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**ARIZONA COURT OF APPEALS**

**DIVISION ONE**

JIE CAO, et al.,

Plaintiffs/ Appellants,

v.

PFP DORSEY INVESTMENTS, LLC, et  
al.,

Defendants/ Appellees.

Court of Appeals  
Division One  
No. 1 CA-CV 21-0275

Maricopa County  
Superior Court  
No. CV2019-055353

**APPLICATION FOR  
ATTORNEYS' FEES**

Pursuant to ARCAP 21 and the Court's July 7, 2022 Opinion, Plaintiffs/ Appellants Jie Cao and Haining "Frazer" Xia ("the Xias") submit their application for attorneys' fees.

The Xias request \$279,674.00 for the fees paid or agreed to be paid to Osborn Maledon, P.A. for work performed in connection with this appeal. This application is supported by the Declaration of Eric M. Fraser, and the attachments to that declaration specifying the details required by ARCAP 21(b)(2).

**I. The Xias prevailed in this appeal, which raised statutory and constitutional issues of statewide importance.**

This appeal concerned constitutional and statutory issues of statewide importance related to the application of the Condominium Act in connection with the forced sales of condominium units. These issues included contested statutory issues, as well as novel constitutional issues relating to Arizona's constitutional prohibition on private takings. As noted in the opening brief, this law has attracted widespread news coverage in the state, and the prominent group Pacific Legal Foundation participated as amicus curiae. (Op. Br. at 59-61.)

The superior court granted Dorsey Place's motion to dismiss and the Xias appealed. (Op. ¶ 10.) On July 7, 2022, this Court issued an opinion reversing and remanding the superior court's dismissal of the Xias'

complaint. (Op. ¶ 37.) This Court also granted the Xias' request for an award of attorneys' fees as the prevailing party. (Op. ¶ 36.)

**II. The Court should award the fees paid or agreed to be paid by the prevailing party, here the Xias pursuant to the Declaration.**

As the prevailing party in the Court of Appeals, the Xias are entitled to recover their reasonable attorneys' fees incurred under the Condominium Declaration. The Condominium Declaration provides the following:

"In the event . . . any Unit Owner employs an attorney or attorneys . . . to enforce compliance with or recover damages for any violation or noncompliance with the Condominium Documents, the prevailing party in any such action shall be entitled to recover from the other party his reasonable attorneys' fees incurred in the action."

[IR-51, Ex. 1 at 52 (APP149).]

"Unlike fees awarded under A.R.S. § 12-341.01(A), the court lacks discretion to refuse to award fees under [a] contractual provision." *Chase Bank of Ariz. v. Acosta*, 179 Ariz. 563, 575 (App. 1994). In determining whether attorneys' fees are reasonable, a court may consider, among other factors:

- "the time and labor required,"
- "the novelty and difficulty of the issues involved,"
- "the skill requisite to perform the legal service properly,"
- "the fee customarily charged in the locality for similar legal services,"

- “the experience, reputation, and ability of the lawyer or lawyers performing the services,” and
- “the degree of risk assumed by the lawyer.”

Ariz. Sup. Ct. R. 42, ER 1.5 (2021).

With respect to the time expended, a party is “entitled to recover a reasonable attorney’s fee for every item of service which, at the time rendered, would have been undertaken by a reasonable and prudent lawyer to advance or protect his client’s interest in the pursuit” of a successful appeal. *Schweiger v. China Doll Rest.*, 138 Ariz. 183, 188 (1983). This may be shown through an affidavit of counsel “indicat[ing] the type of legal services provided, the date the service was provided, the attorney providing the service (if more than one attorney was involved in the appeal), and the time spent in providing the service.” *Id.*

Courts may also consider the quality of the advocates – including training, education, experience, professional standing, and skill. *See London v. Green Acres Tr.*, 159 Ariz. 136, 148 (App. 1988). Finally, “paralegals . . . may perform legal services properly considered as a component in an award” of reasonable attorney’s fees. *See Aries v. Palmer Johnson, Inc.*, 153 Ariz. 250, 261 (App. 1987).

### **III. The fees paid or agreed to be paid by the Xias are reasonable.**

As set forth in the accompanying documentation, the Xias have paid or agreed to pay their attorneys \$279,674.00 in connection with this appeal. (Fraser Dec. ¶¶ 13 & Ex. A.) These fees reflect work performed on the initial appeal assessment, opening brief, reply brief, presentation of oral argument, and preparation of supplemental briefing ordered by the Court.

The Xias ask the Court to reimburse the amounts they agreed to pay the lawyers working on their behalf. As set forth in Mr. Fraser's declaration, for the principal briefing, oral argument, and supplemental briefing, the Xias agreed to a hybrid arrangement under which Osborn Maledon charged less than it would in a typical flat-fee or hourly arrangement. (Fraser Dec. ¶¶ 22–25). Under a flat-fee arrangement, the Xias would have paid a total of \$226,674.00 for the entire representation. *See id.* At hourly rates, the Xias would have paid \$237,643.20 for this representation, inclusive of fees and costs. *See id.* Under the hybrid option that the Xias selected, the Xias would have paid \$184,674.00 in fees if they had lost on appeal, and will pay \$279,674.00 because they won. *Id.*

The different fee arrangements are summarized in this table:

Service Performed	Hybrid Fee if the Xias Did Not Prevail	Flat-fee option	Services Performed Under Hourly Rate	Hybrid Fee if the Xias Prevailed
<b>Appeal Assessment</b>	\$15,000.00	\$15,000.00	\$23,636.50	<b>\$15,000.00</b>
<b>Principal briefing, oral argument preparation</b>	\$132,500.00	\$160,000.00	\$159,742.50	<b>\$197,500.00</b>
<b>Supplemental Briefing</b>	\$30,500.00	\$45,000.00	\$38,724.00	<b>\$60,500.00</b>
<b>Additional Hourly Services Provided</b>	\$6,674.00	\$6,674.00	\$6,674.00	<b>\$6,674.00</b>
<b>Legal Research</b>	n/a	n/a	\$8,866.20	<b>n/a</b>
<b>Total</b>	\$184,674.00	\$226,674.00	\$237,643.20	<b>\$279,674.00</b>

Mr. Fraser’s declaration and accompanying exhibits identify the specific legal services provided to the Xias, including the dates of service, the name of the attorney providing the service, and the time spent. These detailed time records demonstrate that the fees requested by the Xias are reasonable and appropriate for the work performed in this case, and that counsels’ services in this case resulted in a positive outcome for the Xias. *See Schweiger*, 138 Ariz. at 188; ARCAP21(b)(2). The requested fees are for items

of service that a reasonable and prudent lawyer would have taken in connection with this appeal. (See Fraser Dec. ¶¶ 26, 27.)

In addition, this hybrid fee arrangement is reasonable because it reflects consideration of the factors under ER 1.5, including “the degree of risk assumed by the lawyer.” Ariz. Sup. Ct. R. 42, E.R. 1.5 (a)(8). Had the Xias lost the appeal, Osborn Maledon would have recovered \$59,077.63 less than it would have under an hourly rate billing arrangement and \$42,000 less than it would have recovered under a flat-fee billing regime.

As in contingency fee arrangements, this arrangement reasonably “shift[ed] the risk and expense of litigation to counsel.” *Fields v. Elected Officials Ret. Plan*, 248 Ariz. 241, 244, ¶ 17 (App. 2020). The Xias obtained an initial discount from Osborn Maledon’s flat fee or hourly rates in exchange for paying an additional success fee above those amounts if they prevailed. That allocation of risk is reasonable. See, e.g., *Toshiba Mach. Co., Am. v. SPM Flow Control Inc.*, 180 S.W.3d 761, 782–784 (Tex. App. 2005) (affirming trial court award of reasonable attorneys’ fees exceeding what would have been incurred under hourly rates in a hybrid flat fee/contingency arrangement because of “the risk [the] firm took of losing the case.”).

#### **IV. Conclusion.**

The Xias have paid or agreed to pay all fees asked for in this application, and the number of attorney hours expended on this matter are reasonable in light of the importance and complexity of the issues raised, the degree of risk assumed by the lawyers, the skill and experience of the attorneys, and the result. Accordingly, the Court should award the Xias \$279,674.00 for the fees paid or agreed to be paid to Osborn Maledon, P.A. for work performed in the Supreme Court, awarded jointly and severally against Defendants/ Appellees.

RESPECTFULLY SUBMITTED this 21st day of July, 2022.

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