

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000222-001 DT

08/13/2018

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT

C. Avena

Deputy

VINEYARD COMMONS HOMEOWNERS
ASSOCIATION

CHAD M GALLACHER

v.

BENJAMIN A DAMIAN SR. (001)
ROSE MARY M DAMIAN (001)

BENJAMIN A DAMIAN SR.
8252 EXBOURNE CIRCLE
SACRAMENTO CA 95828
ROSE MARY M DAMIAN
8252 EXBOURNE CIRCLE
SACRAMENTO CA 95828

JUDGE STARR
REMAND DESK-LCA-CCC
SOUTH MOUNTAIN JUSTICE COURT

MINUTE ENTRY

Lower Court Case No. CC2016024067 RC.

Appellant Vineyard Commons Homeowners Association (“Vineyard”) seeks reversal of the trial court’s order awarding attorneys’ fees in an amount less than that requested by Vineyard. For the following reasons, the trial court affirms the decision of the trial court in part and reverses it in part, and remands for further proceedings consistent with this Decision.

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I. FACTS AND PROCEDURAL BACKGROUND

Vineyard filed a Complaint against Appellees Benjamin Damian, Sr. and Rose Mary Damian seeking judgment for unpaid assessments, accruing assessments and fees, as well as attorneys' fees and costs. Appellees filed an Answer and Counterclaim. The Counterclaim alleged various claims, including unfair and unequal treatment, deficient community maintenance, harassment, and emotional distress.

The trial court entered judgment and awarded Vineyard attorneys' fees in the amount of \$1,500 on its Complaint, as well as \$750 on the Counterclaim. (Judgment, February 2, 2018.) The Judgment also awarded Vineyard a principal sum of \$4,112.30. (*Id.*)

Vineyard filed a timely notice of appeal from the Judgment. This Court has jurisdiction pursuant to A.R.S. § 12-124(A).

II. Legal Analysis

On a principal judgment of \$4,112.30, Vineyard sought attorneys' fees in the amount of \$31,599.50. Instead, the trial court awarded attorneys' fees in the amount of \$2,250.00. According to Vineyard, this constitutes an abuse of the trial court's discretion.

A trial court is not required to grant attorneys' fees to the prevailing party in a contested contract case. *Associated Indem. Corp. v. Warner (Warner)*, 143 Ariz. 567, 570 (1985). Instead, 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.*

Under *Warner*, a trial court should consider: (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. When a trial court makes a determination regarding fees, an appellate court may only decide whether the ruling is within "the bounds of reason," not whether the appellate court would have

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made the same ruling. *Warner*, at 571. Here, the trial court's grant of attorneys' fees does not exceed the bounds of reason.

As Vineyard points out, however, it also had an entitlement to attorneys' fees under the Declaration of Covenants, Conditions, Restrictions and Easements. Under the Declaration, Vineyard is entitled to "all" attorneys' fees incurred enforcing a lien. This provision does not apply to defense of the Counterclaim, which does not involve enforcement of a lien by Vineyard. The entitlement to attorneys' fees does relate to the Complaint, which was brought to enforce liens.

Contracts for attorneys' fees are enforced in accordance with the contractual terms. *Heritage Heights Home Owners Ass'n v. Esser*, 115 Ariz. 330, 333 (App. 1977). But "a contractual provision providing for an award of unreasonable attorneys' fees will not be enforced." *McDowell Mountain Ranch Community Ass'n, Inc. v. Simons*, 216 Ariz. 266, 270, ¶ 16 (App. 2007). A trial court may reduce an award that is contractually provided for only upon a showing that the fees are clearly excessive. *Id.* at 271, ¶ 22.

Because the trial court did not make specific factual findings, this Court is unable to determine if the trial court found the fees requested on the Complaint to be clearly excessive. Thus, the matter must be remanded for such a determination.

III. CONCLUSION

Based on the foregoing,

IT IS ORDERED affirming the trial court's award of attorneys' fees in the amount of \$750.00 on the Counterclaim.

IT IS FURTHER ORDERED vacating the award of attorneys' fees on the Complaint and remanding for a determination of whether the request on the Complaint was clearly excessive, or whether the attorneys' fees should be awarded in full because the Declaration allows for an award of all attorneys' fees incurred enforcing liens.

IT IS FURTHER ORDERED remanding this matter to the South Mountain Justice Court for further proceedings consistent with this Decision.

IT IS FURTHER ORDERED denying the request for attorneys' fees on appeal, as both parties prevailed in part.

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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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