court” on pages 11 and 12 of that ruling and in the third sentence of the Ruling’s Conclusion on page 16. This Court has considered Plaintiff’s Request, Defendant’s Response, and Plaintiff’s Reply and accedes to Plaintiff’s Request to strike references to “Fraud on the Court.”

IT IS ORDERED *nunc pro tunc* amending the minute entry dated June 10, 2014, pages 11, 12, and 16 as follows:

In place of the “Fraud on the Court” section, this Court substitutes the following section denominated “Other Reasons Justifying Relief.”

Other Reasons Justifying Relief

Defendant requested Rule 141(c) (6) relief re “any other reason that justifies relief from the judgment” in addition to her generic fraud claim. Here, this court found Plaintiff’s counsel erred in its requested attorneys’ fee. In its Complaint, Plaintiff requested attorneys’ fees based on the Declaration of CC&Rs, Plaintiff also requested attorneys’ fees pursuant to A.R.S. § 12-341.01; A.R.S. § 33-1807(H); and A.R.S. §33-1256(h). These statutes use the term “reasonable” as the modifier for the attorneys’ fees provision. The Declaration of CC&Rs used the modifier “reasonable” when describing the attorneys’ fees to be assessed against a defaulting owner. The same provision allowed an additional amount for accruing assessments, attorneys’ fees and costs until all amounts were paid in full but did not specify if “reasonable” or “all” attorneys’ fees were to be awarded for the accruing assessments. The attorneys’ fee provision stated:

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Each Owner agrees that any judgment rendered in any such action shall include a sum for reasonable attorneys' fees in such amount as the Court may adjudge against the defaulting Owner, plus all court costs and necessary expenses and accounting fees incurred by the Association, plus interest on all amounts from the date the assessment becomes delinquent until paid in full, and an amount for accruing assessments, attorneys' fees and costs, until all amounts due and owing under any such judgment are paid in full.

After granting Plaintiff's requested summary judgment, the trial court signed an Order on February 7, 2013. That order, signed by the Hon. Mark Chiles, Sr. stated:

This Court grants Plaintiff's Motion for Summary Judgment as follows:

Principal: \$1,979.77

Interest

Costs

Reasonable Attorney Fees (China Doll required for consideration on amount.)

Accruing charges as granted by court

Please submit a purposed [sic] form of judgment for further consideration.

When Plaintiff's counsel submitted its proposed form of judgment, counsel included a provision for "all" attorney' fees instead of "reasonable" fees. The attorneys' fee provision did not clearly specify "all" attorneys' fees were to be paid.

This Court has also revised the third sentence of its Conclusion to the June 10, 2014, Record Appeal Ruling/Remand. The new third sentence shall be substituted in place of the third sentence on page 16 of the June 10, 2014, Record Appeal Ruling/ Remand.

In addition, this Court finds Plaintiff's counsel provided a Judgment where counsel included a provision for "all" future attorneys' fees despite the language of the provisions of the first and second amended Declarations of CC&Rs lacking a clear statement allowing for "all" attorneys' fees.

IT IS THEREFORE ORDERED striking any reference to Fraud on the Court on pages 11 and 12 of the Record Appeal Ruling/Remand and substituting the revised section for pages 11 and 12.

IT IS FURTHER ORDERED striking any reference to Fraud on the Court on page 16 of the Record Appeal Ruling/Remand and substituting the revised sentence for the Conclusion on page 16 of that ruling.

The remainder of the minute entry stands in effect as stated therein.

The parties will be able to access this Court's minute entry dated June 10, 2014, by accessing the following website: <http://www.courtminutes.maricopa.gov>.

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

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