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IN THE COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

LAVEEN MEADOWS HOMEOWNERS' ASSOCIATION, an Arizona nonprofit corporation, Plaintiff/Appellee, v. CARLOS MEJIA, a married man, as his sole and separate property; et al., Defendant/Appellant.	No.: 1-CA-CV 18-0276 Maricopa County Superior Court No.: CV 2016-094391 **REPLY IN SUPPORT OF APPLICATION FOR ATTORNEYS' FEES AND COSTS**

Plaintiff/Appellee Laveen Meadows Homeowners' Association ("Association"), hereby files its Reply in support of its previously filed Application for Attorneys' Fees and Costs. As this Court explained in *Schweiger, v. China Doll Rest., Inc.*, 138 Ariz. 183, 188, 673 P.2d 927, 932 (App. 1983), the prevailing 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 claim or defense. *Id.*, 138 Ariz. at 188, 673 P.2d at 932. Once the prevailing party submits its application for fees and supports the same with a *China Doll* Affidavit and Application for Award of Attorneys' Fees and Costs, the burden to specifically demonstrate that the requested fees were clearly excessive or unreasonable shifts to the opposing party. *See Nolan v. Starlight Pines Homeowners Assoc.*, 216 Ariz. 482, 491, P 38, 167 P.3d 1277, 1286 (App. 2007); *State ex rel. Corbin v. Tocco*, 173 Ariz. 587, 594, 845 P.2d 513, 520 (App. 1992). General allegations that the hours are excessive or the rates are too high are insufficient to meet the burden of a party opposing a fee application. *See id.* at 594-95, 845 P.2d at 520-21; *see also Orfaly v. Tucson Symphony Society*, 209 Ariz. 260, 26 PP 22-23, 99 P. 3d 1030, 1036 (App. 2004); *Ponderosa Plaza v. Siplast*, 181 Ariz. 128, 133, 888 P.2d 1315, 1320 (App. 1993).

Although Defendant/Appellant Carlos Mejia ("Mejia") argued in his Response that the Association should not be awarded any fees, he identified very few fees that he considered to be objectionable. Rather, Mejia took the contradictory approach of suggesting that this Court should decline to follow its published Opinion filed on May 5, 2020 in this very matter with respect to the fees sought by the Association. As this Court correctly noted in its May 5, 2020 Opinion, the underlying contract, the Declaration of Covenants, Conditions and

Restrictions ("Declaration"), allows the prevailing party to recover reasonable attorneys' fees and costs. Furthermore, as this Court also stated in the May 5, 2020 Opinion, A.R.S. § 33-1807(H) confirms that a judgment "in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party." Finally, the May 5, 2020 Opinion expressly confirmed that "Laveen Meadows is the successful party on appeal and may recover its reasonable attorneys' fees and taxable costs upon compliance with ARCAP 21." Consequently, Mejia's arguments that the Association should not be awarded fees are without merit.

After arguing that the Association should not be able to recover fees in this matter, Mejia argued that if fees are awarded, they should not be part of the Association's lien against the subject property. However, again, Mejia's argument ignores this Court's published Opinion in this matter and effectively seeks to have this Court decline to follow the Opinion just issued in this case. At the heart of this matter was Mejia's contention that foreclosure of the Association's lien was not an available remedy because Mejia paid the assessments after the lawsuit was filed. This Court rejected Mejia's arguments in its May 5, 2020 published Opinion. Nevertheless, Mejia's Response attempted to convince this Court to apply those same rejected arguments to the Association's fees and costs incurred on appeal. Mejia's contention that the fees and costs awarded should not be part of the

Association's lien against the property has no merit pursuant to the explicit language of the May 5, 2020 Opinion in this matter and A.R.S. § 33-1807(A).

Mejia challenged the fees incurred by the Association for only two services performed in this matter: (1) the Association's Motion for Leave to Have Clerical Error Corrected by the Trial Court ("Motion to Correct"); and (2) the preparation for oral argument held in this matter on September 3, 2020. However, this work performed was reasonable and necessary. Although this Court did not grant the Association's Motion to Correct, it was necessary for the Association to seek permission to have the trial court correct the clear mathematical error in calculating the amount of the judgment if the Association wished to explain and cite to the error in its Answering Memorandum on Appeal. As such, the fees incurred for the filing and defense of the Motion to Correct were appropriate and justified.

With respect to Mejia's contention that the Association should not be able to recover fees to prepare for the September 3, 2019 oral argument, Mejia's arguments are wholly without merit. Mejia's contentions regarding the time spent by the Association to prepare for oral argument create a double standard. Mejia would have this Court see the case as a simple matter where "[t]he only dispute was the interpretation of a few words in a statute" when considering the time Association's counsel spent preparing for oral argument. (Mejia's Response, p. 6.) Yet, Mejia would have this Court see the case as a meritorious appeal over a novel

issue with vastly important consequences for society when arguing that Mejia should not have to pay attorneys' fees to the Association related to the appeal. (*See* Mejia's Response, p. 1, 4.) Contrary to Mejia's contentions, the Association's counsel was required to prepare for oral argument in order to adequately address the novel issue presented to this Court through Mejia's appeal. Preparation for the oral argument was necessary and prudently undertaken in order for the Association to prevail in this matter and the Association is entitled to recover fees for the same.

Mejia also criticizes a few of the costs sought by the Association in this matter. Mejia suggests, without any basis other than speculation, that charges for Westlaw possibly related to other cases but were charged to Mejia. Mejia's speculative argument is unfounded. Given the amount of cases cited by Mejia in the briefs he filed on appeal and the number of cases cited by the Association in its Answering Brief, the Association finds it hard to understand why Mejia would think the research charges related to some other matter. The Westlaw charges were included as costs in this matter because they were incurred for research in this appeal. Mejia's arguments to the contrary are as offensive as they are absurd.

Additionally, the charges for $295.10 and $150.90 were the Appellate Court filing fees, as indicated on the Statement of Costs and History Bill, which also included the charges from TurboCourt. (It must be remembered that Mejia appealed this matter twice; the first appeal (CA-CV 17-0539) was dismissed for

failure by Mejia to move to set aside the default judgment in the Superior Court. The Association was required to pay the initial appearance and filing fees under both case numbers. Also, the Association originally intended to pursue a cross-appeal, but withdrew the cross-appeal when this Court dismissed Mejia's first attempt at an appeal.)

The Association must also point out that Mejia's characterization of the Association as "litigating for the sake of litigating" is woefully inaccurate. Likewise, Mejia's attempt to cast himself as merely attempting to exercise his right to counsel also fails to capture the true nature of this matter. The fact cannot be lost that the Association entered a repayment agreement with Mejia during the pendency of this matter and would have gladly allowed Mejia to resolve the matter thereby had Mejia followed through with the his agreement. (*See* EIR #41.) Additionally, Mejia intentionally engaged in risky gamesmanship by waiting literally until the proverbial eleventh hour to deliver his partial payment or to attempt to set aside the default. (*See* EIR #32-35.) Mejia alleges in his Response that "the HOA forced significant litigation" because the Association "would not agree to vacate the entry of default". (*See* Mejia's Response, p. 2, 3) It is absurd for Mejia to argue that the Association engaged in unnecessary litigation by refusing to voluntarily vacate the default when the default was upheld by both the trial court and this Court. Moreover, although Mejia asserts that the Association's

fee request is the result of the Association "litigating for the sake of litigating" (*see* Mejia's Response, p. 3), it was Mejia that pursued the appeal and not the Association. The Association has been on the defensive of this matter responding to Mejia's litigation tactics since the trial court first ruled in its favor. It was Mejia and not the Association that drove the appeal that caused the Association to incur the fees it now seeks to recover.

Additionally, Mejia's argument that to award fees to the Association for defending the appeal would be an "obvious hardship" and have a chilling effect on homeowners' rights to object to fees is curious. (*See* Mejia's Response, p. 1, 7.) Mejia's counsel presumably assisted Mejia in evaluating the risks of pursuing an appeal before Mejia decided to appeal. Mejia was undoubtedly advised by his counsel that if he pursued the appeal and the Association prevailed, there was a good chance that the Association would be entitled to recover its fees and costs incurred on appeal. As Mejia certainly made an informed decision about whether to appeal with a clear understanding of the possible risk of loss, it is disingenuous for Mejia to argue now that the cost of the battle he pursued constitutes a hardship. The Association maintains that the fees and costs incurred were reasonable and should be awarded to the Association.

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DATED this 15th day of June, 2020.

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