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VILLAGEOAK.0067

Attorneys for Plaintiff

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI**

**VILLAGE OF OAKCREEK
ASSOCIATION,**

Plaintiff,

vs.

**LANCE E. BONHAM; JOHN DOES I-
V, inclusive; JANE DOES I-V, inclusive;
BLACK CORPORATIONS I-V,
inclusive; WHITE PARTNERSHIPS I-
V, inclusive; Unknown Heirs and
Devises of each of the above-named
Defendants, if deceased,**

Defendants.

Case No.: V1300-CV2022-80081

**PLAINTIFF'S OBJECTION TO
DEFENDANT'S APPLICATION FOR
AN AWARD OF ATTORNEY'S FEES
AND COSTS**

Assigned to Hon. Linda Wallace

Plaintiff Village of Oakcreek Association, by and through undersigned counsel, hereby requests that any attorney's fee award to Plaintiffs be adjusted downward from the requested amount of \$13,697.00 because of excessive time spent on several tasks and because several billing entries were from the years before the instant Complaint was even filed.

Additionally, Defendant's attorney has specialized in homeowners association law for several years and the amount of time expended by Defendant's counsel exceeds the amount of legal work necessary for this case.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. The Court Has Discretionary Authority to Award Attorneys’ Fees.**

3 Arizona Revised Statutes § 12-341.01 grants the Court discretionary authority to award
4 attorneys’ fees to successful litigants in contested contract actions. The Court should consider
5 several factors in deciding whether to award Defendant his attorneys’ fees and costs incurred
6 in this lawsuit under A.R.S. § 12-341.01: (1) the merits of the claim or defense brought by the
7 unsuccessful party; (2) whether litigation could have been avoided or settled; (3) whether
8 assessing fees against the unsuccessful party would result in extreme hardship; (4) whether the
9 successful party prevailed with regard to all relief sought; (5) whether the claims at issue were
10 novel; and (6) whether an award of fees would deter future claimants with merited claims from
11 bringing such actions. *See Associated Indemnity v. Warner*, 143 Ariz. 567, 694 P. 2d 1181
12 (1985). In his Application for Attorney’s Fees and Costs, Defendant fails to address all of the
13 *Warner* factors. For the reasons set forth below, Defendant is not entitled to the requested
14 attorneys’ fees.

15 **A. The Association’s Complaint Has Merit.**

16 This case involved contract interpretation, specifically, interpretation of the
17 Association’s governing documents, including the 2016 Amendment regarding short term
18 rentals. The Association’s interpretation of its governing documents prohibiting businesses
19 being operated from the home, and the Association’s validly-passed 2016 Amendment
20 prohibiting short term rentals gave the Association the right to demand that Defendant cease
21 his short term rental business operation from his property. Ultimately, the Court ruled in favor

1 of the Defendant. However, such determination does not negate the fact that the argument
2 presented by the Association had merit because the Short Term Rental Amendment was passed
3 in 2016, *before* the Defendant obtained his property the following year.

4 **B. The Litigation Could Have Been Avoided.**

5 Plaintiff filed this lawsuit on April 5, 2022, and Defendant filed his Motion to Dismiss
6 on May 24, 2022, with limited communication to Plaintiff's counsel regarding the merits of the
7 case or an attempt to settle out of court.

8 It would be improper to burden the Association with the expenses it only incurred as
9 the result of Plaintiffs' premature resort to legal action. Accordingly, the Association
10 respectfully requests the Court not award any fees related to the Counterclaim pursuant to
11 A.R.S. § 12-341.01, or at least substantially reduce them.

12 **C. Assessing Fees to the Association Would Result in Extreme Hardship to the
Association and Its Operating Budget.**

13 Any judgment for attorneys' fees against the Association will necessarily affect the
14 Association's operating expenses. The Association has limited funds that are yearly budgeted
15 for the operation of the Association and its common areas and facilities. A large, unexpected
16 award of attorneys' fees will negatively impact the community and result in extreme hardship
17 to the Association. Consequently, this factor weighs in favor of the Association.

18 **D. Defendant Did Not Prevail with Regard to All Relief Sought.**

19 Defendant sought dismissal of the case on two grounds. The first, that the amendment
20 in question was invalid under *Kalway*, and the second, that the amendment did not have enough
21

1 votes to be enacted. Defendant did not succeed on his second ground. Accordingly, Defendant
2 did not prevail with regard to all the relief he sought in this lawsuit and this factor weighs in
3 the Association’s favor.

4 **E. The Claims at Issue in this Lawsuit Were Not Novel.**

5 The issues involved in this case were not novel or particularly difficult, and several of
6 the facts were stipulated to in advance by both parties. The Association’s Complaint was on
7 thirty-five paragraphs long, and none of the legal issues presented were complex. Therefore,
8 this factor weighs in favor of the Association. While *Kalway* was cited in Defendant’s motion
9 to dismiss, the *Kalway* case was published mere weeks prior to the filing of the lawsuit; the
10 Defendant had been in violation of the Declaration that was in effect at the time he became
11 owner of the property for years prior to the *Kalway* case. Validity of short-term rental
12 restrictions is not a novel claim in homeowners association litigation.

13 **F. Future Claimants with Merited Claims Will Not be Deterred from Bringing
14 Their Actions if the Court Does Not Award Defendant all of his Fees.**

15 An award of attorney’s fees to Defendant will no doubt encourage other members of
16 homeowners associations to rush to court instead of trying to resolve short-term issues with
17 their associations. Specifically, owners who even took title to the property after the 2016
18 amendment passed, consistent with this Court’s ruling. If the Court awards Defendant all its
19 requested fees, future claimants will not be deterred from bringing their actions. Future
20 claimants should be inclined to seek resolution with their associations before rushing to court
21 to file a lawsuit. Thus, this factor weighs in favor of the Association.

1 As a result, the majority of the *Warner* factors weigh in the Association’s favor, and
2 therefore, Plaintiffs should not be awarded all of their requested fees.

3 **G. Plaintiffs Can Only Recover for Reasonable Attorneys’ Fees and Costs.**

4 Although Plaintiffs’ counsel’s billing entries generally seem to comply with *Schweiger*
5 *v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 188, 673 P.2d 927, 932 (App. 1983), several
6 of the time entries for preparing normal documents in this type of breach of contract case appear
7 excessive and repetitive. For example:

- 8 • Defendant counsel’s bill for legal services from January 2020 through and including
9 November 2021 are for services from the *years* before the Complaint was filed and are
10 not appropriate for the Defendant to recover. These amounts total 9.6 hours and are
11 woven throughout Defendant counsel’s billing statements and made to look like they
12 were done contemporaneously with the lawsuit, but are in fact listed out of
13 chronological order.
 - 14 ○ For example, the first part of Defendant’s Exhibit A from 2020 and 2021
15 contains 3 billed hours of work. In the pages that follow, there are an additional
16 5.6 hours placed in between billing entries from the instant case, but are from
17 2021.
- 18 • Defendant’s counsel also billed 7.1 hours for “Reviewing the CC&Rs”. *See* Entries
19 dated August 11, 2020, January 25, 2021, March 16, 2021, and May 23, 2022.
- 20 • Defendant’s counsel billed .90 hours for “Considered legal theories in preparation for
21 OSC hearing” on June 2, 2022, but had previously had correspondence with Plaintiff’s
counsel on June 1st that there was an agreement to stipulate to vacating the Order to
Show Cause Hearing set for June 7, 2022.
- Defendant’s counsel’s legal research was redundant, vague, and in most places, wholly
unnecessary for drafting a Motion to Dismiss. In fact, he billed 9.6 hours for conducting
legal research – 2.70 of which was in the years before the Complaint was even filed,
and 6.9 hours after he filed the Motion to Dismiss. For example:
 - On 03/16/2021, he “Reviewed CC&Rs to develop legal theories re rental
restriction; Conducted legal research re various amendments; Drafted and
revised letter to Association re rental restrictions” for 2.70 hours

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- On May 23, 2022, he again “Conducted legal research re various amendments to the Declaration; Reviewed Bylaws and Amendments” this time for 3.20 hours
- Oddly, on June 1, 2022, June 3, 2022, June 14, 2022, and June 19, 2022 he billed a total of 6.9 hours to “Conduct legal research”, *after he had already filed the Motion to Dismiss on May 24, 2022.*

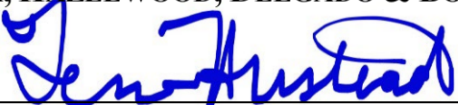
Based on the above, Defendant’s Application reflects approximately at minimum 17.4 excessive hours, or \$6,003.00, that should not be awarded.¹ Any award of fees to Defendant should be adjusted downward, accordingly.

II. CONCLUSION

This Court has the discretion to award attorneys’ fees as well as the discretion to fix an appropriate amount. For the reasons set forth above, Defendant’s request for fees should be reduced by at *least* \$6,003.00 for excessive time spent on the case.

RESPECTFULLY SUBMITTED this 17th day of October, 2022.

CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP

By: 

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THE FOREGOING electronically filed this 17th day of October, 2022, with:

Clerk of the Court
Yavapai County Superior Court
www.AZTurboCourt.gov

¹ This reflects the 9.6 hours billed prior to the filing of the lawsuit, the .90 hours billed for preparing for a hearing that was vacated, and the 6.9 hours of extraneous legal research billed after he had filed the Motion to Dismiss.

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COPY of the foregoing delivered
via TurboCourt E-Service Notification
this 17th day of October, 2022, to:

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By: 

