

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/18/19 8:00am

CV 2016-055080

10/17/2019

HONORABLE LISA DANIEL FLORES

CLERK OF THE COURT
G. Chavez
Deputy

R L WHITMER

R L WHITMER
6333 N SCOTTSDALE RD CASITA 21
SCOTTSDALE AZ 85250

v.

HILTON CASITAS HOMEOWNERS
ASSOCIATION, et al.

AUGUSTUS H SHAW IV

DOCKET - NE
JUDGE FLORES

JUDGMENT

The Court reviewed the parties' papers related to Defendant Hilton Casitas' Application for Award of Attorneys' Fees and Costs, filed after Plaintiff failed in his effort to prove he was entitled to a contempt finding for Defendant's alleged violation of the order of an administrative law judge.

The Court concurs with Plaintiff, for reasons stated in his Objection to Defendant's Application for Attorney Fees and Costs, that this matter does not arise out of contract, and Defendants are not entitled to attorneys' fees pursuant to ARS § 12-341.01. Plaintiff pursued this matter as authorized by statute, seeking a contempt finding for what he believed was a violation of a decision by an administration law judge related to Defendant HOA's budget process. Although a contract exists between Plaintiff and Defendant by virtue of the fact that Plaintiff owns a home in the condominium community, the essential nature of the action was for statutory contempt. This is clear from the appellate opinion issued in this matter. *Whitmer v. Hilton Casitas, et al.*, 245 Ariz. 77 (App. 2018).

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THE COURT FINDS that there is no basis to award fees to Defendant based on Rule 11, or ARS §§ 12-349 and 12-350. Although Plaintiff lost on the merits of his claim, the claim itself was not groundless, and there is no good cause for a finding that Plaintiff filed it in bad faith. As for “unreasonably expanding the proceedings,” it was Defendant who argued erroneously that the superior court lacked jurisdiction to consider Plaintiff’s contempt petition. This choice by Defendant delayed the ultimate outcome, and was the basis of significant attorneys’ fees incurred in the appeal.

IT IS ORDERED denying Defendant’s application for attorneys’ fees.

Pursuant to ARS § 12-341,

IT IS FURTHER ORDERED awarding Defendant \$524.00 in taxable costs. Interest at the rate of 6% per annum shall accrue from the date of this judgment until paid in full.

For reasons stated on the record at the conclusion of the evidentiary hearing held July 10, 2019,

IT IS FURTHER ORDERED denying Plaintiff’s First Amended Verified Complaint and request for finding of contempt.

IT IS FURTHER ORDERED that no further matters remain pending and judgment is entered pursuant to Rule 54(c), Arizona Rules of Civil Procedure.



HONORABLE LISA DANIEL FLORES
JUDICIAL OFFICER OF THE SUPERIOR COURT