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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF NAVAJO

GORDON GROSS and LILIANA
GROSS, husband and wife *et al.*,

Plaintiffs,

v.

THE SHORES AT RAINBOW LAKE
COMMUNITY ASSOCIATION, an
Arizona domestic nonprofit corporation,

Defendant.

No.: S0900CV202200042

**REPLY IN SUPPORT OF
APPLICATION FOR ATTORNEY
FEES**

Re: Defendant's Objection to Application
for Attorney Fees

Arizona law is clear with respect to requests for attorney fees in quiet title actions: where a party complies with A.R.S. §12-1103(B) and successfully quiets title, that party may seek its costs and attorney fees. While the award is, ultimately, in the Court's discretion, Plaintiffs maintain that the factors considered when making such determinations weigh in favor of an award of Plaintiffs' requested fees.

Defendant raises three objections: (1) Plaintiffs did not request their fees in the Motion for Partial Summary Judgment; (2) Plaintiffs were not the prevailing party; and (3) the fees being requested are unreasonable. These objections illustrate both a fundamental misunderstanding of Arizona law and the nature of this dispute. Rule 54 simply does not

1 require what Defendant is arguing. Requests for attorney fees need only be made in the
2 pleadings. Plaintiffs made such request in their Complaint. There is no requirement to
3 request fees in a motion for summary judgment. With respect to Defendant’s prevailing
4 party analysis, Arizona law very clearly states that such determination “turns on whether a
5 party successfully quiets title, regardless of whether claims that do not involve quieting
6 title are included in the same lawsuit.” *Cook v. Grebe*, 245 Ariz. 367, 369, 429 P.3d 1161,
7 1163 ¶8 (App. 2018). Furthermore, even when (unnecessarily) considering other factors
8 for determining the prevailing party under Arizona law (including the typical contractual
9 analysis), it is clear that Plaintiffs are still the prevailing party given the achievement of
10 their primary objective: invalidating the prohibition against short-term rentals.

11 The purpose of this case was to invalidate the time restriction on leasing. The Court
12 struck that time restriction. Plaintiffs, clearly, have prevailed.

13 Plaintiffs maintain that the fees requested, having already been cut from the fees
14 actually incurred, are reasonable given the circumstances of the litigation. Such being the
15 case, Plaintiffs respectfully request that the Court award Plaintiffs their attorney fees as set
16 forth in the Application for Attorney Fees.

17 **Memorandum of Points of Authorities**

18 **I. Award of fees in quiet title actions**

19 As a preliminary matter, Defendant’s assertion that a request for fees must have
20 been included in the Motion for Partial Summary Judgment is belied not only by the Rules
21 of Civil Procedure, it is also contrary to case law cited by Defendant in its Objection. In
22 the interest of brevity, Plaintiffs will not exhaustively brief this fundamental issue given
23 the clarity of Rule 54(g), which states: “A claim for attorney’s fees must be made in the
24 pleadings or in a Rule 12 motion filed before the movant’s responsive pleading.”
25 *Ariz.R.Civ.P. 54(g)*. The Complaint clearly includes a request for attorneys fees. In a case
26 full of peculiar positions, Defendant’s position here takes the distinction as being, perhaps,
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1 the most peculiar. ¹

2 As noted above, Defendant seems to have failed to recognize the correct inquiry
3 under Arizona law for fee requests in quiet title actions. Courts, generally, may only award
4 attorney fees when authorized by statute or agreement of the parties. *Taylor v. S. Pac.*
5 *Transp. Co.*, 130 Ariz. 516, 523, 637 P.2d 726 (1981). Here, Plaintiffs are requesting fees
6 pursuant to Arizona’s quiet title statute: A.R.S. § 12-1103(B). ² The Court of Appeals,
7 dealing with a quiet title action and the fee request therein, stated: “[A] party prevailing in
8 a quiet title action may recover attorneys’ fees if, 20 days before bringing the action, he or
9 she tendered five dollars with a request that the other party execute a quit claim deed, and
10 the other party did not comply.” *Cook v. Grebe*, 245 Ariz. 367, 369, 429 P.3d 1161, 1163
11 ¶5 (App. 2018). Thus, the correct inquiry for this Court is: (1) did Plaintiffs comply with
12 the requirements of A.R.S. § 12-1103(B)? And (2) if so, did Plaintiffs prevail on their quiet
13 title action?

14 Any other inquiry is unnecessary when considering whether to award fees in a quiet
15 title action such as this. Plaintiffs’ Application included a copy of the January 7, 2022
16 Demand sent to the Defendant demanding that it quiet title and execute the included
17 Quitclaim Deed and Notice of Invalidity. That Demand included the statutorily required
18 five dollars. As noted in the Application, Defendant failed to quiet title within 20 days.
19 Such being the case, Plaintiffs filed their Complaint on February 10, 2022 – 29 days after
20 the Demand had been received. Plaintiffs clearly complied with A.R.S. § 12-1103(B) – and
21 Defendant appears to not have ever disputed this fact – and, therefore, the Court may award
22 Plaintiffs their attorney fees requested if the Court determines, under the relevant standards
23 for quiet title actions, that Plaintiffs were the prevailing party.

24 _____
25 ¹ Which is really saying a lot given Defendant’s insistence throughout this dispute that the
26 Court ignore recent, on-point guidance from this State’s Supreme Court on the precise
27 issues of this litigation.

28 ² Plaintiffs also requested fees under A.R.S. § 12-341.01. *See* Application for Attorney
Fees at Page 9.

1 **II. Prevailing party analysis**

2 As the Court appreciates, Arizona law prescribes different factors for analysis for
3 different claims. Under Arizona law, the determination of the prevailing party in a quiet
4 title action “turns on whether a party successfully quieted title, regardless of whether claims
5 that do not involve quieting title are included in the same lawsuit.” *Id* at ¶8. Thus, the
6 question becomes whether Plaintiffs successfully quieted title. While Defendant devotes
7 significant effort to focusing on Plaintiffs’ proposed voluntary dismissal of its money
8 damages claim, that issue is irrelevant to determining the prevailing party in a quiet title
9 action under Arizona law. The only inquiry that need be undertaken is whether title was
10 successfully quieted by Plaintiffs. Here, it is clear that Plaintiffs did just that.

11 Ironically, the Court of Appeals addressed Defendant’s arguments that, because it
12 prevailed on a greater number of items in the litigation, it prevailed on the totality of the
13 litigation. That Court held that “Cook’s position fails to acknowledge the legislature’s word
14 choices in describing the circumstances in which a party may recover attorneys’ fees in
15 litigation involving quiet title disputes. *See* A.R.S. § 12-1103(B) (explaining the
16 prerequisites for recovery of attorney fees in an “action to quiet title to real property”).” *Id*
17 at ¶7. The *Cook* court recognized the legislature’s intent in the quiet title statute: if a party
18 complies with the prerequisites and successfully quiets title, the court may award fees. This
19 intent gives rise to the prevailing party standard set forth by the Court of Appeals that turns
20 on whether the party successfully quieted title. As noted above and in their Application,
21 Plaintiffs clearly quieted title by invalidating the short-term rental prohibition contained in
22 the First Amendment, necessitating the recording of either a new amendment consistent
23 with the Court’s September 14th Ruling to formally invalidate the First Amendment.

24 While Plaintiffs maintain that other factors typically considered in determining the
25 prevailing party under A.R.S. § 12-341.01 need not be considered by the Court here as this
26 is a quiet title action, those factors do weigh toward awarding Plaintiffs their fees,
27 notwithstanding Defendant’s insistence otherwise.

28 As set forth in Plaintiffs’ Application: (1) Defendant’s positions were meritless as
the key issues in this dispute had already been settled in *Dreamland* and the Supreme Court
upheld *Dreamland* in its *Kalway* decision, which was issued near the very beginning of

1 this litigation; (2) this litigation could have been avoided entirely had Defendant complied
2 with Plaintiffs' January 7 Demand; (3) Plaintiffs prevailed on the primary objective of this
3 litigation: invalidating the short-term rental prohibition. This issue's status as the primary
4 objective is evidenced by (a) the focus of both the January 7 Demand and the later-filed
5 Complaint and (b) the Preliminary Injunction stipulated to by Defendant to not enforce the
6 short-term rental prohibition pending the litigation.

7 Defendant contends it was the prevailing party because the Court only invalidated
8 "a one-sentence, 18-word portion found at Section 2.30(A)" *See* Objection at p. 4;13-14.
9 This position, as noted above, is directly rebutted by the *Cook* court, which rejected the
10 appellant's position that because he had prevailed on more claims than appellee, the
11 appellee could not be deemed the prevailing party. *See Cook* at ¶7. This holding recognizes
12 not only the appropriate standard for determining the prevailing party in a quiet title action,
13 it also recognizes that the prevailing party is that party which achieved its primary
14 objective: quieting title. Here, Plaintiffs have achieved their primary objective: quieting
15 title to their property through the invalidation of the chief issue of the dispute, namely, the
16 short-term rental prohibition contained in the First Amendment.

17 Defendant further argues that it prevailed on the claims for money damages in Count
18 II because Plaintiffs proposed to voluntarily dismiss those claims. While the prevailing
19 party with respect to these claims is ultimately irrelevant under *Cook* because this is a quiet
20 title action, Defendant cannot reasonably argue that it was the prevailing party on these
21 claims. As the Court need not be reminded, Defendant stipulated to the relief Plaintiffs
22 sought in their Motion for Preliminary Injunction. Defendant's stipulation not to enforce
23 the short-term rental prohibition (again, further evidence of that issue being the primary
24 objective of the litigation) effectively mooted Plaintiff's damages under Count II.

25 That being said, the mooted of Plaintiffs' damages does not change the analysis
26 with respect to who established liability on those claims. The Court granted Plaintiffs
27 partial summary judgment on "Counts I and II." As the Court, and hopefully Defendant,
28 will recall, Plaintiffs had moved for partial summary judgment as to liability on Counts I
and II. Thus, the Court ruled in favor of Plaintiffs on Count II. Notwithstanding this,
Plaintiffs, recognizing that Defendant's prior stipulation had mooted their damages,

1 determined voluntarily dismissing those claims was the best way to finally resolve this
2 litigation as they had already achieved their primary objective in invalidating the short-
3 term rental prohibition.

4 Plaintiffs are clearly the prevailing party, whether under the correct quiet title
5 standards for such determination or the unnecessary and inapplicable standards
6 promulgated by Defendant. Such being the case, the Court only needs to determine what
7 amount of fees, if any, are reasonable to award Plaintiffs here.

8 **III. Fees requested are entirely reasonable**

9 In the interest of incurring further costs, undersigned has elected not to comb
10 through the submitted invoices to count the exact number of conferences. Plaintiffs would
11 be interested, however, to know whether Defendant did in fact do so and, if it did, whether
12 a single conference with multiple attorneys participating was counted as one conference or
13 multiple conferences.

14 As noted above, this is a lawsuit that has been pending for nearly eleven months and
15 has required substantial briefing at each stage of the litigation (largely as a result of
16 Defendant's continued insistence that this Court deviate from clear Arizona law on the
17 issues presented and its presentation of arguments in direct opposition with Arizona law).
18 Furthermore, and speaking to the reasonableness of the fees requested, Plaintiffs have
19 already cut a substantial amount of the fees incurred from the fees being requested. It is
20 worth noting that this entire dispute, and the costs incurred, could have easily been avoided
21 has Defendant simply complied with Plaintiffs' quiet title demand, which included a copy
22 of the Complaint and Motion for Preliminary Injunction that clearly stated that the First
23 Amendment violated settled Arizona law. Instead, Defendant refused to quiet title and set
24 the parties down a path for costly litigation. All to arrive at the same outcome that would
25 have been reached had Defendant simply quieted title as demanded.

26 Plaintiffs maintain that the fees requested are more than reasonable under the
27 circumstances and reiterate their request that the Court award the same.

28 **IV. Conclusion**

1 Defendant has raised a variety of arguments which do nothing but illustrate
2 Defendant's misunderstanding and misapplication of relevant Arizona law. Plaintiffs have
3 complied with all applicable law and Rules controlling requests for attorney fees are clearly
4 the prevailing party under Arizona law. The fees requested are entirely reasonable and
5 should be awarded by this Court. Such being the case, Plaintiffs respectfully request that
6 the Court award Plaintiffs their fees as requested in their Application for Attorney Fees.

7
8 DATED this ___th day of November, 2022.

9
10 DYER BREGMAN & FERRIS, PLLC.

11 BY /s/ Stockton D. Banfield
12 Stockton D. Banfield
13 Charles M. Dyer
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21 ORIGINAL electronically filed via TurboCourt
22 This ___th day of November, 2022.

23 COPIES emailed and mailed
24 This ___th day of November, 2022 to:

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