

1 **Law Offices of**
2 **J. Roger Wood, PLLC**
3 **Erin S. Iungerich, Esq. (#031590)**
4 4600 South Mill Avenue, Suite 3
5 Tempe, Arizona 85282
6 Phone: (602) 324-7126
7 Fax: (888) 374-0648
8 Email: info@jrogerwoodlaw.com

9 *Attorneys for Defendant*

10
11
12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13
14 **IN AND FOR THE COUNTY OF MARICOPA**

15 TURTLE ROCK III HOMEOWNERS
16 ASSOCIATION, an Arizona non-profit
17 corporation,

18 Plaintiff,

19 vs.

20 LYNNE A. FISHER,

21 Defendant.

22 **Case No. CV2015-095897**

23 **DEFENDANT'S RESPONSE**
24 **AND OBJECTION TO**
25 **PLAINTIFF'S APPLICATION**
26 **FOR ATTORNEY FEES AND**
27 **COSTS**

28 Defendant, Lynne A. Fisher (hereinafter "Ms. Fisher" or "Defendant"), by
and through undersigned counsel, hereby submits her Response and Objection
to Plaintiff Turtle Rock III Homeowners Association's (hereinafter "the

1 Association”) Application for Attorney Fees and Costs. Ms. Fisher challenges
2 the reasonableness of the award requested. The Association is not entitled to an
3 award of \$10,839.70 under the Association’s governing documents or Arizona
4 law; any award must be significantly reduced. Further, the request for costs is
5 outside the scope of the statute and such expenses should not be reimbursed to
6 the Association.
7
8
9

10 This Response is supported by the following Memorandum of Points and
11 Authorities.
12

13 **MEMORANDUM OF POINTS AND AUTHORITIES**
14

15 **I. INTRODUCTION**
16

17 On April 19, 2016, this Court ruled in favor of the Association following
18 an evidentiary hearing. However, the Association’s case sought both the
19 awarding of an injunction and a separate award of fines/penalties against Ms.
20 Fisher. The Association met its burden to be awarded an injunction but the facts
21 did not support the thousands of dollars in fines and penalties requested by the
22 Association.
23
24

25 Now, the Association has requested an award of \$10,839.70 in its
26 Application for Attorney Fees and Costs.
27
28

1
2 **II. ARGUMENT**

3 **A. The Attorneys' Fees Requested by the Association are Unreasonable.**

4
5 The Association's own governing documents contain language limiting
6 the award of attorney's fees to "reasonable attorneys' fees." See Association's
7 Application. Further, A.R.S. §12-341.01 permits this Court to consider the
8 reasonableness of attorney fee awards. By any metric, the Association's
9 requested attorneys' fees totaling \$10,839.70 are patently unreasonable.
10
11

12 It is axiomatic that counsel for the Association is not entitled to its
13 requested attorney's fees totaling \$10,839.70 under a reasonableness standard.
14 Arizona law requires that an award of attorneys' fees be reasonable. See
15 *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 673 P.2d 927 (App. 1983). In
16 order to determine what is reasonable, the court considers the quality of the
17 attorney, the character of the work to be done, the work actually performed by the
18 attorney, and the result. *Id.* citing *Scwartz v. Schwerin*, 85 Ariz. 242, 336 P.2d 144
19 (1959).
20
21
22
23

24 The Association is not entitled to all of its attorneys' fees incurred in this
25 matter. In cases such as this one, the Court is required to award fees pursuant to
26 the terms of the contract provision because contracts for payment of attorney's
27
28

1 fees are enforced in accordance with the terms of the contract. *McDowell Ranch*
2
3 *Community Ass'n v. Simons*, 216 Ariz. 266, 165 P.3d 667 (Ct. App. 2007). Here,
4
5 the Association argues that it is entitled to an award of all of its legal fees and
6
7 costs, but the language of the documents do not support an award of "all", but
8
9 only with those determined to be "reasonable."

10 In addition to the issue of the unreasonable nature of the fees, the counsel
11
12 for the Association utilized block billing in this matter, making it incredibly
13
14 difficult to determine what tasks are associated with the listed time increments.
15
16 See *In re Guardianship of Sleeth*, 226 Ariz. 171, 178, 244 P.3d 1169, 1176 (App.
17
18 2010). In *In re Guardianship of Sleeth*, the court stated that "the superior court
19
20 should consider whether each entry of block-billing provides sufficient detail to
21
22 support an award for that entry." *Id.*

23 In this case, many of the entries are presented as block bills, making it
24
25 virtually impossible to ascertain the reasonableness of the time spent on each
26
27 task. The Affidavit is replete with block billing entries constituting sizable
28
29 amounts of the Association's request for fees. For example, on December 30,
30
31 2015, counsel for the Association billed 1.5 hours for "reviewed case status;
32
33 confirmed no answer filed; discussions with staff; reviewed opposing counsel

1 correspondences and prepared responses to same; received and reviewed draft
2 entry of default; directed same be filed after editing same; reviewed exhibits;
3 reviewed notes; began discovery stages assuming default is not entered." See
4 *Association's Affidavit*. Further, on March 1, 2016, counsel for the Association
5 billed nearly three (3) hours for "prepared 26.1 Disclosure Statement; gathered
6 documents; prepared and provided supplemental correspondence client
7 regarding additional information and exhibits; received and reviewed court
8 minute entry orders with dispositive deadlines." Again on March 25, 2016,
9 counsel for the Association billed 1.5 hours for "prepared draft Statement of
10 Exhibits; prepared comprehensive Pretrial Conference Memorandum for filing
11 with the court per the court orders; sent the same to opposing counsel for
12 review." On April 15, 2016, counsel for the Association billed 4.5 hours for
13 "witness prep and meeting with client; prepared for, travel to and attended
14 trial." On April 21, 2016, counsel for the Association billed nearly three (3)
15 hours for "prepared notice of lodging proposed order and judgment; prepared
16 proposed order and judgment; prepared application and affidavit for attorney
17 fees; prepared statement of costs; prepared application for monetary penalties."

18
19
20
21
22
23
24
25
26
27 *Id.*
28

1
2 Finally, some of the affidavit's entries are questionable as to duration. On
3 October 30, 2015, counsel for the Association allegedly spent **4.5 hours** drafting
4 the Complaint in this matter. The Association's Complaint was five (5) pages in
5 length and one page an hour seems far from reasonable. The Association is not
6 entitled to an award of trumped-up fees.
7

8
9 In addition to the concerns about block billing, the fees are not reasonable
10 due to concerns about the number of professionals involved in what should
11 have been a straightforward CC&R enforcement matter. There were two
12 lawyers and three paralegals all billing time to the instant file at varying hourly
13 rates. More than once, the work done by these five professionals was
14 duplicative. As an example, the entries by Mr. Goodman and Mr. Potter on
15 November 3, 9 and 17 all refer to conversations with Greg Wahl regarding the
16 status of the matter when the only work that seemed to have been completed
17 was the drafting of the complaint.¹ Such duplication is evident throughout as
18 Mr. Potter, Mr. Goodman, Ms. Siebert, Ms. Englesman and Ms. Zeising, all
19 billed time in this matter on all too similar tasks and at all too similar times.
20
21
22
23
24
25

26
27 ¹ This is yet another reason why the Association's attorneys' block-billing is problematic.
28 It appears that some of the tasks between the professionals overlap, but the block-billing prevents a proper analysis of those entries to determine such issues as duplication.

1
2 **B. The Association Did Not Prevail Upon All of its Claims**

3 While there is little doubt that the Court entered a ruling against Ms.
4 Fisher with regard to the equitable claims that it made regarding the condition
5 of the property, the issue of the Association's right to collect fines and penalties
6 is without a final determination. Based on the Defendant's separately filed
7 objection to the award of fines and penalties, should the court refuse to award
8 any amount (or a significantly lesser amount than the \$9,000 requested), there is
9 a question about whether or not the Association should be entitled to a full
10 award of fees when it did not fully prevail. Whether a party is successful is
11 within the discretion of the trial court. *Sanborn v. Brooker & Wake Property*
12 *Management, Inc.*, 178 Ariz. 425, 430, 874 P.2d 982, 987 (App. 1994).
13
14 Consideration should be given to whether the invocation of the process was
15 truly necessary. *Miller v. Uhrick*, 146 Ariz. 413, 415, 706 P.2d 739, 741 (App. 1985).
16
17 Partial success does not preclude a party from obtaining the status of prevailing
18 party and receiving attorneys' fees and costs pursuant to A.R.S. 12-341.01. *Berry*
19 *v. 352 E. S Virginia, L.L.C.*, 228 Ariz. 9, 14, 261 P.3d 784, 789 (App. 2011). In
20
21 addition, a party does not need to win a monetary judgment to be successful in
22
23 an action. *Altfillisch Const. Co. v. Torgerson Const. Corp.*, 120 Ariz. 438, 440, 586
24
25
26
27
28

1 P.2d 999, 1001 (App. 1978). And, in making the determination of a successful
2 party, the Court may utilize a “totality of the litigation test.” *Schwartz v. Farmers*
3 *Ins. Co.*, 166 Ariz. 33, 38, 800 P.2d 20, 25 (App. 1990). It is in the totality test that
4 the Association’s failure on the monetary penalty portion of its claims is
5 germane. Here, and according to the separately filed objection, the Association
6 obtained its equitable relief but did not see its \$9,000 plus fines awarded.
7

8
9 Absent some significant award of fees, the Association can never be considered
10 the total winner and as such a full award of fees is unreasonable and improper.
11

12
13 Not all legal fees are created equal, which is why this Court is permitted
14 to rule on the reasonableness of the award requested. Based on the foregoing,
15 the Association is not entitled to attorneys’ fees of \$10,839.70. The requested
16 award for attorneys’ fees and costs must be reduced.
17

18
19
20 **III. CONCLUSION**

21 The Association’s requested award is both legally unjust and plainly
22 excessive. The governing documents and A.R.S. §12-341.01 permit this Court to
23 consider the reasonableness of attorney fee awards. By any metric, the
24 Association’s request for attorney’s fees totaling \$10,839.70 is patently
25 unreasonable and contrary to law. Defendant respectfully requests a significant
26
27
28

1
2 reduction of the requested award and is prepared for oral argument regarding
3 the same.

4
5 RESPECTFULLY SUBMITTED this 11th day of May, 2016.

6 The Law Offices of J. Roger Wood, PLLC

7
8 By: /s/ J. Roger Wood, Esq.

9 James Roger Wood, Esq.

10 4700 South Mill Avenue, Suite 3

11 Tempe, Arizona 85282

12 Attorney for Defendant

13 **Certificate of Mailing:**

14 Original of the foregoing filed

15 May 12, 2016, with:

16 Superior Court Maricopa County

17 Turbo Court

18 Copies of the foregoing mailed

19 May 12, 2016, to:

20 Clint Goodman, Esq.

21 Scott Potter, Esq.

22 Goodman Law Offices

23 4140 East Baseline Road, Suite 101

24 Mesa, Arizona 85206

25 *Attorney for the Plaintiff Association*

26
27 By: /s/ JRW