

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

VILLAGE OF OAKCREEK
ASSOCIATION,

Plaintiff/Appellant,

v.

LANCE E. BONHAM,

Defendant/Appellee.

Court of Appeals Division One
No. 1 CA-CV 22-0780

Yavapai County Superior Court
Case No. V1300-CV2022-80081

**APPLICATION FOR ATTORNEY’S FEES AND COSTS
OF DEFENDANT/APPELLEE LANCE E. BONHAM**

Mark J. Bainbridge (#023082)
THE BAINBRIDGE LAW FIRM, L.L.C.
7000 N. 16th St., Ste. #120-424
Phoenix, AZ 85020-5547
Phone (602) 274-6369
Email for Minute Entries: info@bainbridgelawfirm.com
Attorney Email: mark@bainbridgelawfirm.com
Attorney for Defendant/Appellee Bonham

Defendant/Appellee Lance E. Bonham (“Defendant” or “Bonham”) hereby submits this Application for Attorney’s Fees and Costs on appeal Pursuant to ARCAP 21(b).

To date, Defendant has incurred Six Thousand, Four Hundred, Eighty-Six Dollars and No Cents (\$6,486.00) in attorney’s fees and One Hundred, Fifty-Four Dollars and Eighty-One Cents (\$154.81) in costs. Thus, as the prevailing party, Defendant is entitled to total recovery of Six Thousand, Six Hundred, Forty Dollars and Eighty-One Cents (\$6,640.81).

Defendant is entitled to recovery of attorney’s fees on appeal under Arizona Rule of Civil Appellate Procedure 21(a), A.R.S. §§ 12-341 and 12-341.01, as well as Section 9.05 of the Declaration. This Application is supported by the accompanying Memorandum of Points and Authorities and the Affidavit of Mark J. Bainbridge, which is attached hereto as Exhibit A.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

The Association brought an action against Bonham seeking to prohibit him from renting property based on an Amendment to the Declaration that was adopted after Bonham was the owner of the property. The Superior Court ruled that the Amendment did not apply to Bonham because the amendment was not reasonably foreseeable. This Court affirmed the Superior Court’s ruling and Bonham now seeks his attorney’s fees and costs on appeal.

II. DEFENDANT IS THE PREVAILING PARTY ON APPEAL AND IS ENTITLED TO FEES AND COSTS PURSUANT TO ARCAP 21.

In its October 3, 2023 Memorandum Decision, the Court affirmed the judgment and stated, “We affirm. Bonham requests his attorney fees on appeal under A.R.S. §§ 12-341, -341.01, and §9.05 of the Declaration. We grant Bonham’s fees and costs upon compliance with ARCAP 21.” Moreover, the

Affidavit of Mark J. Bainbridge, attached hereto and incorporated herein at Exhibit A, sets forth the following:

- A) The dates on which each person for whom fees are claimed performed services;
- B) The time each person expended for each task on each date;
- C) A description of the service;
- D) The identity of the person performing the service; and
- E) Whether the fee is fixed or contingent, and if hourly, the applicable rate for each person.

ARCAP Rule 21(b)(3).

The statement itemizes taxable costs allowed pursuant to A.R.S. §12-341. Bonham's costs include only the Court of Appeals filing fee of \$154.81.

III. DEFENDANT IS ENTITLED TO AN AWARD OF HIS ATTORNEY'S FEES AND COSTS UNDER ARIZONA LAW.

A declaration of covenants, conditions, and restrictions constitutes a contract between a subdivision's property owners as a whole and the individual lot owners. *Ahwatukee Custom Estates Mgmt. Ass'n v. Turner*, 196 Ariz. 631, 633-34, ¶ 5 (App. 2000). Accordingly, as a result of this dispute arising out of contract, and pursuant to A.R.S. §§ 12-341 and 12-341.01, this Court should award Defendant his attorney's fees and costs incurred in furtherance of the appeal.

Section 9.05 of the Declaration also supports an award of Bonham's fees. Section 9.05 states,

Anyone owning or having an interest in the Property, including the Association, may bring an appropriate action in the proper court to enjoin or restrain the violation or to compel compliance with the covenants, Stipulations or restrictions or to collect damages or other dues on account thereof. In such action, the prevailing party will be entitled to recover the costs of the proceeding and such reasonable attorney fees as may be awarded by the court and not by a jury.

(IR 14).

IV. THE REQUESTED ATTORNEY'S FEES ARE RECOVERABLE AS COUNSEL UNDERTOOK ONLY WORK THAT WAS NECESSARY.

“The Prevailing Party on appeal is entitled to recover a reasonable attorney’s fee for every item of service which, at the time rendered would have been undertaken by a reasonable and prudent lawyer to advance or protect his client’s interest on appeal.” *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 188 (App. 1983). In determining whether attorneys’ fees incurred are reasonable, the court will look at several factors, including the quality of the lawyers involved, the character of the work necessary and work actually performed, and the results obtained. *Id.*

Attorney Mark J. Bainbridge is an accomplished business and real estate attorney. Defendant’s attorney’s fees are reasonable and necessary. The attorney’s fees included charges for reviewing and drafting the necessary pleadings and performing legal research, among other things. The fees incurred on appeal are supported by the attached affidavit and itemized billing statement. (*See Exhibit A*). No superfluous work was performed and the amounts incurred were reasonable and necessary. Accordingly, Defendant has satisfied all requirements and prerequisites to the recovery of his attorney’s fees on appeal.

IV. CONCLUSION.

Pursuant to Section 9.05 of the Declaration and A.R.S. §12-341, both upon compliance with ARCAP 21, it is proper for the Court to award Defendant his incurred (and reasonable) attorney’s fees and costs.

Defendant thus hereby requests attorney’s fees and costs on appeal against Plaintiff in the amount of Six Thousand, Four Hundred, Eighty-Six Dollars and No Cents (\$6,486.00) in attorney’s fees and One Hundred, Fifty-Four Dollars and Eighty-One Cents (\$154.81) in costs, for a total recovery of Six Thousand, Six Hundred, Forty Dollars and Eighty-One Cents (\$6,640.81).

RESPECTFULLY SUBMITTED this 12th day of October, 2023.

THE BAINBRIDGE LAW FIRM, L.L.C.

/s/ Mark J. Bainbridge
Mark J. Bainbridge (#023082)
THE BAINBRIDGE LAW FIRM, L.L.C.
7000 N. 16th St., Ste. #120-424
Phoenix, AZ 85020-5547
Attorney for Defendant/Appellee Bonham