

1 GARREY, WONER, HOFFMASTER & PESHEK, P.C.
2 The Gibraltar Building
3 6611 North Scottsdale Road
4 Scottsdale, Arizona 85250
5 (480) 483-9700
6 Shawna M. Woner
7 State Bar No. 012948
8 swoner@gwhplaw.com
9 Stephanie K. Gintert
10 State Bar No. 029640
11 sgintert@gwhplaw.com
12 minuteentries@gwhplaw.com

13 Attorneys for Attorneys for Defendant PFP Dorsey Investments, LLC

14 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

15 IN AND FOR THE COUNTY OF MARICOPA

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

19 Plaintiffs,

20 v.

21 PFP DORSEY INVESTMENTS, LLC, a
22 Delaware limited liability company;
23 DORSEY PLACE CONDOMINIUM
24 ASSOCIATION, an Arizona nonprofit
25 corporation;

26 Defendants.

No. CV2019-055353

**PFP DORSEY INVESTMENTS, LLC’S
REPLY TO PLAINTIFFS’ OPPOSITION
TO DEFENDANT PFP DORSEY
INVESTMENTS, LLC’S APPLICATION
FOR ATTORNEYS’ FEES AND COSTS**

(Assigned to the Honorable Daniel Martin)

27 Defendant PFP Dorsey Investments, LLC (“PFP”), by and through counsel
28 undersigned, hereby replies to Plaintiffs’ Opposition to PFP’s Application for Attorneys’
Fees and Costs.¹ Plaintiffs were on notice that Defendants intended to seek attorneys’ fees

¹ It should be noted that Plaintiffs did not respond to PFP’s Motion for Authorization to File Documents related to PFP Dorsey Investment, LLC’s Application for Attorneys’ Fees and Taxable Costs Under Seal and thus, PFP respectfully requests that this Court summarily grant PFP’s Motion to for Authorization to File Documents under Seal pursuant to Arizona Rules of Civil Procedure Rule 7.1(b)(2).

1 prior to the filing of the Motion to Dismiss, and thus, the purpose of Rule 54(g)(1) is met,
2 allowing PFP to seek an award of its attorneys' fees. Further, an award of attorneys' fees
3 should be granted pursuant to the *Warner* factors and PFP respectfully requests an award of
4 \$20,542.00 in fees as being reasonable. Furthermore, at the very least, PFP respectfully
5 requests an award of its costs in the amount of \$265.75.

6 **1. The Purpose of Rule 54(g)(1) Was Met.**

7 The purpose of Arizona Rules of Civil Procedure Rule 54(g)(1) is to promote early
8 settlement by placing the opposing party on notice before each state of the lawsuit that a
9 party intends to ask for its attorneys' fees. *In re Restated Trust of Crystal H. West v. Moore*,
10 249 Ariz. 355, 470 P.3d 161, 165-66 (2020). Plaintiffs were on notice that fees could be
11 awarded from the very beginning of the lawsuit. Plaintiffs themselves sought attorneys' fees
12 in their Complaint, and thus, they knew that fees could be awarded to the prevailing party.
13 Further, prior to filing their Motions to Dismiss, counsel for Defendants and Plaintiffs
14 discussed whether a resolution between the parties could be reached to avoid the costs of
15 litigation. An offer was made by Defendants to Plaintiff, which was rejected. (*See*
16 *Correspondences between counsel, attached as Exhibit A*). Although a specific request in
17 the Motion to Dismiss was not provided, the purpose of Rule 54(g)(1) in promoting early
18 settlement to avoid the potential risk of attorneys' fees was met in this case when Plaintiffs
19 were put on notice and provided with an opportunity to resolve the case prior to fees
20 escalating and filing the Motion to Dismiss. Thus, an award of attorneys' fees should be
21 granted in PFP's favor.

22 **2. The Warner Factors Weight in Favor of Granting Fees Pursuant to A.R.S. §**
23 **12-341.01.**

24 Plaintiffs attempt to argue that the issues in this case are novel; however, the statute at
25 issue, A.R.S. § 33-1228, although not heavily evaluated by the appellate courts, is clear as to
26 the requirements needed to terminate and sell a condominium. As this Court determined,
27 Defendants strictly followed the statute and the governing documents in properly terminating
28

1 and selling the condominium. There is nothing novel about this issue or even an ambiguity
2 in the interpretation of the statute. Plaintiffs unsuccessfully argued the constitutionality of
3 the statute; however, that argument alone should not preclude an award of attorneys' fees.
4 Plaintiffs allege the lawsuit could have been avoided if Defendants took proper steps in
5 terminating the statute. However, by dismissing the Complaint for failure to state a claim,
6 the Court found that Defendants complied with the statute and governing documents. In
7 light of each of the *Warner* factors and evaluating them altogether, the factors weigh heavily
8 in favor of granting PFP's request for attorneys' fees. *Associated Indem. Corp. v. Warner*,
9 143 Ariz. 567, 570, 694 P.2d 1181, 1184 (1985).

10 **3. PFP's Attorneys' Fees Are Reasonable.**

11 Plaintiffs attempt to argue that PFP's fees are superfluous and unwarranted given both
12 Defendants Motions to Dismiss were similar. Although the arguments were similar, it was
13 Plaintiffs' decision to file a lawsuit against two separate entities. PFP and the Association
14 are separate and distinct entities, which were served separately. They are represented by
15 separate counsel. Thus, to properly defend and protect PFP's interests, undersigned counsel
16 had to incur the time and expense in properly evaluating the allegations, conduct research,
17 and filing its Motion to Dismiss specifically for PFP. PFP was a member of the Association
18 (like Plaintiffs) but was not the Association itself; thus, there are distinctions that needed to
19 be made. When the parties were able to coordinate to reduce costs, they did so.

20 Plaintiffs also attempt to argue that filing a Motion to Dismiss is a simple task and
21 that the time spent on the file was excessive. However, with any new file that is received, a
22 significant amount of time is needed to evaluate the allegations and potential defenses to
23 raise. This included time in discussing the issues with clients, conducting legal research, and
24 reviewing documents pertinent to the case. Although a Motion to Dismiss accepts the facts
25 of the Complaint as true, investigation and analysis was needed to evaluate other potential
26 issues in the case and whether a motion for summary judgment instead should be filed.
27 Further, although the entries are flagged as "Fact Investigation/Devel.," that is a general
28

1 category used in our billing system and does not indicate every entry relates to fact
2 investigation. Considering Plaintiff acknowledges that all the entries, except for 2.6 hours, is
3 designated under this category, a significant portion of the hours was dedicated to legal
4 research, briefing for the Motion to Dismiss, and oral argument. Furthermore, Plaintiffs
5 initiated several issues that required additional time for evaluation and how to handle the
6 matter. For example, Plaintiffs improperly named the Defendants and thus, time was spent
7 on ensuring the proper parties were named and/or dismissed and there also were ancillary
8 matters involving Plaintiffs and PFP, such as a criminal matter for trespass. Thus, the time
9 spent in defending this matter was reasonable and justified based upon the issues involved.
10 See *Schwiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 188, 673 P.2d 927, 932 (App.
11 1983) (“The prevailing party on appeal is ‘entitled to recover a reasonable attorney's fee for
12 every item of service which, at the time rendered, would have been undertaken by a
13 reasonable and prudent lawyer to advance or protect his client's interest in the pursuit’ of a
14 successful appeal.”).

15
16 **4. Conclusion**

17 Based upon the foregoing and as provided in its Application for Attorneys’ Fees and
18 Costs, PFP respectfully that this Court award PFP its attorneys’ fees in the amount of
19
20
21
22

23 / / /

24
25 / / /

26
27 / / /

1 \$20,542.00. At the very least, PPF requests that it be awarded its taxable costs pursuant to
2 A.R.S. § 12-341 in the amount of \$265.75.

3
4 RESPECTFULLY submitted this 8th day of February, 2021.

5
6
7 GARREY, WONER, HOFFMASTER & PESHEK, P.C.

8
9
10 By /s/ Stephanie K. Gintert
11 Shawna M. Woner
12 Stephanie K. Gintert
13 The Gibraltar Building
14 6611 North Scottsdale Road
15 Scottsdale, Arizona 85250
16 Attorneys for Defendant PFP Investments, LLC

17 ORIGINAL of the foregoing
18 e-filed this 8th day of
19 February, 2021, with the
20 Clerk of Maricopa County
21 Superior Court.

22 COPY of the foregoing
23 e-mailed this 8th day of
24 February, 2021, to:

25 Dennis Wilenchik
26 Jack D. Wilenchik
27 WILENCHIK & BARTNESS
28 2810 North Third Street
Phoenix, Arizona 85004
JackW@wb-law.com
rossm@wb-law.com
admin@wb-law.com
Attorneys for Plaintiffs

///

///

1 Edith I. Rudder
2 Nicholas Nogami
3 CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP
4 1400 E. Southern Avenue, Suite 400
5 Tempe, Arizona 85282
6 minuteentries@carpenterhazlewood.com
7 Eadie.Rudder@carpenterhazlewood.com
8 Nicholas.Nogami@carpenterhazlewood.com
9 Attorneys for Dorsey Place Condominium Association

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
By /s/ Ali Linton