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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 devisees of
each of the above-names Defendants, if
deceased,

Defendants.

Case No.: V1300-CV2022-80081

**DEFENDANT'S REPLY IN SUPPORT
OF APPLICATION FOR ATTORNEY'S
FEES AND COSTS AND ENTRY OF
JUDGMENT**

Pursuant to the Court's September 8, 2022 Ruling, Defendant Lance E. Bonham ("Bonham" or "Defendant"), by and through undersigned counsel, hereby replies in support of his Application for Attorney's Fees and Costs and Entry of Judgment.

First, the Association does not dispute fees are recoverable pursuant to contract or the fact that when the contractual provision calls for an award of attorneys' fees to the prevailing party, the award is mandatory. Castle v. Barrett-Jackson Auction Co., LLC, 229 Ariz. 471, 475, ¶ 17 (App. 2012). The award of fees is not discretionary, and the Association performed the entirely wrong analysis as Associated Indemnity v. Warner does not apply. 143 Ariz. 567, 694 P.2d 1181, (1985).

1 The only issue the Court should consider is whether the attorney’s fees are
2 “clearly excessive.” Entirely disposing of a cause of action brought in an aggressive
3 manner seeking a Preliminary and Permanent Injunction for the attorney’s fees contained
4 in Defendant’s fee application is more than reasonable and the fees are not excessive.

5 In McDowell Mountain Community Ass’n Inc. v. Simons, the Court of Appeals
6 established that a mandatory fee provision in a Declaration such as this requires an award
7 of fees. 216 Ariz. 266, 165 P.2d 667, (2007). The Court stated,

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9 Our application of Elson to the circumstances of this case is supported by
10 cases in other jurisdictions. *See, e.g., F.H. Krear & Co. v. Nineteen Named*
11 *Trustees*, 810 F.2d 1250, 1263 (2nd Cir.1987) (holding that “when a
12 contract provides that in the event of litigation the losing party will pay the
13 attorneys' fees of the prevailing party, the court will order the losing party
14 to pay whatever amounts have been expended by the prevailing party, so
15 long as those amounts are not unreasonable”); *Storm Assoc., Inc. v.*
16 *Baumgold*, 186 Conn. 237, 246, 440 A.2d 306 (1982) (holding the
17 reasonableness of attorneys' fees request pursuant to a contractual provision
18 will be “presumed” absent evidence of its unreasonableness); *Dunn v.*
19 *Sentry Ins.*, 462 So.2d 107, 108–09 (Fla.App.1985) (holding that a court
20 should uphold a contractual attorneys' fees provision unless it is facially
unreasonable or found excessive); *Cent. Progressive Bank v. Bradley*, 502
So.2d 1017, 1017 (La.1987) (holding that a court may inquire into the
reasonableness of contractual agreements for attorneys' fees when the
requested fees are manifestly excessive); *Conway v. Am. Nat'l Bank of*
Danville, 146 Va. 357, 364–65, 131 S.E. 803 (1926) (holding that a fee
stipulated by contract is prima facie reasonable and placing the burden on
the challenging party to prove the amount is excessive or unreasonable).

21 *Id.* at 270.

22 The Court went on to hold that the submission of a China Doll Affidavit establishes the
23 prima facie requirement and the burden shifted to show the fees were “clearly excessive.”
24 The amounts requested are not unreasonable or clearly excessive and the Association has
25 not articulated any reason why the fees are unreasonable or excessive. Instead, the
26 Association falsely states that prelitigation fees should not be recovered and nakedly
27 asserts too much time was spent reviewing legal documents and performing research.
28

1 First, *Fees are recoverable for pre-complaint investigation and evaluation of a*
2 *claim.* First Nat'l Bank of Ariz. v. Continental Bank, 138 Ariz. 194, 673 P.2d 938 (App.
3 1983)(holding pre-complaint and evaluation of the potential claim part of the process and
4 expense of litigation). Defendant did not bring this action and did not instigate any of the
5 legal fees that were incurred before the action commenced. Rather, Defendant spent a
6 reasonable amount of time accurately informing the Association of its flawed reasoning
7 and responding to a multitude of violation letters, threats from the property manager and
8 harassment of renters at the property. The Association did not heed the warning or
9 modify its behavior, proceeded anyway, and failed. Defendant should not be burdened
10 with the expense of the Association's actions.

11 Second, the various legal research and analysis was not clearly excessive. The
12 Association complains of the amount of time reviewing CC&Rs and performing legal
13 research and alleges that because research took place after certain filings, it was therefore
14 unnecessary. The Association's assertion that an agreement was established on June 1,
15 2022 thereby relieving the need to prepare is incorrect. There was a tentative agreement
16 in place that also required stipulating to certain facts, which was what was being
17 developed. Additionally, the Association's counsel asserts that research after the filing of
18 a motion to dismiss was unnecessary. A motion does not stand alone in a vacuum at the
19 time of filing. Theories are developed over the course of the litigation and research is
20 necessary to formulate a reply. The governing documents are complex legal documents.
21 There are two sets of CC&Rs (an Original and a Restated and Amended), including a
22 multitude of amendments. All documents were reviewed and analyzed in detail.
23 Moreover, all relevant law on the ability to amend Declarations was analyzed and
24 reviewed.

25 The Association has not fulfilled its burden to demonstrate Bonham's attorney's
26 fees are clearly excessive. Bonham has now incurred Fifteen thousand, forty-two dollars
27 and 50/100 (\$15,042.50) in attorney's fees; and One hundred, ninety-seven dollars and
28 56/cents (\$197.56) in costs, for a total of Fifteen thousand, two hundred, forty dollars and

1 06/cents (\$15,240.06). Bonham should be awarded \$15,240.06 in attorney's fees and
2 costs, which now includes the attorney's fees related to this Reply. (See Supplemental
3 Billing, Attached as Exhibit 1).

4 **RESPECTFULLY SUBMITTED** this 28th day of October, 2022.

6 THE BAINBRIDGE LAW FIRM, L.L.C.

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8 /s/ Mark J. Bainbridge
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12 Efiled this 28th day of October, 2022, with:

13 Clerk of the Court
14 Yavapai County Superior Court
15 <http://www.azturbocourt.gov>

16 COPY of the foregoing emailed and e-served
17 this 28th day of October, 2022, to:

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26 By: /s/ Suzan Oxley