

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

VILLAGE OF OAKCREEK  
ASSOCIATION,

Plaintiff / Appellant,

vs.

LANCE BONHAM; JOHN DOES I-V,  
INCLUSIVE; JANE DOES I-V,  
INCLUSIVE; BLACK CORPORATIONS  
I-V; WHITE PARTNERSHIPS I-V,  
inclusive; Unknown Heirs and Devisees of  
each of the above-names Defendants, if  
deceased,

Defendant / Appellee.

**Court of Appeals  
Division One  
1 CA-CV 22-0780**

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

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**PLAINTIFF’S OBJECTION TO DEFENDANT/APPELLEE’S  
APPLICATION FOR ATTORNEY’S FEES AND COSTS**

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Plaintiff Village of Oakcreek Association, by and through undersigned counsel, hereby requests that any attorney's fee award to Defendant/Appellee be adjusted downward from the requested amount of \$6,640.81 because of excessive time and duplicative time spent on several tasks. 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.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **A. The Court has discretionary authority to award attorney's fees.**

Arizona Revised Statutes § 12-341.01 grants the Court discretionary authority to award attorney's fees to successful litigants in contested contract actions. A plaintiff can only recover for *reasonable* attorney's fees and costs. Here, several of Plaintiff's attorney's time entries for preparing normal documents are excessive and repetitive. For example, Defendant's counsel billed for reviewing the Opening Brief twice, on two different dates:

On March 23, 2023 he "Reviewed Opening Brief" for .5 hours.

On April 5, 2023, he "Reviewed Association's Opening Brief and reviewed cases cited therein" for 1.3 hours.

Defendant's counsel also billed 1.1 hours for "Conducted legal research re standard of review." Plaintiff contends that 1.1 hours for conducting legal research for a standard that applied to the Plaintiff's motion is excessive, especially considering

Defense counsel's own statement that "he is an accomplished business and real estate attorney." (Def. App for Attorney's Fees and Costs, at 4).

Defendant's counsel billed repetitively for the same drafting of the Answering Brief:

On April 5, 2023, he "Drafted and revised Answering Brief" for 3.3 hours.

On April 7, 2023, he "Drafted and revised combined statement of the case and facts" for 2.7 hours.

On April 7, 2023, he again "Drafted and revised legal argument" for another 4.7 hours.

On April 14, 2023, he then again "Drafted, revised, and finalized Answering Brief" for .9 hours.

These 11.6 hours of multiple "drafting" entries are redundant in addition to vague. To believe this narrative, we would have to assume Plaintiff's counsel spent 3.3 hours drafting and revising the brief on one day, then two days later, spending an additional 7.4 hours drafting and revising the same Brief he had already billed to draft and revise.

Based on the above, Defendant's Application reflects approximately at minimum 7.25 excessive hours, or \$2,501.25, that should not be awarded. Any award of fees to Defendant should be adjusted downward, accordingly.

### **B. Additional Factors for the Court to Consider When Awarding Attorney's Fees**

The Court should consider several factors in deciding whether to award Defendant his attorney's fees and costs incurred in this lawsuit under A.R.S. § 12-

341.01, including the merits of the claim or defense brought by the unsuccessful party, whether litigation could have been avoided or settled, whether assessing fees against the unsuccessful party would result in extreme hardship, whether the successful party prevailed with regard to all relief sought, whether the claims at issue were novel, and whether an award of fees would deter future claimants with merited claims from bringing such actions. *See Associated Indemnity v. Warner*, 143 Ariz. 567 (1985).

In the instant matter, assessing fees to the Association, a non-profit organization, would result in hardship to the Association and its operating budget. Any judgment for attorney's fees against the Association will affect the Association's operating expenses. The Association has limited funds for the operation of the Association and its common areas and facilities. A large, unexpected award of attorney's fees will negatively impact the community and result in extreme hardship to the Association and the homeowners who live there.

Additionally, the lower court's decision in this case centered around the recently decided *Kalway v. Calabria Ranch HOA, LLC*, 2022 506 P.3d 18 (Ariz. 2022) case. This Court should take into consideration the novel issues created by the lower court's ruling of which Plaintiff then sought clarification. The lower court's interpretation of *Kalway* issues in its decision required the Plaintiff to bring additional questions to the Court of Appeals. In the context of these new legal issues, the claims were meritorious

and a challenge to the lower court's decision was warranted in order to get further explanation.

If these duplicative fees are not reduced, the non-profit Plaintiff would be punished for bringing forth questions that have merit. Furthermore, an award of excessive attorney's fees will no doubt encourage other members of homeowners associations to rush to the courts instead of trying to resolve issues with their associations. If the Court awards all of Defendant's requested fees, future claimants will lack motivation to seek resolution among their own neighbors and community associations, and will instead rush to court to file a lawsuit.

### **CONCLUSION**

This Court has the discretion to award attorney's 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* \$2,501.25 for excessive and duplicative time spent on the case.

**DATED** this 26th day of October, 2023.

**CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP**

By: \_\_\_\_\_



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**THE FOREGOING** electronically filed  
this 26<sup>th</sup> day of October, 2023, with:

Clerk of the Court  
Court of Appeals, State of Arizona, Division One  
1501 West Washington Street  
Phoenix, Arizona 85007  
[www.AZTurboCourt.gov](http://www.AZTurboCourt.gov)

**COPY** of the foregoing delivered  
via TurboCourt E-Service Notification  
this 26<sup>th</sup> day of October, 2023, to:

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