

**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

**APPELLEES' REPLY TO OBJECTION TO STATEMENT OF
COSTS AND ATTORNEY FEES ON APPEAL**

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The 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”), pursuant to Rule 21, Ariz. R. Civ. App. P., hereby submit their Reply to Objection to Verified Statement of Costs and Attorney Fees on Appeal.

COSTS

Appellant does not object to any costs and the requested full amount of costs in the amount of \$341.25 should therefore be awarded to Appellee.

ATTORNEY FEES

Next, Appellant takes issue with the amount of attorney fees sought in this matter. More specifically, Appellant states that the amount of time spent on the Answering Brief was excessive.

As to the preparation of the Answering Brief, undersigned counsel spent approximately three (3) days’ time reviewing the Opening Brief, reviewing the transcript, reviewing, analyzing, and comparing cited case law,

reviewing the substantive papers/pleadings filed below, and preparing, editing and finalizing the Answering Brief. Although undersigned counsel does not dedicate his practice to Appellate Procedure and Practice, apparently contrary to Mr. Wirken (based on a review of Mr. Wirken's law firm profile), in the three or so previous appeals undersigned counsel has been involved in, in one way or another, and in consultation with other counsel, the time equivalent of 3-5 days is not out of the ordinary and is reasonable. Thus, in light of the above, undersigned counsel concludes that 28.2 hours is within that standard and, thus, is reasonable.

In addition, Appellant takes issue with the amount of time spent preparing for and attending the oral argument. In fact, Appellant suggests that no more than five hours is sufficient to prepare for argument. Undersigned counsel respectfully disagrees with Mr. Wirken's analysis and position. Effectively, between review of the Reply Brief, review of the below pleadings and transcript, review of the draft Opinion, and the final day of preparation for oral argument, undersigned counsel spent less than two days preparing for an important and somewhat involved oral argument. Did undersigned counsel spend more time on the final preparation day than necessary (6.1 hours)? Well, perhaps that argument could be made; however, in light of what was at issue,

undersigned counsel does not believe that additional time preparing on the day of the hearing was unreasonable in the context at issue.

Therefore, Appellees' requested fees should be awarded as sought.

Respectfully submitted on April 3, 2020.

THOMPSON KRONE, PLC

By: /s/ Craig L. Cline

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that foregoing Appellees' Verified Statement of Costs and Attorney Fees on Appeal was filed and served on April 3, 2020 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 April 3, 2020, as follows:

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