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CNA.DORSEY.01

Attorneys for Defendant Dorsey Place Condominium Association

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

**JIE CAO and HAINING “FRAZER”
XIA, a married couple; STONE XIA, an
individual,**

Plaintiffs,

v.

**FPF DORSEY INVESTMENTS, LLC,
a Delaware limited liability company;
DORSEY PLACE CONDOMINIUM
ASSOCIATION, an Arizona nonprofit
corporation,**

Defendants.

Case No. CV2019-055353

**DEFENDANT DORSEY PLACE
CONDOMINIUM ASSOCIATION’S
APPLICATION FOR
ATTORNEYS’ FEES AND COSTS**

(Assigned to: Honorable Daniel G. Martin)

Defendant Dorsey Place Condominium Association (“Association”), by and through undersigned counsel, hereby submits its Application for Attorneys’ Fees and Costs (“Application”) against Plaintiffs Jie Cao, Haining “Frazer” Xia, and Stone Xia (“Plaintiffs”). The Association requests that the Court award all of its attorneys’ fees and costs incurred in this action pursuant to Ariz. R. Civ. P. 54(f) and (g), and A.R.S. §§ 12-341, 12-341.01, and 12-349. The Court should award all of the Association’s attorneys’ fees and costs in this case because Arizona law provides for such an award, and the Association’s attorneys’ fees and costs are reasonable.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. FACTUAL AND PROCEDURAL BACKGROUND**

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4 The Association is an Arizona nonprofit corporation that formerly governed a
5 condominium known as the Dorsey Place Condominium, as defined by A.R.S. §33-1202, et.
6 seq. Until recently, the Association and Plaintiffs were governed by a Declaration of
7 Condominium for Dorsey Place Condominiums, recorded on August 15, 2007 at Sequence
8 Number 20070921387 in the Office of the Maricopa County Recorder (the “Declaration¹”).
9 Following a duly-conducted vote of the Membership, the Association recorded a
10 Condominium Termination Agreement on April 9, 2019 at Sequence Number 20190248170
11 in the Office of the Maricopa County Recorder (the “Termination Agreement²”). The
12 Termination Agreement was drafted and executed pursuant to Section 13.4 of the
13 Declaration and A.R.S. §33-1228. The Termination Agreement provided at Section 12:
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17 Attorney’s Fees. If any action is brought by any party with
18 respect to its rights under this Agreement, the prevailing party
19 shall be entitled to reasonable attorney’s fees, consultant fees and
20 all other court costs from the non-prevailing party, whether or
21 not taxable by statute.

22 The Declaration provides at Section 13.15:

23
24 In the event...any Unit Owner employs an attorney or attorneys
25 to...of [sic] enforce compliance with or recover damages for any
26 violation or noncompliance with the Condominium Documents,
27 the prevailing party in any such action shall be entitled to recover
28 from the other party his reasonable attorney’s fees incurred in the
action.

28 ¹ A true and accurate copy of the Declaration is attached as Exhibit A to this Application.
² A true and accurate copy of the Termination Agreement is attached as Exhibit B to this Application.

1 Plaintiffs filed their Complaint in this matter on November 20, 2019. Plaintiffs filed
2 a First Amended Complaint on March 27, 2020. Plaintiffs then filed a Second Amended
3 Complaint on July 6, 2020 (the Second Amended Complaint shall be referred to herein as
4 the “Complaint”), which is the pleading most relevant to this Application. The Complaint
5 was filed after counsel undersigned delivered a letter to Plaintiffs’ counsel to highlight
6 glaring issues with the First Amended Complaint, including reliance on the wrong version
7 of A.R.S. §33-1228³. The crux of the Complaint challenged the validity of the Termination
8 Agreement and the conduct of the Association in the process of executing the same.
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11 Both Defendants moved to dismiss the Complaint pursuant to Rule 12(b)(6),
12 Ariz.R.Civ.P. Both Defendants’ motions argued that the Complaint did not actually allege
13 that either party had violated either the Declaration or A.R.S. §33-1228 in the course of
14 executing the Termination Agreement. Following briefing and oral argument, Judge Martin
15 granted both Defendants’ motions to dismiss by Minute Entry dated December 15, 2020,
16 which was filed with the Clerk of the Superior Court on December 18, 2020. This
17 Application followed.
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20 **II. LEGAL ARGUMENT**

21 **A. The Association is Entitled to an Award of Its Attorneys’ Fees and Costs** 22 **Incurred in this Case Pursuant to A.R.S. § 12-341.01 and the Contractual** 23 **Documents Between the Parties.**

24 Arizona Revised Statutes § 12-341.01 provides in relevant part:

25
26 A. In any contested action arising out of a contract, express or implied, the court
27 may award the successful party reasonable attorney fees.... This section shall not
28 be construed as altering, prohibiting or restricting present or future contracts or

³ A true and accurate copy of this letter is attached as Exhibit C to this Application.

1 statutes that may provide for attorney fees.

2 B. The award of reasonable attorney fees pursuant to this section should be made
3 to mitigate the burden of the expense of litigation to establish a just claim or a just
4 defense. It need not equal or relate to the attorney fees actually paid or contracted,
5 but the award may not exceed the amount paid or agreed to be paid.

6 Attorneys' fees can be awarded when a party successfully defends claims brought against it,
7 like the Association has done in this case. *See Fulton Homes Corp. v. BBP Concrete*, 214
8 Ariz. 566, 155 P.3d 1090, 1096 (App.2 007). Therefore, the Association, as the prevailing
9 party, may be awarded all of its reasonable attorneys' fees under A.R.S. § 12-341.01.
10 Additionally, A.R.S. § 12-341 is clear that the "successful party to a civil action shall recover
11 from his adversary all costs expended or incurred therein unless otherwise provided by law."

13 Arizona law clearly provides that condominium governing documents constitute a
14 contract by and among the Association and lot owners. *See Ahwatukee Custom Estates*
15 *Mgmt. Ass'n, Inc. v. Turner*, 196 Ariz. 631, 634, ¶ 5, 2 P.3d 1276, 1279 (App. 2000);
16 *McDowell Mountain Ranch Cmty. Ass'n, Inc. v. Simons*, 216 Ariz. 266, 165 P.3d 667, (App.
17 2007); *Ariz. Biltmore Estates Ass'n v. Tezak*, 177 Ariz. 447, 448, 868 P.2d 1030, 1031 (App.
18 1993). Arizona has a long history of granting awards of attorneys' fees and costs in
19 community association cases where the association prevails as a matter of law. *Nolan v.*
20 *Starlight Pines Homeowners Ass'n*, 216 Ariz. 482, 490, 167 P.3d 1277, 1285 (Ct. App.
21 2007).

22 This action arises out of contract, the Declaration, as described by A.R.S. § 12-
23 341.01(A). Notably, Plaintiffs acknowledge the contractual basis for their claim by seeking
24 their own attorneys' fees and costs in the Complaint. Plaintiffs forced the Association to
25 defend against a meritless lawsuit. The Association, having prevailed on Plaintiffs' claim,
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1 is entitled to an award of its attorneys' fees and costs in this case. This is particularly true in
2 this case given the above-cited provisions in the Declaration and Termination Agreement,
3 which require an award of fees to the prevailing party in any dispute arising out of those
4 documents. Accordingly, the Association is entitled to its fees as a matter of law.
5

6 Based on this language in the Termination Agreement and the Declaration, and
7 having employed counsel to prosecute this matter, Plaintiffs are entitled to recover **all** of their
8 attorneys' fees and court costs it expended. *See Geller v. Lesk*, 230 Ariz. 624, 627, 285 P.3d
9 972, 975 (App. 2012) (fee provision in parties' contract governs award of fees); *see also*
10 *McDowell Mountain Ranch Community Ass'n, Inc. v. Simons*, 216 Ariz. 266, 270-271, 165
11 P.3d 667, 671-672 (App. 2007) (trial court's discretion is more narrowly circumscribed when
12 parties contractually agree that the prevailing party shall be awarded all its' attorneys' fees
13 and is limited to determining only "obviously excessive" fees).
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16 In addition to the applicable fee provisions, the Court should consider several factors
17 in deciding whether to award the Association its fees and costs incurred in this lawsuit: (1)
18 the merits of the claim or defense brought by the unsuccessful party; (2) whether litigation
19 could have been avoided or settled; (3) whether assessing fees against the unsuccessful party
20 would result in extreme hardship; (4) whether the successful party prevailed with regard to
21 all relief sought; (5) whether the claims at issue were novel; and (6) whether an award of fees
22 would deter future claimants with merited claims from bringing such actions. *See Associated*
23 *Indemnity v. Warner*, 143 Ariz. 567, 694 P. 2d 1181 (1985).
24
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27 Here, Plaintiffs' claims lacked merit as evidenced by the disposition of this matter.
28 Plaintiffs' entire Complaint was dismissed by the Court after thorough briefing and argument

1 and the Association's Motion to Dismiss with Prejudice was granted in its entirety. In
2 addition, the fact that Plaintiff could not bring forth a viable claim against the Association
3 further shows that this litigation could have been avoided and should never have occurred.
4 Had Plaintiffs recognized the deficiencies in their claim against the Association, all litigation
5 expenses could have been avoided.
6

7 Moreover, there is no evidence of hardship on the part of Plaintiffs. In order to prove
8 financial hardship, a party must assert "present specific facts by affidavit or testimony."
9 *Woerth v. City of Flagstaff*, 167 Ariz. 412, 420 (App.1990).
10

11 Further, the Association clearly prevailed with regards to all relief sought, as it
12 obtained dismissal of Plaintiffs' claims in their entirety. Additionally, the claims at issue
13 were not novel. This case is nothing more than a contractual matter between parties, which
14 is certainly not a novel or untested issue. Finally, an award of fees against Plaintiff will not
15 deter future claimants from bringing merited claims; rather, it will deter future potential
16 litigants from bringing meritless ones. Plaintiffs was given the opportunity to bring proper
17 legal claims against the Association before this Court and failed to do so even after taking
18 several attempts to craft one through amendments to their complaint. An award of fees
19 against Plaintiffs will not deter future meritorious claims.
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22 Thus, based on a consideration of all relevant factors, the Association is entitled to an
23 award of all its fees and costs incurred in this matter.
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25 **B. The Association's Requested Attorneys' Fees Are Reasonable.**
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27 This Application is submitted concurrently with the Association's Declaration of
28 Attorneys' Fees and Costs in Support of this Application ("Declaration of Fees"). The

1 Declaration of Fees includes, as exhibits, the invoices generated by counsel for the
2 Association. The invoices contain the date the service was rendered, the attorney rendering
3 the service, the task completed, the amount of time spent on the task, the hourly rate, and the
4 total fee for each individual task. Pursuant to Arizona law, there is a presumption that all
5 attorneys' fees and costs incurred by the Association, as supported by the Declaration, are
6 reasonable. *See Schweiger v. China Doll Rest., Inc.*, 138 Ariz. 183, 188, 673 P.2d 927, 932
7 (App. 1983); *State ex rel. Corbin v. Tocco*, 173 Ariz. 587, 594, 845 P.2d 513, 520 (App.
8 1992). Absent a specific evidentiary showing that the amount requested is unreasonable,
9 and not merely a broad challenge to this Application, the Association is entitled to all of its
10 attorneys' fees and costs incurred. *Tocco*, 173 Ariz. at 594, 845 P.2d at 520.

14 **III. CONCLUSION**

15 Plaintiffs failed to bring a proper legal claim with merit before this Court. The
16 Association had no choice but to defend against Plaintiffs' claims, and successfully did so.
17 The Association has prevailed in defense of the entire claim. Arizona Revised Statutes §§
18 12-341 and 12-341.01 provide for an award of the attorneys' fees and costs to the prevailing
19 party in a contract-based action such as this one. Upon review of this Application, the
20 accompanying Declaration of Fees, Statement of Costs, and Notice of Lodging the
21 Association's Proposed Form of Judgment on all claims, the Association requests that the
22 Court grant an award of all of its attorneys' fees and litigation costs incurred in this case,
23 totaling \$34,481.28

24 The Association further respectfully requests that the Court grant it twenty (20) days
25 within which to submit a proposed form of Judgment.
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RESPECTFULLY SUBMITTED this 7th day of January, 2021.

CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP

By: 

Edith I. Rudder, Esq.

Nicholas C. S. Nogami, Esq.

Attorneys for Defendant Dorsey Place Condominium Assoc.

1 **ORIGINAL** of the foregoing e-filed
2 this 7th day of January 2021, with:

3 *Maricopa County Superior Court*
4 *(via AZ TurboCourt)*

5 **COPY** of the foregoing mailed and emailed
6 this 7th day of January 2021 to:

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By: /s/

