IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

TURTLE ROCK III HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation; Plaintiff-Appellee, v. LYNNE A. FISHER, record owner; Defendant-Appellant.	No. 1 CA-CV 2016-0455 Maricopa County Superior Court No. CV2015-095897

Appellee's Answering Brief

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TABLE OF CONTENTS

TABLE OF CITATIONS

CASES

STATUTES and RULES

STATEMENT OF THE CASE

Appellant, Lynne Fisher, ("Fisher") is an Owner of real property located within Turtle Rock III Homeowners Association (the "Association"). [Record on Appeal ("ROA") #25, Exhibit 2, Deed of Ms. Fisher], who was habitually violating the provisions governing the community. All Owners in the Association are governed by the Declaration of Covenants, Conditions, and Restrictions of Turtle Rock III Homeowners Association (the "Declaration"). [ROA #25, Exhibit 1]. Fisher had been in violation of several provisions of the Declaration dating back to before 2014. [ROA #26, Exhibit 4, containing violation letters dated from January 2014].

Specifically, Fisher allowed several conditions to exist on her property that violated multiple covenants in the Declaration, including (1) allowing the side yard gate to the North of the property to sit with rotting wood; (2) missing a side yard gate to the South of the property; (3) allowing her front yard to be overrun with weeds; (4) failing to replace an old wood-rotted garage door with paint chipping away; (5) failing to maintain her patio, including her patio door that was rotting away and clearly damaged; (6) maintaining blinds in the front window that were sun-damaged and visible from neighboring property; and (7) storing items smashed against the front window so they were visible from neighboring property. [ROA #1; *See* photographs at ROA #28]. These conditions violated Article VI, Section 1,

Article VI, Section 3, Article XIII, Section 1, and Article XIII, Section 2 of the Declaration. [ROA #1, #25, Exhibit 1, Declaration].

In order to compel Fisher's compliance with the Declaration, the Association filed its Complaint in November 2015. [ROA #1]. A hearing date was set for April 15, 2016, which was to be a trial on the merits on both issues of the requested injunction and monetary penalties. [ROA #18; 21]. Fisher failed to attend the trial date on April 15, 2016, as noted in the Court's Order. [ROA #30 at Page 1].

After hearing the evidence and the Association's testimony, the trial court granted the Association's request for an injunction, and ordered Fisher to cure her violations, requiring her to (1) replace the backyard door with an appropriate exterior door that closes and locks; (2) maintain the front and back yard clean and free of weeds; (3) remove the sun screen on the front window and replace the dilapidated and sun-damaged blinds with new blinds that close properly; and (4) remove items that are pressed against the front window so that the blinds could be closed properly. [ROA #30 at Page 2]. The Association was also awarded attorneys' fees, costs, and 42% of the monetary penalties requested in the final Order and Judgment filed June 8, 2016. [ROA #39]. Fisher appeals from that Order and Judgment. [ROA #41; 42].

ARGUMENT

As Fisher notes in her Opening Brief, the material facts of this matter are not in dispute. [Opening Brief at 6]. Fisher does not dispute that the conditions described

above existed on her Lot. Indeed, she cannot contest the facts because she waived that right by failing to appear at trial. The main points contested in this appeal are (1) whether the trial court abused its discretion in granting an injunction that required Fisher to maintain the interior, rather than exterior, of her property; and (2) whether the trial court abused its discretion in awarding a small portion of the Association's requested monetary penalties.

I. The Trial Court Did Not Abuse Its Discretion in Granting the Injunction to Cure Fisher's Violations.

The trial court's injunctive orders should be affirmed because (A) Fisher failed to appear at trial, thereby waiving her ability to contest, (B) Fisher's arguments are being raised for the first time on appeal, and (C) *assuming arguendo* Fisher can appeal the injunction, said rulings were based on uncontroverted facts and the express language of the Association's Declaration of Covenants, Conditions and Restrictions.

Standard of Review

Whether a trial court grants or denies a party's request for injunctive relief is within its sound discretion. *See Power P.E.O. Inc., v. Emps. Ins. Of Wausau,* 201 Ariz. 559, 562, 38 P.3d 1224, 1227 (App. 2002); *Ahwatukee Custom Estates Mgmt. Ass'n, Inc. v. Turner,* 196 Ariz. 631, 634, 2 P.3d 1276, 1279 (App. 2000). As such, this Court reviews the trial court's grant of the Association's requested injunction

for a clear abuse of discretion. *See Mahar v. Acuna*, 230 Ariz. 530, 534, 287 P.3d 824, 828 (App. 2012); *Cty. Of Cochise v. Faria*, 221 Ariz. 619, 621, 221 P.3d 957, 959 (App. 2009). Although underlying legal issues related to the injunction may be reviewed *de novo* (s*ee Valley Med. Specialists v. Farber*, 194 Ariz. 363, 366, 982 P.2d 1277, 1280 (1999)), the "abuse of discretion" standard is the most deferential standard to the trial court's decisions.

A trial court abuses its discretion when it "commits an error of law in the process of reaching a discretionary conclusion or when the record, viewed in the light most favorable to upholding the trial court's decision, is devoid of competent evidence to support the decision." *Mahar,* 230 Ariz. at 534 (App. 2012). "The question is not whether the judges of this court would have made an original like ruling, but whether a judicial mind, in view of the law and circumstances, could have made the ruling without exceeding the bounds of reason." *Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 571, 694 P.2d 1181, 1185 (1985).

Therefore, to overturn the trial court's order granting the Association's injunction in this case, it would have to find that the Record is devoid of competent evidence to support that decision.

A. Fisher Failed To Appear At Trial, Thereby Waiving Her Right To Contest the Trial Court's Injunction.

Despite receiving abundant notice and being represented by legal counsel, Fisher failed to appear for trial. Instead, she attempts to raise issues in this appeal as a substitute for participating at the trial court. Admittedly, Fisher's attorney appeared for trial, but counsel's arguments are not evidence, nor do they constitute controverting testimony. *See Luevano v. Holder,* 660 F.3d 1207, 1213 (10th Cir. 2011).

Fisher has waived her right to contest and appeal any of the resulting findings of facts and conclusions of law. *Graf v. Whitaker,* 192 Ariz. 403, 966 P.2d. 1007 (App. 1998) (courts have the authority to control the proceedings before them, and may dismiss a party or enter default if a party does not follow the procedural rules); *Bloch v. Bentfield,* 1 Ariz. App. 412, 418, 403 P.2d 559, 565 (App. 1965) (plaintiff who failed to appear for trial in civil matter waived his right to a jury trial).

B. Fisher's Arguments Are Being Raised For the First Time On Appeal.

Fisher's argument that the trial court abused its discretion by issuing an injunction as to the *interior* of the unit is being raised for the first time on appeal, and should necessarily be disregarded. Indeed, the trial court noted Defendant *never* objected to its entry of injunction [ROA #30 at Page 2] ("With regard to the outstanding violations, there being no objection"). Nor can Fisher point to anywhere in the record where this issue was raised. A party cannot raise issues for the first

time on appeal. *Englert v. Carondelet Health Network*, 199 Ariz. 21, 26-27, ¶13, 13 P. 3d 763, 768-69 (App. 2000).

C. Assuming Fisher Can Raise This Argument, the Injunction Was Based On the Express Language of The Contract and Should be Affirmed.

The trial court did not abuse its discretion in ordering Fisher to replace the "dilapidated blinds" in her front window and to remove items pressed against her front window that prohibit the blinds from closing properly because those issues are *visible from neighboring property*. [ROA #30 at Page 2 (there being "no objection" the trial court found the blinds were "dilapidated"). Put simply, the injunction is supported by express terms of the Declaration and abundant, uncontroveted evidence.

The Declaration is a contract between the Association and all Owners, including Fisher. *Powell v. Washburn*, 211 Ariz. 553, 554, 125 P.3d 373, 374 (2006). The Declaration is recorded for the purpose of protecting the value and desirability of the properties within the Association. [ROA at #25, Exhibit 1, Declaration Recitals].

There are several provisions in the Declaration from which the Association derives its authority to seek the injunction awarded by the trial court in this case. First, Article I, Section 18 defines "Visible from Neighboring Property" to mean, "with respect to any given object, that such object is or would be visible to a person

six (6) feet tall, standing on any part of such neighboring property at the elevation no greater than the elevation of the base of the object being viewed." [ROA #25; Exhibit 1 at Article I, Section 18]. The Declaration also requires each Owner to maintain his or her Lot and all improvements thereon "in a clean and attractive condition." [ROA #25; Exhibit 1 at Article VI, Section 1]. A separate provision prohibits any reflective material, such as aluminum foil, or items such as newspapers, bed sheets, or cardboard to "be installed or placed on the outside or inside of any windows or any other part of a Lot which can be seen from other Lots, Common Areas, or outside the development." [ROA #25; Exhibit 1 at Article VI, Section 4] (emphasis added).

Fisher's front window blinds can be seen from the street, and were maintained in a dilapidated and poor manner such that they detracted from the attractiveness of the neighborhood. [ROA #1, Exhibit B to Complaint, photographs of window violations]. Similarly, the items stored in the front window were also visible from the street, as they were smashed against the window, and clearly prevented the blinds from closing properly. [ROA #1, Exhibit B to Complaint, photographs of window violations]. Based on the cited provisions of the Declaration, it is within the Association's authority to regulate the inside of Owners' homes, to the extent the inside conditions affect the attractiveness of the exterior of the home or run afoul of

the provisions that require Owners to maintain their Lots in an attractive condition. This is precisely what the trial court has done in this case with the injunction.

Specifically, after hearing the undisputed evidence and testimony, the trial court found that the "dilapidated blinds" must be replaced and close properly "so as not to permit view into the interior of the residence." [ROA #30 at Page 2]. Secondly, because the blinds were dilapidated, the trial court ordered they be replaced per the express authority granted in the Declaration. The trial court certainly had the authority to enforce the language of the contract. In summary, the Declaration's servitudes authorized the Association and trial court to control any compliance need that was visible from neighboring property, irrespective of whether said issue was an exterior or interior item.

Further, the trial court's injunction is narrowly tailored. It very specifically required Fisher to replace the unsightly blinds with blinds that "close properly so as not to permit view into the interior of the residence," and to "remove[] or pull[] back" items in the interior of the residence that prevent the blinds from closing properly. [ROA #30 at Page 2]. The trial court is not, as Fisher suggests, instructing her how to "place[] or use[] her furnishings," nor is it allowing the Association to regulate the "goings-ons" inside her home, or regulating how much, what size, or what style of furniture Fisher can keep in her home. [Opening Brief at Page 10 and 12]. Instead, the trial court is simply trying to enforce the intent of the Declaration, such that each

Lot, and the portions of each Lot that are *visible from neighboring property*, are maintained in a neat and attractive manner.

Fisher mischaracterizes the trial court's narrowly tailored order, which regulates only to the extent to allow the front window blinds to close properly, so as not to allow any passers-by the chance to view the interior of her home, and so that the home looks attractive from the street. The trial court's Order granting the injunction related to the issues of the blinds and items against the front window should be affirmed.

II. The Trial Court's Order Awarding Monetary Penalties Should Be Affirmed.

The trial court's order awarding monetary penalties should be affirmed because Fisher waived her right to contest by failing to appear at trial. *See* I(A), *infra*, incorporated herein; *Graf,* 192 Ariz. at 403; *Bloch,* 1 Ariz. App. at 418, *supra*.

Assuming arguendo she did not waive her right to contest the trial court's holdings, the award of monetary penalties should be affirmed because (A) Fisher's argument that the governing documents do not authorize said monetary penalties is being raised for the first time on appeal, (B) conclusory arguments not supported by the record are not sufficient to overturn the trial court, (C) Fisher received abundant notice and opportunities to be heard prior to initiating the lawsuit, and (D) the trial court properly exercised its discretion when it awarded *less than half* of what the Association requested in monetary penalties.

Standard of Review

The award of *reasonable* monetary penalties in this case was a discretionary decision of the trial court and is reviewed for abuse of discretion. *State v. Gay*, 214 Ariz. 214, 150 P.3d 787, 790 (App. 2007) ("We review the court's decision for abuse of discretion if it involves a discretionary issue.") (internal quotations omitted). This Court views the evidence in the light most favorable to the prevailing party. *McFarlin v. Hall*, 127 Ariz. 220, 619 P.2d 729 (1980).

A. Fisher Cannot Argue the Enforcement Policy Did Not Grant Authority To Impose Monetary Penalties For The First Time On Appeal.

As noted above, at no time during the trial did Fisher object or admit any controverting evidence that the fine schedule authorized monetary penalties —

> With regard to the outstanding violations, *there being no objection…*
>
> …
>
> With regard to the Rules and Regulations, counsel for Defendant is correct that no written evidence has been presented to support the fine schedule. However, the Court finds Ms. Curtiss' testimony sufficient under the circumstances to support as a matter of evidence the fine assessment of $25.00 per day.

[ROA #30 at Pages 2-3]. In summary, the trial court noted the *actual* fine policy was not part of the record but concluded the *uncontested* testimony of the Association's witness was sufficient evidence to authorize fines. Fisher cannot

object to or controvert the evidence presented at trial for the first time on appeal. *Englert*, 199 Ariz. at 26-27.

B. Conclusory Arguments Are Not Sufficient To Overturn The Trial Court's Findings That the Association's Governing Documents Grant Authority To Fine.

Other than conclusory statements like "[just] because the board member said so," Fisher cites to nothing in the record to develop her argument. [*See* Opening Brief at 15]. In *State ex rel. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, 30, ¶16, 66 P.3d 70 (App. 2003), the court held that the appellant must make certain that the record on appeal contains all transcripts or other documents necessary for the court to consider the issues raised on appeal. Nothing Fisher cites to, indeed nothing in the record, controverts Ms. Curtiss's testimony (and the trial court's reliance thereon) that the Association's governing documents authorized the fines.

Ms. Curtiss testimony was subject to cross-examination by defense counsel and questioning by the trial court. The trial court may rely on the sworn testimony of a witness with first-hand knowledge of the issues she is testifying to. *See Castro v. Ballesteros-Suarez*, 222 Ariz. 48, 51, 213 P.2d 199, 200 (App. 2009) (The appellate court is bound by trial court's findings of fact, based on oral or documentary evidence, unless clearly erroneous, to give regard to the trial court's ability to judge the credibility of witnesses). The trial court noted that Ms. Curtiss's

testimony established the Association's authority to impose escalating fines, such as daily fines. [ROA #30 at Page 3].

What the record does show is that the Association derives its authority to impose monetary penalties from the Declaration at Article VI, Section 3. [*See* ROA #25, Exhibit 1]. In addition, Fisher *admitted* before trial in the Joint Pretrial Statement that Arizona law authorizes the Association to charge reasonable monetary penalties for violations to the Declaration after notice and an opportunity to be heard. [ROA #29, page 2]. She cannot suddenly change her mind and controvert the record.

After the Association provided Fisher with the fine policy *after* trial (pursuant to the trial court's order), it moved for monetary penalties [ROA #30 at Page 3 (ordering the Association to provide Fisher with a copy of the Enforcement Policy); ROA #31]. In her objection thereto, she merely offered conclusory statements that the governing documents did not authorize fines. [ROA #35 at Pages 3-4]. She did not reference any language. She did not submit a copy of the policy for the trial court's consideration. She was silent on the language in said policy. In short, she offered *nothing* substantive to controvert the sworn testimony, the Declaration, her non-objection to the Pretrial Statement, and the trial court's reliance thereon. [*See*

ROA #30 at Page 3; ROA #35 at Page 3: 23-24].[1] "[C]ounsel's arguments are not evidence." *See Luevano,* 660 F.3d at 1213. Courts do not accept as true conclusory allegations which are contradicted by the evidence presented. *Warren v. Fox Family Worldwide, Inc.,* 328 F.3d 1136, 1139 (9th Cir. 2003) (internal citations omitted). Fisher cannot raise this argument for the first time and the Court does not have anything in the record to evaluate even if she could. *State ex rel. Dep't of Econ. Sec.* 205 Ariz. at 30, ¶16 (the record must be sufficiently developed by the appellant for the Court to evaluate her argument).

C. Fisher Had Abundant Notice and An Opportunity To Be Heard On the Issue of Monetary Penalties.

Assuming arguendo Fisher did not waive her right to contest the exhibits presented at trial due to her absence, her argument still fails. *See* I(A), *infra*, incorporated herein. She cannot point to anything in the record that alters or disputes the trial court's holdings that Ms. Curtiss' testimony is sufficient to support daily fines. Fisher was given both "notice" of the fines and "an opportunity to be heard." [*See* A.R.S. § 33-1803(B); ROA #26-27].

Fisher can hardly claim that the Association failed to provide her with notice and an opportunity to be heard, as required by A.R.S. § 33-1803(B). The uncontested

[1] *See also* ROA #38 at Page 3 ("Pursuant to this Court's order, Defendant was provided with the Association's Enforcement Policy yet she is ironically silent about those provisions when she argues over reasonableness").

and uncontroverted evidence and testimony presented at trial established Fisher received notice in over 90 letters dating back to January 2014 [ROA #26-27].[2] Indeed, by September 2015, Fisher had been notified over 90 times, on a near monthly basis, that she was incurring monetary penalties for her failure to cure multiple violations. These fines totaled $5,315.25. [ROA #31; #25, Exhibit 3, Ledger].

The first time the Association assessed a $25 monetary penalty was February 21, 2014. [ROA #26, Exhibit 4]. She received notice of the violation and an opportunity to be heard for that fine on January 29, 2014. [ROA # 26, Exhibit 4]. Even if *that* $25 fine may have been assessed prematurely, the subsequent fines were assessed well over 30 days *after* the initial January 29th courtesy notice. The trial court understood that all of the subsequent letters and fines dated back to the original notice when it held:

> With regard to the outstanding violations, *there being no objection…*
>
> …
>
> notwithstanding what appears to be some deviation from the 30 day requirement, the postings have been made

[2] Fisher listed no exhibits or witnesses other than herself in the Joint Pretrial Statement [ROA #29], and since she failed to appear to testify to the contrary, the Association's evidence is uncontroverted. Indeed, she did not object to the Pretrial Statement in the Record and admitted facts therein.

> retroactive of the second letter of violation. There has been no violation of the 30 day notice requirement.

[ROA #30 at Page 2] (emphasis added). Even if Fisher is correct in stating the original $25 fine was initially applied to the ledger before the full 30 days, that discrepancy does not invalidate any of the subsequent fines imposed well after 30 days. This is a moot point because the trial court gutted fines by awarding only 42% of the requested amounts. It can easily be determined then that the first $25 fine falls under those fines not awarded by the trial court.

Essentially, Fisher illogically argues that none of the fines could be imposed because the "notice and opportunity to be heard" requirement resets every time a subsequent letter *for the same* violation was sent. This is simply not true nor supported by any evidence or the record.

With respect to the per day fines, after the Association received no response from Fisher, and exhausted every other remedy available to it, it moved to per day monetary penalties per the authority vested in its governing documents and as testified to by Ms. Curtiss. [*See* ROA #30 at Page 3]. Fisher received correspondence from the Association's counsel on September 16, 2015, which stated:

> Additional fines will be assessed to your account at a rate of $25.00 per day from the date of this letter until the violations are remedied. The Association recognizes your right to appeal the violations above. If you wish to appeal the additional fines and violations set forth above, you must provide timely written request of a hearing within 10 calendar days of this letter.

[ROA #27, Exhibit 4, September 16, 2015 letter from counsel]. The amount of the $25 per day fines totaled an additional $3,850.00 by the time Fisher finally brought her Lot into compliance. [ROA #31]. Again, the authority for this amount is uncontroverted for reasons set forth in Paragraphs I(A) and II(A-B), *infra*, incorporated herein.

D. The Trial Court Weighed the Reasonableness of The Monetary Penalties, and Awarded The Association Less Than Half of Its Requested Monetary Penalties.

In its Application for Monetary Penalties, the Association requested a total of $9,165.25. This amount included $5,315.25, which were fines charged to Fisher's ledger by the Association prior to September 16, 2015. It also included $3,850.00, which were fines assessed at $25 per day from the date of the Association attorney letter, September 16, 2015, until April 15, 2016. [ROA #31; ROA #25-27, Exhibits 3 (ledger) and 4 (violation letters)]. In its Order, the trial court, in its discretion, cut the requested monetary penalties by more than half, only awarding $3,850.00 in monetary penalties. [ROA #39 at Page 2]. Therefore, Fisher's concerns of reasonableness were already addressed by the trial court by only awarding 42% of the total requested amount. Given the nature of the violations and the length of time the violations went uncured, the fines awarded were reasonable and supported by the record. *See Makeever v. Lyle,* 125 Ariz. 384, 388, 609 P.2d 1084, 1088 (App. 1980) (associations may exercise broad powers, as long as the decisions are not

"arbitrary and capricious, bearing no reasonable relationship" to the association's concepts).

Contrary to Fisher's assertions, there is no reason why the $25 per day penalty was unreasonable. Fisher cites to no Arizona authority holding daily fines are punitive and can never be awarded in this context. First, nothing in the record supports her facts and arguments on this point. *See* I(A) and II(A-B), *infra.* Second, Fisher relies on one outdated twenty-year old case from Alaska, which is distinguishable. *See Kalenka v. Taylor,* 896 P.2d 22 (Alaska 1995). *Kalenka* involved an entirely different context, where former owners (who subdivided the lots) sued the new owners who built on the lots, for a violation of the contract between the parties. The former owners specifically sought both "punitive damages" of $1 million, plus "additional punitive assessments" of $1,000 per day for the new owners' violations. The Supreme Court of Alaska held that the former owners could not recover the punitive damages sought from a breach of contract claim, and found that the "assessed penalties" were also not recoverable, especially since the $1,000 per day penalty did not distinguish between degrees of violations of the Declaration. *See Kalenka,* 896 P.2d at 229. Unlike the record in the *Kalenka* case, Fisher never appeared to contest the evidence presented during trial nor did she develop the record to make the argument now.

E. The Association's Monetary Penalties Did Not Violate Fisher's Due Process Rights, but Instead Were a Product of Her Own Creation.

Fisher waived her ability to argue due process as it is being raised for the first time on appeal and was waived due to her failure to attend trial. *See* I(A) and II(A-B), *infra*, incorporated herein. Notwithstanding, Fisher herself notes that there is no case law in the homeowner's association context addressing procedural due process rights, and also notes that associations are not state actors. [Opening Brief at 18-19]. Simply put, the trial court did not ignore Fisher's procedural rights. Even with notice of the trial and an opportunity to be heard in this matter, she *still* failed to appear. [*See* ROA #30 at Page 1]. Fisher's due process challenge is the product of her own creation and she cannot now claim that the court erred in awarding the Association its monetary penalties.

The case cited by Fisher, *Salas v. Ariz. Dept. of Economic Sec.*, 182 Ariz. 141 893 P.2d 1304 (App. 1995), dealt with unemployment benefits, and the notice required for withholding such entitlements. This is an important distinction, because that specific context affected the claimant's "means to live." *Id.* at 1307. Here, the fines were relatively small, at $25 per day, after years of violations, and had no bearing on Fisher's standard of living. Further, as noted above, Fisher did in fact receive notice of the fines dated back to February 2014, and had multiple opportunities to be heard regarding these issues.

The trial court did not abuse its discretion in awarding the Association a portion of its requested monetary penalties. As such, the order awarding the penalties should be affirmed.

REQUEST FOR ATTORNEYS' FEES

Pursuant to Rule 21(a) and (b) of the Arizona Rules of Civil Appellate Procedure ("ARCAP"), the Association hereby gives notice of its intention to claim attorneys' fees and taxable costs incurred in responding to this appeal. The Association claims it is entitled to attorneys' fees pursuant to the Declaration at Article XIII, Section 2, which states:

> In the event the Board employs an attorney or attorneys…to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, Article of Incorporation, Bylaws, or any Rules and Regulations of the Association, whether or not a lawsuit is filed, such owner agrees to pay reasonable attorneys' fees and costs thereby incurred, and all other expenses incurred by the Association, in addition to any other amounts due from the owner or any other relief or remedy obtained against said owner.

[ROA #25, Exhibit 1]. This provision entitles the Association to recover its attorneys' fees in this enforcement action appeal. A contractual provision for attorneys' fees must be enforced according to its terms. *McDowell Mountain Ranch Ass'n v. Simons*, 165 P.3d 667, 216 Ariz. 266 (App., 2007); *Chase Bank of Ariz. v. Acosta*, 179 Ariz. 563, 575, 800 P.2d 1109, 1121 (App. 1994).

Assuming arguendo that the Association is not entitled to attorneys' fees pursuant to an express contractual provision, Plaintiff is entitled to attorneys' fees pursuant to A.R.S. § 12-341.01.

CONCLUSION

For the reasons stated above, the trial court's order granting the Association's injunction and order awarding monetary penalties should be affirmed, as the trial court was within its discretion to grant the injunction and award the reasonable penalties. Further, this Court should award the Association its attorneys' fees and taxable costs pursuant to the notice above.

Dated this 8th day of February, 2017.

Respectfully submitted,

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