

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

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WILLIAM GARDNER, *Plaintiff/Counter-Defendant/Appellant,*

*v.*

SCOTTSDALE WATERFRONT RESIDENCES  
CONDOMINIUM ASSOCIATION, *Defendant/Counter-Claimant/Appellee.*

No. 1 CA-CV 16-0506  
FILED 7-25-2017

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Appeal from the Superior Court in Maricopa County  
No. CV2015-093959  
The Honorable David M. Talamante, Judge

**AFFIRMED**

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COUNSEL

William Gardner, Albuquerque, New Mexico  
*In propria persona*

Carpenter, Hazelwood, Delgado & Bolen, PLC, Tempe  
By Mark K. Sahl, Gregory A. Stein  
*Counsel for Defendant/Counter-Claimant/Appellee*

**MEMORANDUM DECISION**

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Paul J. McMurdie joined.

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**T H O M P S O N**, Judge:

¶1 Appellant William Gardner (Gardner) appeals from the trial court’s judgment granting Scottsdale Waterfront Residences Condominium Association (SWRCA) attorneys’ fees. Finding no abuse of discretion, we affirm.<sup>1</sup>

**FACTUAL AND PROCEDURAL HISTORY**

¶2 This matter arises out of a dispute between Gardner, a condominium owner, and SWRCA, the homeowner’s association. Gardner brought suit asserting SWRCA was in breach of contract by allowing his rightful parking spots to be used by unauthorized users. SWRCA counter-claimed asserting Gardner breached the contract by renting his unit out for short-term “vacation rentals” of less than six months and by failing to pay the penalties SWRCA had assessed for those violations.

¶3 The parties eventually reached a settlement agreement during a settlement conference. That agreement is signed by the parties and their respective counsel. Gardner agreed to sign up for “sure pay” for his homeowner’s association fees and SWRCA agreed to stop the infringement

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<sup>1</sup> Gardner filed three separate notices of appeal in this matter. Two identical notices of appeal were filed in the superior court on August 4, 2016, and are recorded in the record at Docket numbers 55 and 56. We treat these as one appeal (NOA #1). This timely one-sentence appeal specifically states he appeals “from the Order entered in the above-referenced action on July 5, 2016, granting attorneys’ fees to the Defendant/Counterclaimant.” Another notice of appeal was filed in this court on September 19, 2016 (NOA #2). NOA #2 listed several additional issues Gardner wished to raise on appeal. NOA #2 was untimely and filed in the wrong court. For purposes of this appeal, we examine only the issue raised in NOA #1.

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upon Gardner's parking spots. SWRCA also agreed to waive the penalties they had assessed Gardner.

¶4 When Gardner failed to enroll in the "sure pay" program, SWRCA filed a Motion to Enforce Settlement Agreement, which the trial court granted. SWRCA requested attorneys' fees and filed a proposed order for judgment. Gardner did not object to the form of judgment; he only objected to SWRCA's request for attorneys' fees.

¶5 On July 5, 2016, the trial court entered a signed order that specified the terms of the settlement agreement, accepted it, granted the motion to enforce, and awarded SWRCA \$4333 in attorney fees. The order stated it was a final order and certified pursuant to Arizona Rules of Civil Procedure 54(c) that no other legal issues were outstanding. On August 4, 2016, Gardner filed NOA #1 appealing the award of attorneys' fees to SWRCA.

DISCUSSION

¶6 Gardner, representing himself, has filed a 22-page opening brief that makes only glancing reference to the aforementioned attorneys' fees award.<sup>2</sup> His table of contents, under Argument section (C), states "Because of these deliberate breeches [sic] of Gardner's rights the HOA's Attorney's fees were awarded to the HOA as well as an order to enforce settlement agreement which must be reversed and the award reversed." However, there is no corresponding section in the brief which discusses in any depth the award of fees to SWRCA. Gardner stated he was "outrage[d] and blindsided" by the fees ruling and that it should be reversed. The only reference in the brief to the law, as regards attorneys' fees, are citations to A.R.S. § 12-341.01 and *Ocean West Contractors, Inc. v. Halec Constr. Co.*, 123 Ariz. 470, 473-74, 600 P.2d 1102, 1105-06 (1979) (discussing what constitutes a successful party) in the section where he states he should be awarded his own attorneys' fees.

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<sup>2</sup> SWRCA asserts that Gardner's opening brief should be dismissed for failure to comply with the rules for appellate briefing. Specifically, it notes that Gardner has not identified any legal error committed by the trial court, has not outlined the appropriate standard of review, includes documents not in the record on appeal, and presents several "questions" which are never addressed in the argument section. We are cognizant of the deficiencies in Gardner's briefing, nevertheless we proceed to the merits on the attorneys' fees issue.

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¶7 Extensive briefing, however, is not needed on this attorneys' fees issue. The record on appeal and the law are clear. The trial court has broad discretion in deciding whether to award attorneys' fees under Arizona Revised Statutes (A.R.S.) § 12-341.0(A) (2016), which provides for a discretionary award of attorneys' fees to the prevailing party in a matter arising out of contract. *See Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 570, 694 P.2d 1181, 1184 (1985). On review, we will affirm the trial court's award of fees if it is supported on "any reasonable basis." *Maleki v. Desert Palms Prof'l Props., L.L.C.*, 222 Ariz. 327, 334, ¶ 32, 214 P.3d 415, 422 (App. 2009) (citation omitted). Here, SWRCA was the successful party in a contract action and we find no abuse of discretion in the award of \$4333 in attorneys' fees to SWRCA.

¶8 For the same reason, we award SWRCA its reasonable fees incurred on appeal, in an amount to be determined after compliance with ARCAP 21, pursuant to A.R.S. § 12-341.01

CONCLUSION

¶9 The trial court is affirmed.



AMY M. WOOD • Clerk of the Court  
FILED: AA