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SUPERIOR COURT OF THE STATE OF ARIZONA
COUNTY OF COCONINO

ROBERT R. HAWK and CECELIA J.
HAWK, husband and wife,

Plaintiffs,

v.

PC VILLAGE ASSOCIATION, INC., an
Arizona corporation,

Defendant.

NO. CV2011-00775

**PC VILLAGE ASSOCIATION
INC.'S OPPOSITION TO
PLAINTIFF'S AFFIDAVIT OF
ATTORNEY'S FEES AND
STATEMENT OF COSTS**

(Assigned to the Honorable Mark R.
Moran)

Defendant PC Village Association, Inc. ("PC Village"), by and through
counsel undersigned, hereby submits its Opposition to Plaintiff's Affidavit of Attorney's
Fees and Statement of Costs.

I. LEGAL ARGUMENT FOR REDUCING ATTORNEY'S FEES

Policy weighs in favor of substantially reducing the \$19,476.50 that Plaintiff
demands. The awarding of attorney's fees to a successful party in a contested action is
discretionary with the court. *Fulton Homes Corporation v. BBP Concrete*, 214 Ariz. 566,
155 P.3d 1090 (2007). In exercising its discretion in an award of attorneys' fees, the court
should consider:

1 the merits of the unsuccessful party's claim, whether the claim
2 could have been avoided or settled, whether the successful
3 party's efforts were completely superfluous in achieving the
4 result, whether assessing fees against the unsuccessful party
5 would cause an extreme hardship, whether the successful party
6 did not prevail with respect to all of the relief sought, the
7 novelty of the legal question presented, and whether an award
8 to the prevailing party would discourage other parties with
9 tenable claims from litigating legitimate contract issues for
10 fear of incurring liability for substantial amounts of attorneys'
11 fees.

12 *Id.*

13 In this case, the factors above weigh in favor of a fee award substantially
14 less than what Plaintiff's attorney demands. As Plaintiff's attorney freely admits, the legal
15 issues in this case arose from new legislation that lacked any on-point legal precedent.
16 Pl.'s Aff. of Att'y Fees at 4:10. The issues addressed were therefore novel legal concepts.
17 *Id.* Forcing PC Village to pay Plaintiff's legal fees would chill future efforts to clarify
18 legal ambiguities when on-point legal precedent does not exist. PC Village's
19 interpretation of the statutes in question had merit. As the motions before this Court make
20 clear, PC Village held a good faith position that the statutes at issue did not apply
21 retroactively to the disputed CC&R provisions. Therefore, resolution of the dispute was
22 not possible without first determining whether or not the statutes were applicable.

18 **II. REASONABLENESS OF ATTORNEY'S FEES**

19 Many of the fees that Plaintiff demands are clearly excessive. Plaintiff's
20 attorney spent a total of 36 hours, or \$7,200 on his reply in support of his motion for
21 summary judgment and response to PC Village's cross claim. Given the legal questions at
22 issue, that amount far exceeds the amount of time that a reasonable attorney would have
23 expended on similar work.

24 Furthermore, many of the fees that Plaintiff demands are listed as block-
25 billed amounts in excess of three hours. Such amounts total 36.3 hours, or \$7,260. These
26 entries do not meet the requirements set forth in *Schweiger v. China Doll Restaurant, Inc.*,
27 as an attorney is required to set forth "the time spent in providing the service." 138 Ariz.
28 183, 188, 673 P.2d 927, 932 (Ariz. Ct. App.1983) (citation omitted). Some block entries

1 exceed six hours. As the court has stated, "[i]t is insufficient to provide the court with
2 broad summaries of the work done and time incurred." *Id.*

3 **III. CONCLUSION**

4 For the foregoing reasons, the \$19,476.50 that Plaintiff seeks for fees and
5 costs should be substantially reduced.

6 DATED this 17th day of April, 2012.

7 JONES, SKELTON & HOCHULI, P.L.C.

8
9 By 

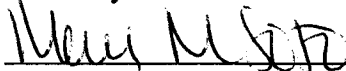
10 Edward G. Hochuli
11 2901 North Central Avenue, Suite 800
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13 Attorneys for Defendant PC Village
14 Association, Inc.

15 ORIGINAL of the foregoing mailed for filing
16 this 17 day of April, 2012 to:

17 Clerk of the Court
18 Civil Filings
19 Coconino County Superior Court
20 200 N. San Francisco St. (Courthouse)
21 Flagstaff AZ. 86001

22 COPY of the foregoing mailed
23 this 17th day of April, 2012, to:

24 Tevis Reich
25 Attorney at Law
26 6 East Dale Avenue
27 Flagstaff, Arizona 86001
28 Attorney for Plaintiffs



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Category

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