

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TJ 2013-003854

04/10/2014

COMMISSIONER JAMES R. MORROW

CLERK OF THE COURT

S. Stulz

Deputy

VELDA ROSE ESTATES HOMEOWNERS  
ASSOCIATION

CHARLES E MAXWELL

v.

EDITH POGGI

C ADAM BUCK

KATHY COLE  
6429 E UNIVERSITY DR, #1  
MESA AZ 85205  
JAMES HANLEY  
6429 E UNIVERSITY DR  
# 2  
MESA AZ 85205  
NONI JOHNSON  
6429 E UNIVERSITY, #3  
MESA AZ 85205  
EDITH POGGI P L L C  
4111 N 54TH ST  
CAVE CREEK AZ 85331  
COLETTE M THOMPSON  
6429 E UNIVERSITY DR  
#4  
MESA AZ 85205

MINUTE ENTRY

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TJ 2013-003854

04/10/2014

Plaintiff Velda Rose Estates Homeowners Association (Plaintiff) filed its Third Supplemental Post-Judgment Application for Amount of Attorney Fees (Application) on February 13, 2014, supported by a Supplemental *China Doll* Affidavit of Charles E. Maxwell in Support of Post-Judgment Award of Attorney's Fees. In addition, Plaintiff filed a Supplemental Post-Judgment Statement of Costs and Notice of Taxation. Defendant Edith Poggi filed her Objection to Any and All Requests for Post Judgment Relief Including Plaintiff's Application for Attorney's Fees and Supplemental Post-Judgment Statement of Costs and Notice of Taxation (Response) on March 5, 2014. Along with her Response, Defendant filed a Motion for Accelerated Ruling on Motion to Stay and Motion for Extension of Time Nunc Pro Tunc (Motion for Accelerated Ruling) and a Motion to Stay Pending Appeal Which Has Been filed (Motion to Stay). Plaintiff, in turn, filed its Reply in Support of Plaintiff's Third Supplemental Post-Judgment Application for Amount of Attorney Fees and Supplemental Post-Judgment Statement of Costs and Notice of Taxation (Reply) on March 10, 2014. Plaintiff also filed its Response in Opposition to Defendants' Motion for Extension of Time Nunc pro Tunc (Response to Motion for Accelerated Ruling), and its Response in Opposition to Defendant's Motion to Stay Pending Appeal (Response to Motion to Stay). Also on March 10, 2014, Plaintiff filed a Motion to Strike concerning a Report and Order Imposing Sanctions which Defendant included as an exhibit to her Response. Defendant, in turn, filed her Reply to Motion to Stay and a Response to Motion to Strike on March 27, 2014. The time period for Plaintiff to file a reply memorandum in support of the Motion to Strike has now elapsed.

In its Application, Plaintiff seeks an award of \$15,255.00 in attorney's fees and \$2,649.86 in costs, relying on A.R.S. § 33-1807(H) ("A judgment or decree in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party."). The Judgment entered by the Justice Court did provide for an award of "all costs and attorney fees incurred by Plaintiff after submission of this Judgment for entry by the Court in collecting the amounts listed in this Judgment." Although Plaintiff presents this language as determinative with respect to the issue before the Court, Plaintiff did not present its current Application to the Justice Court. Instead, it elected to present the issue to this Court, which will review the Application for reasonableness. Attorney Charles E. Maxwell submitted his affidavit dated February 12, 2014, attesting that he "reviewed the records and file maintained by the firm, as well as the substantive pleadings and legal services necessary in order to pursue post-judgment collections" and he "avow[ed] . . . that the supplemental sum of \$15,255.00 as and for post-judgment attorney fees, is, in my opinion, in compliance with the applicable ethical standards for attorney fees and constitutes a fair and reasonable fee." Attorney Maxwell also attested that the "disbursements in the amount of \$2,649.86 have been expended in advance on behalf of Plaintiff." Attorney Maxwell's credibility is, therefore, before the Court.

Defendant challenges the Application, in part, by attacking the credibility of attorney Maxwell. Defendant provided the Court with the Report and Order Imposing Sanctions in PDJ-

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TJ 2013-003854

04/10/2014

2012-9112 (Report), in which the disciplinary panel found “clear and convincing evidence that Mr. Maxwell violated ERs 3.3(a)(1) and 8.4(c).” According to the Report, Mr. Maxwell knowingly made a false representation to Commissioner Kongable that there was no legislative history regarding A.R.S. 33-1807.” Report at 14. Plaintiff moved to strike the Report arguing that it is “immaterial, impertinent, or scandalous matter.” Plaintiff’s Motion to Strike is denied, as the credibility of attorney Maxwell is material to the consideration of his February 12, 2014, affidavit.

Defendant argues that the judgment issued against her by the Justice Court was the result of fraud. This issue, however, was presumably raised before the Justice Court in Defendant’s motion to set aside the judgment, the denial of which Defendant is pursuing through an appeal. Defendant asks that this matter be stayed pending the resolution of her appeal. She does not provide the Court, however, with any legal basis for granting this request. Although on appeal, Defendant does not suggest to this Court that she has posted an appropriate bond on appeal with the Justice Court or has otherwise obtained a stay of execution from the Justice Court. As no legal basis is presented by Defendant to support her request that this Court stay the collection proceedings pending her appeal, her Motion for Stay is denied. If Defendant does obtain a stay from the Justice Court or from the court hearing her appeal in that matter, she should promptly alert this Court.

Defendant broadly asserts that the expenditure of “over \$25,000.00 in attorney’s fees . . . as a result of approximately \$1,979.77 in association dues” is not reasonable. Response at 8. Defendant’s argument may become very persuasive to Plaintiff in the event Defendant’s assertion that she cannot afford to pay additional fees is borne out and an award becomes uncollectible or is discharged in bankruptcy. That being said, Plaintiff did obtain a judgment against Defendant, which Defendant failed to pay. Plaintiff then faced the difficult choice of expending monies to collect on the judgment or not. Defendant has not provided any legal authority holding that expending a disproportionate amount in fees relative to the amount awarded in the underlying judgment makes the fees unreasonable.

Plaintiff improperly seeks an award from this Court for work done before the Justice Court, defending the Justice Court’s ruling on appeal, and in supporting its Application with vague and commingled time entries. The Court has reviewed the billing statement attached to attorney Maxwell’s affidavit and the statement of costs to determine if the amounts sought relate to the limited collections issues before this Court. Many do not. Plaintiff included a number of entries not directly related to post-judgment proceedings before this Court, such as entries related to the post-judgment proceedings in the Justice Court, interactions with various renters, the lower court appeal of the Justice Court matter, and entries too vague to discern whether they related to the post-judgment collection matters before this Court or combined with non-collections issues: 2013 entries–10/23, \$67.50; 10/23, \$660.00; 10/24, \$20.00; 10/25, \$45.00; 10/25, \$860.00; 11/6,

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TJ 2013-003854

04/10/2014

\$60; 11/13, \$80.00; 11/14, \$700.00; 11/15 \$20.00; 11/15 \$20.00; 11/18, \$100.00; 11/18, \$80.00; 11/19, \$20.00; 11/20, \$60.00; 11/22, \$180.00; 11/22, \$45.00; 12/2, \$80.00; 12/3, \$20.00; 12/5, \$60.00; 12/5, \$240.00; 12/5 \$40.00; 12/5, \$67.50; 12/9, \$40.00; 12/11, \$40.00; 12/16, \$360.00; 12/16, \$45.00, 12/18, \$40.00; 12/24, \$40.00; 12/27, \$40.00; 12/27, \$20.00; 12/30, \$100.00; 2014 entries: 1/2, \$67.50; 1/7, \$45.00; 1/8, \$45.00; 1/10, \$45.00; 1/10, \$135.00; 1/13, \$112.50; 1/15, \$22.50; 1/27, \$67.50; 1/28, \$67.50; 1/28, \$337.50; 2/3, \$450.00; 2/6, \$225.00; 2/6, \$75.00; 2/6, \$247.50; 2/7, \$112.50, 2/7, \$25.00; 2/14, \$45.00. The Court reduced the award of attorney's fees by these amounts. If it is timely to do so and appropriate under the rules, Plaintiff may pursue an award in Justice Court concerning the post-judgment proceedings before that tribunal or before the court handling the lower court appeal. Plaintiff is cautioned that it should have its attorney track tasks in a manner that allows a subsequent reviewing Court to discern to which proceeding a specific charge relates.

IT IS ORDERED denying Plaintiff's Motion to Strike filed March 10, 2014.

IT IS FURTHER ORDERED denying Defendant's Motion to Stay Pending Appeal.

IT IS FURTHER ORDERED denying as moot Defendant's Motion for Accelerated Ruling on Motion to Stay and Motion for Extension of Time Nunc Pro Tunc.

IT IS FURTHER ORDERED granting, in part, the Third Supplemental Post-Judgment Application for Amount of Attorney Fees, and awarding Plaintiff \$8,880.00 in fees and \$2,649.86 in costs against Defendant, all in accordance with the formal written modified Order signed by the Court on April 10, 2014 and filed (entered) by the Clerk on April 10, 2014.