

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO**

MAARTEN KALWAY,
Plaintiff/Appellant,

v.

CALABRIA RANCH HOA, LLC, an Arizona limited liability company; MICHAEL A. REID and FLORENCE J. CLARK, husband and wife; EDWARD A. PHLAUM and DIANE LYN PHLAUM, husband and wife, and as Co-Trustees of the EDWARD A. AND DIANE LYN PHLAUM REVOCABLE TRUST, dated April 10, 2017; and STUART J. SCIBETTA, an unmarried man; and as Trustee of the STUART J. SCIBETTA LIVING TRUST dated April 1, 2015,

Defendants/Appellees.

No.: 2 CA-CV 2019-0106

Pima County Superior Court
Case No. C20181284

**AFFIDAVIT OF CRAIG L. CLINE IN SUPPORT OF APPELLEES'
VERIFIED STATEMENT OF COSTS
AND ATTORNEY FEES ON APPEAL**

Craig L. Cline
Thompson Krone, PLC
3430 E. Sunrise Dr., Suite 110
Tucson, Arizona 85718
520.884.9694
Craig@ThompsonKrone.com
Attorneys for Appellees

State Bar No. 020412

STATE OF ARIZONA)
) ss.
County of Pima)

¶1. I, Craig L. Cline, being first duly sworn upon oath, depose and state as follows:

¶2. I am counsel of record for Appellees Calabria Ranch HOA, LLC; Michael A. Reid and Florence J. Clark, husband and wife; Edward A. Phlaum and Diane Lyn Phlaum, husband and wife, and as Co-Trustees of the Edward A. and Diane Lyn Phlaum Revocable Trust dated April 10, 2017; and Stuart J. Scibetta, an unmarried man; and as Trustee of the Stuart J. Scibetta Living Trust dated April 1, 2015 (collectively, “Appellees”). This Affidavit is submitted pursuant to Rule 21 (b), Ariz. R. Civ. App. P., and for the purpose of verifying the costs and attorney fees incurred by Appellees in connection with this appeal. The statements made in Appellees’ Statement of Costs and Attorney Fees on Appeal filed herein are true in substance and fact.

¶3. In their brief on appeal, Appellees requested an award of attorney fees pursuant to A.R.S. §12-341.01, as a prevailing party on a claim based in contract and controlling Arizona law. This Court’s decision, issued March 13, 2020, granted the request for attorney fees and directed Appellees to file their statement of costs and attorney fees pursuant to Rule 21, Ariz. R. Civ. App. P.

¶4. I was the only appellate attorney and devoted 49.1 hours to preparing appeal papers, analyzing the record (including relevant transcripts from the Motion for Summary Judgment hearing conducted in Superior Court), researching and analyzing the relevant law, writing Appellees' Answering Brief, analyzing Appellant's Opening Brief and Reply Brief and authorities, and preparing for and presenting oral argument in this Court. The total amount of attorney fees requested relating to this appeal is \$14,484.50. The fee was hourly at \$295.00 per hour which is at or below market in Tucson for an active practitioner with over twenty (20) years of commercial litigation experience, including HOA representation. Attached hereto as Exhibit A is a detailed description of the foregoing work performed in this appeal.

¶5. All of the work described in the attached Exhibit was performed in connection with this appeal. All such work was reasonable and necessary in connection with the representation of Appellees in this appeal.

¶6. The costs incurred on behalf of Appellees include the cost of preparing the transcript of the December 17, 2018 hearing on Cross Motions for Summary Judgment in the Pima County Superior Court. Catherina L. Tapia, Pima County Superior court reporter charged Appellees \$122.50 for the hearing transcript; however, Appellant reimbursed Appellees for one-half of that cost. Attached as Exhibit B is Ms. Tapia's invoice.

¶7. The costs for filing fees for the appeal total \$280.00. A copy of the receipt is attached hereto as Exhibit C.

DATED: March 23, 2020.

/s/ Craig L. Cline
Craig L. Cline

SUBSCRIBED and SWORN to before me on this 23rd day of March, 2020 by Craig L. Cline.

/s/Cheryl L. Zauner
Notary Public, #73028

My Commission Expires:
May 1, 2022

CERTIFICATE OF SERVICE

The undersigned hereby certifies that foregoing Affidavit of Craig L. Cline in Support of Appellees' Verified Statement of Costs and Attorney Fees on Appeal was filed and served this 23rd day of March by electronically filing the original with the Court of Appeals as follows:

Clerk, Arizona Court of Appeals
Division Two
400 West Congress Street
Tucson, AZ 85701

AND two copies were mailed to counsel of record on this 23rd day of March, 2020, as follows:












Gust Rosenfeld, PLC
Gerard R. O'Meara, Esq.
1 South Church Avenue, Suite 1900
Tucson, Arizona 85701
gromeara@gustlaw.com
Attorneys for Appellant

By: /s/ Craig L. Cline
Craig L. Cline
Attorneys for Appellees

EXHIBIT A

Activities Export

03/23/2020
10:55 AM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
09/25/2019		review of opening brief ● Billed invoice 2656	00405 adv. Maarten Kalway	Craig Cline	0.70h	295.00	-	206.50
09/27/2019		continued review of opening brief ● Billed invoice 2656	00405 adv. Maarten Kalway	Craig Cline	1.10h	295.00	-	324.50
10/02/2019		review of opening brief ● Billed invoice 2718	00405 adv. Maarten Kalway	Craig Cline	0.60h	295.00	-	177.00
10/03/2019		continued review of opening brief ● Billed invoice 2718	00405 adv. Maarten Kalway	Craig Cline	1.10h	295.00	-	324.50
10/21/2019		review of cited case law ● Billed invoice 2718	00405 adv. Maarten Kalway	Craig Cline	1.40h	295.00	-	413.00
10/22/2019		continued review of case law (1.5); initial draft of answering brief (2.7) ● Billed invoice 2718	00405 adv. Maarten Kalway	Craig Cline	4.20h	295.00	-	1,239.00
10/23/2019		continued draft of answering brief ● Billed invoice 2718	00405 adv. Maarten Kalway	Craig Cline	3.40h	295.00	-	1,003.00
10/25/2019		continued draft of answering brief ● Billed invoice 2718	00405 adv. Maarten Kalway	Craig Cline	2.60h	295.00	-	767.00
10/29/2019		continued draft of answering brief ● Billed invoice 2718	00405 adv. Maarten Kalway	Craig Cline	2.10h	295.00	-	619.50
11/03/2019		continued edits to brief (2.0); review of edits from client (.4) ● Billed invoice 2767	00405 adv. Maarten Kalway	Craig Cline	2.40h	295.00	-	708.00
11/06/2019		continued edits to response (3.2); email to client (.2); telephone call with client (.3); email revised	00405 adv. Maarten Kalway	Craig Cline	3.90h	295.00	-	1,150.50

Activities Export

03/23/2020
10:55 AM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		Brief (.2) ● Billed invoice 2767						
11/07/2019	①	continued edits to brief (.2.6); email to client (.2) ● Billed invoice 2767	00405 adv. Maarten Kalway	Craig Cline	2.80h	295.00	-	826.00
11/08/2019	①	finalize and edit brief ● Billed invoice 2767	00405 adv. Maarten Kalway	Craig Cline	1.90h	295.00	-	560.50
12/02/2019	①	review of reply brief ● Billed invoice 2825	00405 adv. Maarten Kalway	Craig Cline	0.60h	295.00	-	177.00
12/12/2019	①	continued review of reply (.3); email to client (.1) ● Billed invoice 2825	00405 adv. Maarten Kalway	Craig Cline	0.40h	295.00	-	118.00
01/10/2020	①	review of emails from court of appeals (.2); email to client (.1) ● Billed invoice 2880	00405 adv. Maarten Kalway	Craig Cline	0.30h	295.00	-	88.50
01/17/2020	①	prepare for oral argument (review of Reply Brief) ● Billed invoice 2880	00405 adv. Maarten Kalway	Craig Cline	0.40h	295.00	-	118.00
01/19/2020	①	review of filings and MSJ Ruling/ Transcript in preparation for oral argument ● Billed invoice 2880	00405 adv. Maarten Kalway	Craig Cline	1.20h	295.00	-	354.00
01/22/2020	①	continued review of filings in State Court ● Billed invoice 2880	00405 adv. Maarten Kalway	Craig Cline	0.70h	295.00	-	206.50
01/27/2020	①	review of filings in preparation for oral argument	00405 adv. Maarten Kalway	Craig Cline	1.40h	295.00	-	413.00

Activities Export

03/23/2020
10:55 AM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Billed invoice 2880						
01/29/2020	①	review of draft decision (.3); email to client (.2); review of cited case law in draft decision (.4) ● Billed invoice 2880	00405 adv. Maarten Kalway	Craig Cline	0.90h	295.00	-	265.50
01/30/2020	①	continued review of cases cited by draft opinion ● Billed invoice 2880	00405 adv. Maarten Kalway	Craig Cline	0.80h	295.00	-	236.00
01/31/2020	①	continued review of cited case law including Dreamland and other critical cases ● Billed invoice 2880	00405 adv. Maarten Kalway	Craig Cline	0.70h	295.00	-	206.50
02/02/2020	①	continued preparation for oral argument including reviewing cited cases and authority ● Billed invoice 2956	00405 adv. Maarten Kalway	Craig Cline	1.30h	295.00	-	383.50
02/03/2020	①	continued review of MSJ Ruling and general prep for oral argument ● Billed invoice 2956	00405 adv. Maarten Kalway	Craig Cline	2.70h	295.00	-	796.50
02/04/2020	①	continued preparation for oral argument ● Billed invoice 2956	00405 adv. Maarten Kalway	Craig Cline	3.00h	295.00	-	885.00

Activities Export

03/23/2020
10:55 AM





Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)	
02/05/2020		continued preparation and attend oral argument	00405 adv. Maarten Kalway	Craig Cline	6.10h	295.00	-	1,799.50	
		 Billed invoice 2956							
03/13/2020		review of opinion (.2); email to client (.2)	00405 adv. Maarten Kalway	Craig Cline	0.40h	295.00	-	118.00	
		 Unbilled							
								49.10h	\$14,484.50
								49.1h	

EXHIBIT B

Catherine Tapia, CR
Certificate No. #50806

Pima County Superior Court
110 W. Congress
Managing Court Reporters Office
Seventh floor
Tucson, Arizona 85701
(520) 724-3017 (work)

INVOICE NUMBER: 2019-CLT-033

BILLING DATE: May 31, 2019

ORDERING PARTY: Cline Law Firm
(520) 770-7722

MAARTEN KALWAY vs. CALABRIA RANCH HOA LLC, et al

C20181284

CROSS MOTIONS FOR SUMMARY JUDGMENT

HONORABLE COMMISSIONER: Janet Bostwick

December 17, 2018

35 pages at \$3.50 page

TOTAL DUE: \$122.50

Thank you.

EXHIBIT C

COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO
400 West Congress Room 200
Tucson, AZ 85701

RECEIPT

September 04, 2019 Number: 8961

RE: MAARTEN KALWAY v. CALABRIA RANCHHOA, LLC; MARK A. REID; FLORENCE J. CLARK;

...

2 CA-CV 2019-0106

Paid For: CALABRIA RANCH HOA

Paid By: Craig L. Cline

Payment Type: Check No.: 2289

Description	Amount
Appellant Fee	\$0.00
Appellee Fee	\$0.00
Cross Appellant Fee	\$280.00
Cross Appellee Fee	\$0.00
Petitioner Fee	\$0.00
Respondent Fee	\$0.00
PR Fee	\$0.00
Copy Fee	\$0.00
Surcharge Fee	\$0.00
Certification Fee	\$0.00
Other Fee	\$0.00
	=====
Total	\$280.00

Maria Campos
Deputy Clerk