

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2023-000212-001 DT

12/18/2023

HONORABLE JOSEPH P. MIKITISH

CLERK OF THE COURT
P. McKinley
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 / REMAND

McDowell Mountain Justice Court Case No. CC2022062965RC

The Court has received and reviewed the Defendant/Appellee Scottsdale Embassy Condominium Association's ("the Association") Motion for Attorney Fees and Costs, filed October 2, 2023; the response thereto filed by the Plaintiff/Appellant Mary Edinburgh ("Ms. Edinburgh") on October 12, 2023; and the Association's reply filed on October 18, 2023.

In the Motion, the Association argues that attorney fees are mandatory according to Paragraph XV, Section 1, of the CC&Rs. It further argues that, even if the attorney fees were not mandatory under the CC&Rs, the fee should be awarded under A.R.S. § 12-341.01(A) which allows for attorney's fees for actions arising out of contract. Ms. Edinburgh argues that the fees requested are not mandatory under the CC&Rs because those only provide for fees to enforce a lien or collection, or enforce compliance with or compel specific performance of the terms and conditions of the Declaration. Ms. Edinburgh further argues that the fees are not appropriate under A.R.S. § 12-341.01 because those fees are discretionary and the Association's claims do not meet the criteria.

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The Declaration provides as follows:

In the event the Declarant, or the Association, employs an attorney or attorneys to enforce said lien or the collection of any amount due pursuant to this Declaration, or to enforce compliance with or compel specific performance of the terms and conditions of this Declaration, the owner, owners and parties against whom the action is brought shall pay all attorney's fees and costs thereby incurred by any such enforcing party prevailing in any such action.

Declaration, Paragraph XV, Section 1. The Court agrees with Ms. Edinburgh that this provision of the Declaration does not apply in this case because she is not the "owner, owners [or] parties against whom the action is brought." Ms. Edinburgh brought the action, it was not brought against her.

The parties agree, however, that the matter arises out of the provisions of the Declaration, which constitute a contract. Courts assess six factors for determining an award of contracts under A.R.S. § 12-341.01(A). See *Associated Indemnity v. Wagner*, 143 Ariz. 567, 570 (1985). First, the Court finds that Ms. Edinburgh presented colorable claims, but she did not establish a basis for error by the trial court by demonstrating either breach of contract or damages. Second, Ms. Edinburgh does not describe how or whether the Association could have avoided or settle the litigation. She does not indicate that a settlement offer was made or whether it was reasonable. Third, Ms. Edinburgh argues that the assessment of fees would be an extreme hardship because she has sold the property in Arizona and is caring for her ailing father in Texas. The Court finds that the assessment of fees would be a hardship under the circumstances, but because of the relatively low amounts requested, fees would not constitute an extreme hardship. Fourth, as acknowledged by Ms. Edinburgh, the Court finds that the Association prevailed as to all of the relief sought. Fifth, the Court finds that the legal questions were novel and ensuring that the Declaration authorized the type of assessment sought. Sixth, the Court finds that an award would not discourage other parties with tenable claims from pursuing those claims without fear of incurring liability for substantial fees.

Given the Court's findings on the applicable factors, the Court finds that attorney's fees and costs are appropriate. Because of the merits of Ms. Edinburgh's claims, the hardship involved, and the novelty of the claims raised, the court finds a fee award of \$2,500.00 is appropriate. Further, an award of costs in the amount of \$230.00 is appropriate.

CONCLUSION

For the reasons stated above, and the Court's ruling of September 14, 2023,

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

IT IS FURTHER ORDERED awarding the Association \$2,500.00 in attorney fees and \$230.00 in costs on appeal.

IT IS FURTHER ORDERED remanding this matter to the McDowell Mountain Justice Court for such further appropriate proceedings, if any, as may be appropriate.

No matters remain pending in connection with this appeal. This is a final order. *See* Rules 12(c), 12(d), 14(b), Sup. Ct. R. App. P. – Civil and Rule 54(c), Ariz. R. Civ. P.

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

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