

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2023-000212-001 DT

09/14/2023

HONORABLE JOSEPH P. MIKITISH

CLERK OF THE COURT  
J. Eaton  
Deputy

MARY EDINBURGH

JONATHAN A DESSAULES

v.

SCOTTSDALE EMBASSY CONDOMINIUM  
ASSOCIATION (001)

TERESA H FOSTER

JUDGE MIKITISH  
MCDOWELL MOUNTAIN JUSTICE  
COURT  
REMAND DESK-LCA-CCC

RULING

**McDowell Mountain Justice Court Case No. CC2022062965RC**

Plaintiff/Appellant Mary Edinburgh appeals from a civil judgment entered in the McDowell Mountain Justice Court. After a bench trial, that court found in favor of Defendant/Appellee, Scottsdale Embassy Condominium Association. This Court has jurisdiction pursuant to ARIZ. CONST. Art. 6, § 16 and A.R.S. §§ 12–124, 22–261. For the following reasons, this Court affirms.

**I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

Plaintiff sued Defendant on a breach of contract claim.<sup>1</sup> Plaintiff was a property owner within the Scottsdale Embassy Condominium Association and alleged that Defendant “ha[d] wrongfully and unlawfully attempted to implement a special assessment upon condominium owners to pay for roof repairs.” *See* Complaint at p. 2. Plaintiff alleged she “ha[d] been forced,

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<sup>1</sup> Because the parties are familiar with the facts and procedural history, it is not recounted in detail here.  
Docket Code 019

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under protest and duress, to make payment of \$1,500.00 to the Association for this wrongful and unlawful misconduct.” *Id.* at p. 3. Defendant filed an Answer and then parties litigated Plaintiff’s motion for summary judgment, which the trial court ultimately denied on November 9, 2022. A bench trial was held on January 23, 2023. The president of the Scottsdale Embassy Condominium Association and Plaintiff testified, and several exhibits were admitted into evidence.

At the conclusion of the trial, the trial court took the matter under advisement and issued its written ruling on January 25, 2023. The trial court entered judgment for Defendant. In its written ruling, dated January 25, 2023, the trial court found,

Based upon evidence and testimony in the bench trial held on January [sic] 23, 2023, the Plaintiff did not prevail by the Proponderance [sic] of the Evidence. Therefore Judgment is granted to the Defendant. Defendant to submit an Application for Fees and Costs within 10 days. Plaintiff to submit a response within 5 days of the Defendant’s filing.

Minute Entry dated 1/25/2023.

Defendant submitted its Motion for Attorney Fees. Plaintiff then filed its Response to Defendant’s Motion for Attorney Fees. The trial court issued its judgment awarding attorney’s fees on March 1, 2023. Plaintiff timely appealed.

## II. LEGAL STANDARD

When reviewing a trial court judgment reached after a bench trial, the reviewing court views “the evidence in a light most favorable to sustaining the verdict.” *Castro v. Ballesteros-Suarez*, 222 Ariz. 48, 51-52 ¶ 11 (App. 2009). This Court cannot “reweigh the evidence or substitute [its] evaluation of the facts” for that of the trial court. *Id.* However, this Court considers pure questions of law *de novo*, including whether the trial court correctly applied the substantive law to the facts. *Trust v. County of Yuma*, 205 Ariz. 272, 274 ¶ 7 (App. 2003).

“Implied in every judgment, in addition to express findings made by the court, is any additional finding that is necessary to sustain the judgment, if reasonably supported by the evidence, and not in conflict with the express findings.” *Coronado Co., Inc. v. Jacome’s Dept. Store, Inc.*, 129 Ariz. 137, 139 (App. 1981). “[I]f any reasonable view of the facts and law might support the judgment of the trial court, [this court] is obliged to affirm its decision [and follows] this rule even if the trial court has reached the correct result for the wrong reason.” *Pugh v. Cook*, 153 Ariz. 246, 248 (App. 1987).

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To establish a claim for breach of contract, the plaintiff must prove, by a preponderance of the evidence, the existence of a contract, the defendant's breach of that contract, and the plaintiff's resulting damages. *See, e.g., Keg Restaurants Ariz., Inc. v. Jones*, 240 Ariz. 64, 75 ¶ 41 (App. 2016).

This Court reviews a trial court's attorneys' fees award for an abuse of discretion, *Geller v. Lesk*, 230 Ariz. 624, 627 ¶ 8 (App. 2012), and views the facts in the light most favorable to upholding the trial court's ruling. *Tucson Estates Prop. Owners Ass'n, Inc. v. McGovern*, 239 Ariz. 52, 54 ¶ 3 (App. 2016). Trial judges are presumed to know the law and apply it when making their determinations. *Fuentes v. Fuentes*, 209 Ariz. 51, 58 ¶ 32 (App. 2004). Moreover, trial judges are not required to detail each item of their thinking on the record when reaching their legal conclusions. *See id.* at 55 ¶ 18.

An issue is "discretionary" when

its resolution is based on factors which vary from case to case and which involve the balance of conflicting facts and equitable considerations. Thus, the phrase "within the discretion of the trial court" does not mean that the court is free to reach any conclusion it wishes. It does mean that where there are opposing equitable or factual considerations, we will not substitute our judgment for that of the trial court.

*State v. Chapple*, 135 Ariz. 281, 296 (1983), *superseded by statute on other grounds*, *State v. Sanders*, 245 Ariz. 113, 127 ¶ 52 (2018).

Trial judges must consider a myriad of factors when exercising their discretion regarding attorneys' fees awards. *See generally Associated Indem. Corp.*, 143 Ariz. 567 (1985); *Schweiger v. China Doll Rest., Inc.*, 138 Ariz. 183 (App. 1983). "The amount of fees is peculiarly within the trial court's discretion. Appellate courts are hesitant to second-guess the trial court on awards of attorneys' fees 'in view of the [trial court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.'" *Chase Bank of Arizona v. Acosta*, 179 Ariz. 563, 574 (App. 1994) (quoting *Associated Indem. Corp.*, 143 Ariz. at 571). Thus, on appeal,

the question is not whether the judges of [the reviewing] court would have made an original like ruling, but whether a judicial mind, in view of the law and circumstances, could have made the ruling without exceeding the bounds of reason. [The reviewing court] cannot substitute [its] discretion for that of the trial judge.

*Associated Indem. Corp.*, 143 Ariz. at 571 (internal quotation omitted).

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**III. LEGAL ANALYSIS**

The Court has reviewed and considered Plaintiff's "Appellant's Opening Brief" which will be referred to herein as the "Opening Memorandum" or "O.M." and Defendant's "Defendant/Appellee's Answering Memorandum" which will be referred to herein as the "Answering Memorandum" or "A.M."

Plaintiff urges three assignments of error on appeal. First, Plaintiff argues that the trial court "err[ed] in its bench trial ruling in favor of Defendant/Appellee." O.M. at p. 8. Second, "the trial court err[ed] in awarding attorneys' fees to Defendant/Appellee." *Id.* And finally, Plaintiff argues that "the trial court err[ed] in denying Plaintiff/Appellant's motion for summary judgment on November 10, 2022." *Id.*

In response, Defendant contends that the trial court did not err in "dismissing the Complaint," nor "in awarding attorneys' fees." A.M. at p. 5. Defendant argues that the "denial of the summary judgment is irrelevant" because "[t]he matter actually proceeded to trial and the court dismissed the Plaintiff's claim after hearing all of the evidence and weighing the creditability [sic] of witnesses." *Id.* Defendant further alleges that Plaintiff "failed to meet her burden of proof to establish a breach and/or to establish any damages." *Id.* at p. 8.

The record does not reflect that either party requested the trial court to make specific findings of facts and conclusions of law. *See* Rule 135(a), Justice Court Rules of Civil Procedure. Accordingly, the trial court did not do so, but instead offered a very brief written ruling that found "Plaintiff did not prevail by the Proponderance [sic] of the Evidence." Minute Entry dated 1/25/23. Plaintiff essentially argues that the trial court erred when it found that Plaintiff failed to carry her burden of proof. "In a contract case, the burden of proof rests solely on the plaintiff," and never shifts to the defendant." *Wells Fargo Bank, N.A. v. Allen*, 231 Ariz. 209, 213 ¶ 16 (App. 2012). Thus, Plaintiff had the burden of proof by a "preponderance of the evidence." *See, e.g., Aileen H. Char Life Interest v. Maricopa County*, 208 Ariz. 286, 291 ¶ 11 (2004). A party's testimony, if believed by the trial court, is sufficient proof to sustain a verdict and judgment. *Cf. State v. Montano*, 121 Ariz. 147, 149 (App. 1978) ("one witness, if relevant and credible, is sufficient to support a conviction").

Here, the parties agreed that the "Declaration" or "CC&Rs" created a contract between the parties. *See* Plaintiff's Exhibit 1. Plaintiff argued that the manner in which Defendant sought to impose a temporary fee increase for community roof repairs, and later recharacterized it as a "special assessment" was in breach of the CC&Rs. Plaintiff conceded that she had paid the \$1,500.00 assessment "under protest" although she did believe the roof repairs were necessary.

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Plaintiff did not contend that she was not required to pay for the roof repairs as a property owner; however, she argued that the manner in which the assessment was imposed was improper.

Defendant testified that the board believed it could impose a temporary fee assessment because it had historically been done and the roof repairs were of an urgent nature. Defendant further testified that when a single property owner [not Plaintiff] objected to the assessment, it sought to reclassify it as a special assessment pursuant to the CC&Rs, using a ballot and seeking 2/3 two-thirds majority of property owners' approval, which it later obtained. Plaintiff further argued that the manner in which Defendant sought to classify the assessment as a special assessment also was not proper (i.e., the ballot used, the distribution of the ballots, the lack of a "meeting").

It was for the trial court to make a determination based on the conflicting testimony and other evidence. This Court cannot, on appeal, read the trial transcript, review the exhibits, and then substitute its judgment for that of the trial court. An appeal is not the proverbial second bite of the apple. The January 23<sup>rd</sup> trial was the "main event" in this case. The trial judge heard the testimony, saw the parties while they were testifying, and considered the exhibits. It was the trial judge's role as the trier of fact to weigh the conflicting testimonies, make its own credibility determinations, and determine whether Plaintiff met her burden of proof. *Castro*, 222 Ariz. at 51-52 ¶ 11.

With respect to Plaintiff's contention that the attorneys' fees awarded to Defendant were "unjustified and should likewise be reversed," this Court disagrees. While it is always more helpful for litigants to get a full and comprehensive explanation of the trial court's ruling, it was not required. The trial court was permitted to order the prevailing party to provide a proposed form of judgment and to sign same, without further explanation. The parties' trial court filings reflect that each party discussed the factors relevant to the trial court's decision regarding attorneys' fees. Mindful of the trial court's superior ability to perceive and balance the competing factual and equitable interests, this Court will not substitute its own judgment for that of the trial court. The trial court had to balance a myriad of factors when making its determination. This Court will not disturb that exercise of discretion.

Defendant/Appellee has given notice of its intent to seek costs and attorneys' fees in the Answering Memorandum. As the prevailing party, Defendant/Appellee may be entitled to recover its taxable costs and its reasonable attorneys' fees on appeal. Upon Appellee's compliance with Rule 13, Sup. Ct. R. App. P. – Civil, this Court will consider Appellee's request for costs and fees. If Appellee contends that this Court is required to award reasonable attorneys' fees due to a provision of a contract between the parties, Appellee's Rule 13 filing must either supply the contractual provision requiring the award of fees or specifically identify where in the existing record that provision can be found. *See Bennett Blum, M.D., Inc. v. Cowan*, 235 Ariz.

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204, 206 ¶ 8 (App. 2014). Appellee’s Rule 13 filing also “must disclose the terms of any fee agreement for the services for which the claim is made.” Rule 54(g)(4), Ariz. R. Civ. P., *See also Jerman v. O’Leary*, 145 Ariz. 397, 403 (App. 1985) (“[I]t is vital to know what the agreement was between appellees and their lawyer.”).

Upon resolution of Defendant/Appellee’s request for fees and costs, the Court will remand this matter to the McDowell Mountain Justice Court.

This Court will not address Plaintiff’s contention that the trial court erred by not granting the motion for summary judgment. As Defendant correctly notes, this matter proceeded to a trial on the merits and all of the evidence was presented to the trial court before it made its ruling. Plaintiff is dissatisfied with the result the trial court reached. That is understandable. But there was no showing of any legal error. This Court will not reweigh the evidence and substitute its judgment for that of the trial court.

**IV. CONCLUSION**

Accordingly,

**IT IS THEREFORE ORDERED** affirming the judgment of the McDowell Mountain Justice Court.

Upon a determination of any request for an award of fees and costs this Court will enter a final judgment.

/s/ Joseph P. Mikitish  
THE HON. JOSEPH P. MIKITISH  
Judge of the Superior Court

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.