

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-019511

08/30/2023

HONORABLE JOAN M. SINCLAIR

CLERK OF THE COURT
A. Walker
Deputy

JENNIFER DUNCAN, et al.

RODNEY GALARZA

v.

LABLONDE DEVELOPMENT
CORPORATION, et al.

BENJAMIN J BRANSON

VENESSA J BRAGG
J GREGORY CAHILL
MICKELSON CONSTRUCTION
4618 W ALAMEDA RD
GLENDALE AZ 85310
TEODORO RODRIGUEZ DE LA ROSA
8414 S CENTRAL AVE LOT 58
PHOENIX AZ 85042
DANIELLE EDMONDS
ALEJANDRA ESTRADA
7714 W WELDON AVE
PHOENIX AZ 85033
JUAN LOPEZ
7714 W WELDON AVE
PHOENIX AZ 85033
RICHARD V MACK
JENNIFER R REBHOLZ
AMORETTE C RINKLEIB
THOMAS A WALCOTT
KURT M ZITZER
JUDGE SINCLAIR

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RULING

On October 11, 2022, this Court filed a ruling on Defendant Talus Homeowners' Association's ("Talus HOA") Motion to Dismiss. The Court granted the motion to dismiss, dismissed Count 5 of the First Amended Complaint and dismissed the Talus HOA from this litigation. On October 21, 2022, the Talus HOA filed its Application for Attorneys' Fees and Costs. On November 18, 2023, the Plaintiffs filed a Motion for Reconsideration and the Court set oral argument on May 4, 2023. Oral argument was to be heard at that same date and time on the Talus HOA's Application for Attorneys' Fees and Costs.

On May 4, 2023, the Court ordered the parties to submit separate notices of the status of the case given that a mediation was scheduled to take place shortly. Once those notices were filed, the Court would take under advisement the matters argued on May 4, 2023. At that same hearing, the Court issued a preliminary injunction prohibiting any additional fines by Talus HOA. By minute entry filed on June 23, 2023, the Court formally granted the Plaintiffs' Motion for Reconsideration, vacated the October 11, 2022, minute entry, denied the Plaintiffs' request for an evidentiary hearing on the cost of remediation to the home and held in abeyance Defendant Talus HOA's Application for Attorneys' Fees and Costs. The Court clarified that it was not aware of the existence of the Troon North Master HOA when the October 11, 2022, ruling was issued. The Court set up a briefing schedule on the Talus HOA's Amended Application for Attorneys' Fees and Costs. That amended application was filed on August 4, 2023, and has been fully briefed. The Court now rules on that application.

The Talus HOA argues that it was the successful party between itself and the Plaintiffs because the Court did not rule that the fines it assessed were invalid. The preliminary injunction issued by the Court simply stopped any additional fines from being levied. According to the CC&Rs, the Talus HOA believes it is entitled to its fees and costs. The Talus HOA claims that the case the Plaintiffs brought against it was without substantial justification under A.R.S. § 12-349. It further argues that the Plaintiffs should have pursued alternative dispute resolution prior to bring the Talus HOA into this litigation and the Plaintiffs acted unreasonably.

Plaintiffs argue that they are entitled to attorneys' fees and costs because they are the successful party. Section 11.01 of the CC&Rs does not apply here because this case did not involve the HOA trying to enforce a lien or collect money. Plaintiffs claim that the Talus HOA was only brought into this case to defend itself against the request for an injunction. Plaintiffs argue that while Talus was pressuring the Plaintiffs to make repairs, it was aware that the Troon North HOA had already issued a cease-and-desist letter to the Plaintiffs preventing them from doing just that. Plaintiffs further claim that Talus was aware that the City of Scottsdale rejected the HOA's plan for a fix while it was still pressuring the Plaintiffs to comply with its demands.

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Plaintiffs argue that by taking these positions, the Talus HOA defended itself without substantial justification.

On the Court's own motion, the Court will clarify its ruling in the minute entry filed on June 23, 2023.

IT IS ORDERED *nunc pro tunc* amending the minute entry filed on June 23, 2023, by deleting the last two paragraphs of that minute entry that now read:

The Court will discuss with the Plaintiffs and the Defendant HOA how the case will go forward as to Count 5 of the First Amended Complaint at the Rule 16 Scheduling Conference set on July 11, 2023. The Court encourages these two parties to continue to explore creative solutions concerning Count 5 of the First Amended Complaint.

IT IS FURTHER ORDERED that there will be no discovery at this time between the Plaintiffs and the Defendant HOA.

Instead, the following language will be inserted:

IT IS ORDERED affirming the Court's prior order at the hearing on May 4, 2023, where the Court issued a preliminary injunction prohibiting additional fines from Defendant Talus HOA as of that date. The Court made this ruling based on the argument of counsel and the record before the Court. Neither party requested a hearing for the purpose of the Court making this determination relative to a preliminary injunction. The only request for a hearing came from counsel for the Plaintiffs relative to the potential cost of the repairs being sought by the Talus HOA, which the Court did not find necessary.

Requests for Attorneys' Fees and Costs

As the Court noted in the minute entry filed on July 11, 2023, Count 5 of the First Amended Complaint was effectively resolved when the Court issued its preliminary injunction on May 4, 2023. That was the relief requested by the Plaintiffs in their complaint. The preliminary injunction prohibited the Talus HOA from taking any action against the Plaintiffs as of May 4, 2023.

Based on that prior ruling,

IT IS ORDERED dismissing Count 5 of the First Amended Complaint because the relief requested has been granted.

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IT IS FURTHER ORDERED dismissing the Talus HOA from this lawsuit as none of the other claims in this case involve that party.

The only remaining issue relative to the Talus HOA is its pending Application for Fees and Costs, and the Plaintiffs' Renewed Request for Attorneys' Fees and Costs.

The Court did not address the validity of any fines issued prior to May 4, 2023, because there is no specific action before the Court seeking the enforcement of any fines levied by the Talus HOA. Defendant Talus HOA is not the successful party because the Court granted the preliminary injunction requested by the Plaintiffs. Under A.R.S. § 12-349, the Court finds that both the Plaintiffs and the Talus HOA acted unreasonably and without substantial justification: Plaintiff by bringing the Talus HOA into this lawsuit prior to the HOA filing any action for enforcement of its fines; and the Talus HOA for seeking "to enforce its CC&Rs against the Plaintiffs" under this set of circumstances. Talus HOA's Amended Application for Attorneys' Fees and Costs, p.3. Moreover, neither party informed the Court at the time the motion to dismiss was originally argued that another entity, the Troon North Master HOA, was involved.

IT IS ORDERED denying the Talus HOA's Application for Attorneys' Fees and Costs.

IT IS FURTHER ORDERED denying the Plaintiffs' request for attorneys' fees and costs.