

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-094261

06/09/2015

HON. MARK F. ACETO

CLERK OF THE COURT
M. Scott
Deputy

TROON RIDGE ESTATES III & IV
HOMEOWNERS ASSOCIATION

LINDSEY O STEARNS

v.

4 A A R HOLDINGS L L C, et al.

ELIJAH W ROSOV

SCOTTSDALE COMMUNITY
ASSOCIATION
NO ADDRESS ON RECORD
CITIBANK SOUTH DAKOTA N A
NO ADDRESS ON RECORD
MICHAEL D RIPSON
28695 N 94TH PL
SCOTTSDALE AZ 85262
BRADLEY R JARDINE

MINUTE ENTRY

On April 8, 2015, attorney Bradley Jardine filed a “Motion for Attorney’s Fees” on behalf of Troon Ridge Estates III & IV Homeowners Association (the “HOA”). On May 15, 2015, attorney Lindsey Stearns filed an “Application in Support of Attorney’s Fees and Costs” on behalf of the HOA. On May 15, 2015, attorney Elijah Rosov filed an “Application for an Award of Attorneys’ Fees” on behalf of Forange. On May 15, 2015, Mr. Rosov also filed a “Notice and Amendment”. Through this document, Forange seeks an award of costs. The court has reviewed the pleadings.

The court makes note of the following:

- On June 1, 2012, the HOA filed a complaint against Forange.

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- On December 10, 2012, Forange filed a complaint against the HOA.
- The two complaints were ultimately consolidated under one cause number.
- This case can be divided into four parts: (1) the HOA's claim for unpaid assessments (asserted in count 1 of the HOA's complaint); (2) the HOA's claim for lien foreclosure (also asserted in count 1 of the HOA's complaint); (3) the HOA's allegations that Forange violated certain aspects of the CC&Rs (asserted in count 2 of the HOA's complaint); and (4) Forange's claims that the HOA recorded a groundless document (asserted in Forange's complaint).
- As noted above, the first part of this case was the HOA's claim for unpaid assessments. Regarding this part of the case, the HOA ultimately succeeded in obtaining the relief it sought. More specifically, on July 23, 2013 (13 months after the HOA filed its complaint), Forange finally paid the previously unpaid assessments.
- The second part of the case was the HOA's lien foreclosure claim. Forange prevailed on this part of the case.
- The third part of the case was the HOA's allegations that Forange was guilty of CC&R violations. This part of the case was ultimately dismissed pursuant to agreement of the parties. That said, the parties did not agree who was the successful party regarding this part of the case.
- Regarding the third part of the case, the HOA obtained none of the relief it sought.¹ Additionally, Forange obtained the precise result it was seeking, i.e. dismissal. Given all of the circumstances (including but not limited to those discussed in this minute entry), the court finds Forange to be the successful party regarding the third part of this case.
- The fourth part of this case was Forange's claims that the HOA had recorded groundless documents. The HOA was the successful party on this part of the case.

¹ The "Stipulation Regarding Dismissal" did recite that the "Declaration applies to [Forange's] Property..." While plaintiff might suggest this to be a victory, it is not. Forange never claimed that the Declaration did not apply to Forange's Property. The "Stipulation Regarding Dismissal" also recited that the "Property is currently in compliance with the Declaration..." While plaintiff might suggest this to be a victory, it is not. From Forange's perspective, this was simply a statement that Forange had been and continued to be in compliance with the Declaration.

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COSTS

The HOA succeeded on parts of this consolidated case. Likewise, Forange succeeded on parts of this consolidated case.

A.R.S. §12-341 makes it mandatory that the successful party to a civil action recover from its adversary all taxable costs. Where there are multiple claims, the trial court has discretion to determine the prevailing party. *Hooper v. Truly Nolen*, 171 Ariz. 692, 695 (App. 1992).

After considering all of the circumstances, the court finds Forange to be the prevailing party in this consolidated case and

IT IS ORDERED awarding taxable costs to Forange in the amount of \$994.05.²

FEES REGARDING UNPAID ASSESSMENTS

The court makes note of the following:

- As noted above, the HOA succeeded on the first part of the case, i.e. the HOA's claim for unpaid assessments.
- The CC&Rs generally mandate an award of fees to a party who has successfully prosecuted a claim to enforce the CC&Rs. That said, a party seeking to recover fees must establish the amount of fees incurred.
- The HOA has not established the amount of fees incurred regarding prosecution of its unpaid assessment claim.³

Under the circumstances,

IT IS ORDERED denying the HOA's application for an award of fees pursuant to the CC&Rs as to the HOA's claim for unpaid assessments.

FORANGE'S COMPLAINT

² Forange sought an award of costs in this amount through a "Notice and Amendment" filed on May 15, 2015.

³ The amount of fees incurred in the prosecution of this part of the case is minimal. Further, the HOA has not established specifically what fees were incurred regarding this as opposed to some other part of the case.

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The HOA argues that the claims in Forange's complaint arose out of contract. Based on A.R.S. §12-341.01, the HOA seeks an award of fees regarding these claims.

The court finds that the claims in Forange's complaint do not arise out of contract. For this reason,

IT IS ORDERED denying the HOA's claim for an award of fees based on §12-341.01 regarding the claims in Forange's complaint.

FORANGE'S CLAIM FOR FEES

The court makes note of the following:

- The claims in the HOA's complaint arise out of contract.
- As noted above, the court has determined that Forange is the prevailing party.
- Forange prevailed on some, but not all of the claims in this consolidated case.
- An award of fees pursuant to §12-341.01 "should be made to mitigate the burden of the expense of litigation to establish a just claim or a just defense. It need not equal or relate to the attorney fees actually paid or contracted...." §12-341.01(B).
- In deciding what amount of fees to award, the court may consider the *Warner*⁴ factors. *See Moedt v. General Motors Corp.*, 204 Ariz. 100, ¶20 (App. 2002). The court has considered these factors.

CONCLUSION

As noted above, costs are awarded to Forange in the amount of \$994.05. Further, the HOA's request for an award of attorney fees is denied. Further, in order to mitigate the burden of the expense of litigation to establish just defenses,

IT IS ORDERED awarding attorney fees to Forange in the amount of \$18,000.00.⁵

⁴ *Associated Indem. Corp. v. Warner*, 143 Ariz. 567 (1985).

⁵ The court has obviously awarded less fees to Forange than it reportedly incurred. For example, the court assumes that it has discretion to award fees to Forange incurred while it was represented by attorney Van Loon. That said, in the exercise of its discretion, the court has declined to award such fees to Forange.

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CONTINUANCE ON DISMISSAL CALENDAR

IT IS ORDERED continuing the case on the Dismissal Calendar for dismissal on **July 7, 2015**. Unless a proposed form of judgment is submitted to the court before that date, all remaining unadjudicated claims will be dismissed without further notice.