

ARIZONA COURT OF APPEALS

DIVISION ONE

LAVEEN MEADOWS HOMEOWNERS'  
ASSOCIATION, INC., an Arizona  
nonprofit corporation,

Plaintiff/Appellee,

vs.

CARLOS MEJIA, a married man, as his  
sole and separate property; et al.,

Defendant/Appellant.

1 CA-CV 18-0276

Maricopa County Superior Court  
No. CV2016-094391

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**APPELLANT'S RESPONSE TO APPLICATION FOR ATTORNEYS'  
FEES AND COSTS**

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Appellant Carlos Mejia (“Mejia”) hereby responds to the Application for Attorneys’ Fees and Costs filed by appellee Laveen Meadows Homeowners’ Association, Inc. (“HOA”).

## **I. INTRODUCTION**

Mejia overpaid the alleged outstanding assessments which still resulted in the Superior Court entering a Judgment of Foreclosure in a *negative principal amount* of \$2,152.08 (i.e., “-\$2,152.08”). EIR 76. This Judgment allowed the HOA to foreclose on attorneys’ fees and costs in the amounts of \$11,190.00 and \$1,012.25, respectively. *Id.* On April 20, 2018, the Superior Court entered another order awarding the HOA post-judgment fees and costs in the amount of \$7,778.51.<sup>1</sup> Now, the HOA is asking this Court to award it another \$33,961.86 in fees and costs.

As discussed below, this Court should exercise its broad discretion and deny the HOA’s request for attorneys’ fees and costs. Mejia would suffer tremendous hardship and an injustice if he lost his home to cover what will amount to over \$50,000 in attorneys’ fees and costs after he already overpaid the assessments owed. His appeal was meritorious. It addressed a novel issue. And, an adverse fee award would chill any homeowner from ever challenging a bill from their HOA.

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<sup>1</sup> There is no entry on the Electronic Index of Record identifying this Order.

Moreover, a significant portion of the HOA's appellate fees and costs should not have been incurred and are otherwise grossly excessive.

## **II. THE COURT SHOULD EXERCISE ITS DISCRETION AND DENY THE HOA'S APPLICATION FOR FEES AND COSTS**

The award of attorneys' fees is "peculiarly within the discretion of the trial court." *Woliansky v. Miller*, 146 Ariz. 170, 172 (App. 1985). Even in cases where a contractual fee provision exists (such as here), Arizona courts still retain discretion to determine a reasonable attorney fee. *Chase Bank of Ariz. v. Acosta*, 179 Ariz. 563, 574 (App. 1994).

Mejia overpaid the alleged outstanding principal by over \$2,000. At the time that he made his payment while in default, the HOA had incurred \$4,190 in attorneys' fees and costs for essentially filing a *pro forma* complaint. EIR 29-31. Arguably, the HOA was not entitled to this \$4,190 because Mejia defaulted and did not contest the action. Nevertheless, the HOA could have credited Mejia's \$2,000 overpayment to cover the HOA's *pro forma* complaint which would have reduced the HOA's fees down to approximately \$2,000.

It is important to note that after the HOA forced significant litigation in the Superior Court over an entry of default (not even a default judgment), the Superior Court exercised its discretion and actually reduced the HOA's award by over \$10,000 after all was said and done. Cf. EIR 65-66, HOA's Supplemental Fee

Application 13:1-4 (where the HOA demanded a total of \$28,640.00 in fees) with EIR 76 and EIR 101 (Foreclosure Judgment and subsequent Order awarding fees where the Court awarded the HOA total fees in the amount of \$18,190). The HOA could have saved itself this money if it accepted the overpayment as full satisfaction or made a reasonable settlement offer on the \$2,000 balance.

However, the HOA always insisted on recovering every penny based on the constant threat of foreclosure and would not agree to vacate the entry of default. Indeed, the HOA's counsel actually had the gall to suggest in one of their many fee applications in this case that Mejia should have just paid the fees instead of hiring a lawyer to defend himself. EIR 65-66, Supplemental Fee Application 15:12-17.

The HOA gave Mejia no choice but to litigate to try to vacate default and assert the defense that the HOA had no right to foreclose once he paid off the principal debt. Now, three fee applications later, the HOA stands to recover over \$50,000 in attorneys' fees and costs and can foreclose on this amount essentially litigating for the sake of litigating.

Under Arizona law and this State's Constitution, "all citizens of [Arizona], regardless of their financial status, must be afforded an equal opportunity to the courts and an equal opportunity to appeal." *Eastin v. Broomfield*, 116 Ariz. 576, 585 (1977). The HOA sought to deprive Mejia of this fundamental right by

refusing to be reasonable and suggesting that he should have just succumbed to whatever the HOA demanded without challenging the fees or amounts sought. EIR 65-66. *See e.g. Bocchino v. Fountain Shadows HOA*, 244 Ariz. 323 (App. 2018) (HOA has no right to just tack attorneys' fees onto a homeowner's account. A court must approve the fees first); *McNair v. Maxwell & Morgan, P.C.*, 893 F.3d 680, 684 (9<sup>th</sup> Cir. 2018) (same).<sup>2</sup>

Mejia should not be penalized with the potential loss of his home for exercising his fundamental right to access the court and to appeal the Superior Court's peculiar decision where it awarded the HOA a negative amount and still held that foreclosure was available. *Eastin*, 116 Ariz. at 585. Accordingly, this Court should exercise its discretion and deny the HOA's application as an unreasonable, direct assault on his rights to access the court. *Woliansky*, 146 Ariz. at 172; *Chase Bank of Ariz. v. Acosta*, 179 Ariz. at 574; *Eastin*, 116 Ariz. at 585. A ruling against Mejia sends the message that citizens without financial wherewithal to pay on demand might as well capitulate. This outcome contradicts the policy decision set forth in *Eastin* and its progeny by depriving homeowners like Mejia of access to the Court.

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<sup>2</sup> The law firm in *McNair* (Maxwell & Morgan) is the same firm seeking attorneys' fees in this case on behalf of the HOA herein. In fairness to Maxwell & Morgan, *Bocchino* and *McNair* were decided after the HOA herein demanded that Mejia pay all fees before seeking judicial approval.

Alternatively, there is nothing preventing this Court from exercising its discretion to award the HOA a monetary judgment – not a foreclosure judgment – for a reasonable attorneys’ fee incurred on appeal. This outcome would begin to reconcile the principles of fundamental fairness to Mejia and his right to appeal a novel issue with the HOA’s right to recover fees for prevailing on appeal. Just as monetary judgment creditors do each day, the HOA could record its monetary judgment as a judgment lien to secure the amount awarded. There is no reason that Mejia should lose his home over filing an appeal – especially when it was the HOA that turned a \$2,000 deficit (if that) into a \$50,000 boon to its firm.

### **III. THE FEES AND COSTS SOUGHT ARE GROSSLY EXCESSIVE AND UNREASONABLE**

The Court has discretion to reject attorneys’ fees that are grossly excessive fees. *McDowell Mountain Ranch Commt’y. Ass’n., Inc. v. Simons*, 216 Ariz. 266 (App. 2007). Though the factors discussed in *Associated Indemnity Corp. v. Warner*, 143 Ariz. 567, 570 (1985) are mostly considered when fees are sought pursuant to A.R.S. § 12-341.01, this Court should exercise its discretion and consider them here when making its determination.

After Mejia filed his opening brief, the HOA filed a self-styled “Motion for Leave to Have Clerical Error Corrected by the Trial Court.” Though this Motion was a tacit admission by the HOA that the Foreclosure Judgment was defective,

this Motion was nothing more than an attempt to change the Foreclosure Judgment itself and redefine the entire landscape of the appeal. Predictably, this Court summarily denied the Motion. See Order dated January 28, 2019. However, the HOA incurred fees and forced Mejia to incur fees litigating this Motion. Since the Motion was inappropriate and unnecessary, this Court should exercise its discretion to deny fees totaling \$3,630 that were incurred litigating this Motion between November 21, 2018 and April 23, 2019. *Simons, supra*.

The Court should also significantly reduce the fees that the HOA incurred preparing for the appellate oral argument. Between August 29, 2019 and September 3, 2019, the HOA's counsel spent 23.9 hours (i.e., nearly three eight-hour days without a break) at a cost of \$7,192.50.<sup>3</sup> The facts were not in dispute nor was the applicable law. The only dispute was the interpretation of a few words in a statute (i.e., does the phrase "may be foreclosed" within A.R.S. § 33-1807 mean that the trial court "must" award foreclosure even if the homeowner pays off the principal debt?). Therefore, this amount is grossly excessive. *Simons, supra*.

Finally, Mejia objects to the costs sought by the HOA. There are no descriptions in the billing for the amounts sought especially next to the more

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<sup>3</sup> The entry dated September 3, 2019 block bills preparation time, the hearing and travel. Thus, Mejia cannot tell how much time of the 5.1 hours billed on this day was to prepare for oral argument.

expensive charges. The HOA charged Mejia \$100 on two occasions (\$200 total) for monthly Westlaw charges. Was this the charge for actual research (undefined) or is Mejia being lumped in with other homeowners who are billed equally for research that might not have benefited the HOA in this case? Mejia was also charged \$295.10 and twice charged \$150.90 (\$596.90 total) for filing certificates of service (service for what?). He was also charged a \$72 “annual maintenance fee,” which is anyone’s guess what that can be. The Court should deny these unexplained costs for lack of detail. *Cyprus Bagdad Copper Corp. v. Ariz. Dept. of Rev.*, 196 Ariz. 5, 10, ¶ 24 (App. 1999).

#### **IV. CONCLUSION**

The HOA should have ended this case with a phone call after Mejia made his \$2,000 overpayment. Instead, it racked up an enormous bill and refused to negotiate because it believed it could hold the extraordinary remedy of foreclosure over him to coerce him into paying the full amount demanded. This Court should not award these fees. The case presented a novel issue, the HOA refused to settle, taking Mejia’s home over these fees would cause an obvious hardship and Mejia’s defense had merit (it resulted in a dissent). *Warner*, 143 Ariz. at 570. Awarding fees to the HOA would encourage it to engage in similar conduct and would

completely chill a homeowner's right to criticize a fee demand and access the courts. *Eastin, supra; Bocchino, supra; McNair, supra.*

Based on the foregoing, this Court should deny the HOA's Application for Attorneys' Fees and Costs. At a minimum, it should greatly reduce the award and only give the HOA a monetary judgment for the amount – not a foreclosure judgment.

DATED this 2nd day of June 2020.

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