

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2018-000257-001 DT

09/20/2018

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT  
C. Avena  
Deputy

DESERT ROSE COMMUNITY ASSOCIATION    CHAD M GALLACHER

v.

MICKEY M SLEDGE (001)

MICKEY M SLEDGE  
2518 E FRANCISCO DR  
PHOENIX AZ 85042

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

HIGHER COURT RULING / REMAND

**Lower Court Case No. CC2016-235679.**

Appellant Desert Rose Community Association (“Desert Rose”) seeks reversal of the trial court’s order declining to award attorneys’ fees as requested by Desert Rose. For the following reasons, this Court reverses the decision of the trial court and remands for further proceedings consistent with this Decision.

**I. FACTS AND PROCEDURAL BACKGROUND**

Desert Rose filed a Complaint against Appellee Mickey M. Sledge seeking judgment for unpaid assessments, accruing assessments and fees, as well as attorneys’ fees and costs. Desert Rose included the basis for its request for attorneys’ fees in its Complaint, and again in its Application for Attorneys’ Fees. Appellee did not file an Answer; Desert Rose filed an Application for Entry of Default and Affidavit on Default.

SUPERIOR COURT OF ARIZONA  
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The trial court entered judgment and awarded Desert Rose an amount for principal and interest, but declined to award any attorneys' fees. (Judgment, April 28, 2017.) Desert Rose filed a timely notice of appeal from the Judgment. This Court has jurisdiction pursuant to A.R.S. § 12-124(A).

*II. Legal Analysis*

An appellate court reviews a trial court's award or denial of attorneys' fees for an abuse of discretion. *Vortex Corp. v. Denkewicz*, 235 Ariz. 551, 562, ¶ 39 (App. 2014).

Generally, 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). But as Desert Rose points out, it had an entitlement to attorneys' fees under the Declaration of Covenants, Conditions, and Restrictions. Under specific language in the Declaration, Desert Rose is entitled to "reasonable attorneys' fees" incurred enforcing collection of delinquent assessments.

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). "[A] contractual provision providing for an award of unreasonable attorneys' fees will not be enforced," but a trial court may reduce an award that is contractually provided for only upon a showing that the fees are clearly excessive. *McDowell Mountain Ranch Community Ass'n, Inc. v. Simons*, 216 Ariz. 266, 270-71, ¶ 16, ¶ 22 (App. 2007).

There is also a statutory basis for an award of reasonable attorneys' fees to Desert Rose, as the prevailing party. "A judgment or decree in any action brought under this section [lien for assessments] shall include costs and reasonable attorney fees for the prevailing party." A.R.S. § 33-1807(H).

The trial court did not make specific factual findings, and thus this Court is unable to determine the basis for its denial of all attorneys' fees in this matter. Given that there is both a contractual and statutory basis for an award of such fees, the trial court should have considered the request for attorneys' fees, and entered an award of those fees it found reasonable, considering all the circumstances.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2018-000257-001 DT

09/20/2018

III. CONCLUSION

Based on the foregoing,

IT IS ORDERED reversing the trial court's denial of attorneys' fees.

IT IS FURTHER ORDERED remanding for a determination of reasonable attorneys' fees, and an award of such fees.

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

IT IS FURTHER ORDERED Desert Rose shall submit any Application for Attorneys' Fees and Costs on Appeal no later than October 12, 2018. Sledge may file any objection no later than November 9, 2018.

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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