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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
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BY: DN

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

CITRUS POINT COMMUNITY ) 1 CA-CV 09-0206  
ASSOCIATION, an Arizona nonprofit )  
corporation, ) DEPARTMENT D  
)  
Plaintiff/Appellee, ) **MEMORANDUM DECISION**  
)  
v. ) (Not for Publication -  
) Rule 28, Arizona Rules of  
CONTEMPORARY LIFESTYLES ) Civil Appellate Procedure)  
PROPERTIES AND INVESTMENTS, LLC, )  
a limited liability company; KIRK )  
M. HOFMANN and JANE DOE HOFMANN, )  
husband and wife, )  
)  
Defendants/Appellants. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CV 2007-091510

The Honorable Louis A. Araneta, Judge

**AFFIRMED**

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By Charles E. Maxwell  
And Brian W. Morgan  
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Attorneys for Plaintiff/Appellee

Mesa

Law Offices of William M. King PC  
By William M. King  
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Scottsdale

O R O Z C O, Judge

¶1 Appellants Contemporary Lifestyles Properties and Investments, LLC, and Kirk M. Hoffmann (collectively, Appellants) appeal from the trial court's award of attorney fees in favor of appellee, Citrus Point Community Association (the Association). The parties settled a lawsuit the Association filed against Appellants by entering into a Stipulated Injunction in favor of the Association that authorized it to enter Appellants' property to clean up the yard and compelled Appellants to comply with the Association's maintenance requirements. Appellants contend that there was no legal authority for the trial court to award attorney fees because the dispute was resolved by stipulation with no admission of liability, and because both parties prevailed in part, resulting in no prevailing party. For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 Citrus Point Community Association is a nonprofit Arizona corporation whose members are the owners of lots within the Association. The Association is governed by certain Project Documents, including a Declaration of Covenants, Conditions and Restrictions (CC&Rs).<sup>1</sup> The Association is responsible for

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<sup>1</sup> The Project Documents include, but are not limited to: the CC&Rs, Articles of Incorporation of Citrus Point Community Association including the amendments thereto, and the Citrus Point Community Association Bylaws.

administering and enforcing the provisions of those documents. Appellants are owners of a lot within the Citrus Point Community and as such are subject to the terms of the Association's documents.

¶13 The Association filed a complaint against Appellants alleging that they failed to comply with landscaping, nuisance, and trash provisions of the governing documents and failed to pay assessments and fines. The complaint sought an injunction requiring Appellants to: perform proper maintenance and landscaping; allow the Association to enter and correct violations at Appellants' expense; and properly maintain the property in the future. The complaint also sought judgment for the amount of assessments and fines accrued and continuing to accrue pursuant to the Association documents.

¶14 The parties entered into a Stipulated Injunction, which provided in part:

[The parties] hereby stipulate to a permanent injunction in favor of [the Association] and against the [Appellants] as follows:

1) [Appellants] hereby agree and acknowledge that the Association or its delegates have the right to enter upon their property . . . for the purpose of conducting an initial clean-up of the front yard . . . and conducting any and all other necessary cleaning or maintenance as determined by the Association to bring the Property into compliance with applicable community rules . . . All costs incurred by the Association

shall be charged to the [Appellants'] property account as an assessment . . . .

2) [Appellants] furthermore acknowledge and agree that the Association or its delegates shall have the continuing right to enter upon the Property for the purpose of cleaning and maintaining the same . . . for a period of four (4) months following the date of the Initial Clean-up . . . . All maintenance performed during the Follow-up Maintenance Period shall be performed to the reasonable satisfaction of the Association and all costs incurred by the Association for the same shall be charged to the [Appellants'] property account as an Assessment. . . .

3) Upon expiration of the Follow-up Maintenance Period, [Appellants] shall assume full responsibility for maintaining the Property in compliance with applicable community rules. In the event the [Appellants] fail in this responsibility, the Association may provide written notice to the [Appellants]. . . indicating the nature of any violation(s) and allowing [Appellants] fourteen (14) days to correct the same. If after fourteen (14) days . . . the violation(s) has/have not been corrected . . . [Appellants] agree . . . that the Association . . . shall have the right to enter upon the Property for the purpose of correcting the same as well as performing any other maintenance or clean-up that may be required at that time to bring the Property into compliance with community rules. . . . [A]ll costs incurred therefor [sic] shall be charged to the [Appellants'] property account as an Assessment.

4) The Association hereby agrees to waive all fines imposed against [Appellants'] account, which as of April 23, 2008, were in the discounted amount of \$10,585.00. [Appellants] agree and acknowledge that a violation of this

Stipulated Injunction . . . can result in a finding of contempt and may result in a reinstatement of some or all the fines.

5) The parties agree to submit the issue regarding an award of attorney fees to the Court. . . .

The parties also agreed to a proposed form of order, which provided for the entry of "a permanent injunction in favor of [the Association] and against [Appellants] pursuant to the terms of the Stipulated Injunction." The trial court signed the order.

¶15 The Association submitted an application for attorney fees. Appellants objected, arguing that the trial court was not authorized to award attorney fees because the matter was resolved by settlement. They also argued that they were the prevailing party because the relief granted was no more than the relief provided under the CC&Rs, and the Association had waived all fines against them.

¶16 The trial court found:

The parties reached agreement on a Stipulated Injunction which contained language that such agreement was not an admission of liability on the part of [Appellants] for fines or otherwise.

Although [the Association] did not prevail on all claims, the Court recognizes it as the prevailing party entitled to reasonable attorney fees and costs.

The trial court awarded the Association \$19,300 in attorney fees and \$700 in costs. Appellants timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101.B (2003).

#### DISCUSSION

¶7 Appellants argue that no authority exists for the trial court to award attorney fees because the action was resolved by settlement in which each party prevailed in part. They acknowledge that the trial court had authority pursuant to the CC&Rs to award attorney fees to the prevailing party. However, Appellants argue that the CC&Rs do not provide any guidance for an award of attorney fees for an "out of court settlement" and that the Association was not the prevailing party.

¶8 The CC&Rs constitute a contract. *McDowell Mountain Ranch Cmty. Ass'n, Inc. v. Simons*, 216 Ariz. 266, 269, ¶ 14, 165 P.3d 667, 670 (App. 2007). In interpreting a contract, the goal is to give effect to the intent of the parties. *Taylor v. State Farm Mut. Auto. Ins. Co.*, 175 Ariz. 148, 152, 854 P.2d 1134, 1138 (1993). We look to the plain language of the agreement and, if that language is clear, we enforce the contract as written. *Mining Inv. Group, LLC v. Roberts*, 217 Ariz. 635, 639, ¶ 16, 177 P.3d 1207, 1211 (App. 2008).

¶9 Article 9.1 of the CC&Rs provides that if a lawsuit is filed by the Association "to enforce the provisions of the Project Documents or in any other manner arising out of the Project Documents . . . the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action." The CC&Rs do not require that the matter be resolved by trial in order for attorney fees to be awarded. Rather, the plain language requires only that the Association have filed an action to enforce the Project Documents and that it prevail in the action. If the Association is the prevailing party, it is entitled to fees under the CC&Rs.

¶10 The trial court has discretion in deciding who the successful party is for the purpose of awarding attorney fees and its decision will not be disturbed on appeal if the record contains any reasonable basis for the decision. *Maleki v. Desert Palm Prof'l Props., L.L.C.*, 222 Ariz. 327, \_\_\_, ¶ 35, 214 P.3d 415, 422 (App. 2009); *Sanborn v. Brooker & Wake Prop. Mgmt., Inc.*, 178 Ariz. 425, 430, 874 P.2d 982, 987 (App. 1994). To be successful, a party need not achieve the full measure of relief sought. *Sanborn*, 178 Ariz. at 430, 874 P.2d at 987.

¶11 The Association's complaint sought a permanent injunction requiring Appellants either to clean up the property in accordance with the Association documents or to allow the

Association to enter and clean up the property at Appellants' expense and to require future compliance by Appellants. The complaint also sought a judgment in the amount of fines and assessments imposed against Appellants. The Stipulated Injunction gave the Association the right to enter onto Appellants' property to conduct a cleanup at Appellants' expense, the continuing right for four months to enter the property to conduct maintenance at Appellants' expense, and the further continuing right to enter the property to conduct cleanup in the event Appellants failed in their obligation to maintain the property after the four-month period had expired. The Stipulated Injunction gave the Association the relief it requested in its complaint to ensure that the property was maintained in accordance with the CC&Rs. It was thus successful on that claim.

¶12 Appellants argue the Stipulated Injunction gave the Association no more rights to do what it could already do pursuant to the CC&Rs and thus constituted no concession by Appellants and no victory for the Association. Appellants further argue the Association's waiver of the accumulated fees and assessments was a major concession by the Association in their favor. Consequently, Appellants assert, the Association was not the successful party under the Stipulated Injunction.



¶13 Pursuant to the CC&Rs, if Appellants did not properly maintain the property the Association could "cause such action to be taken and the cost thereof [to] be paid by [the] Owner." However, the Stipulated Injunction gave the Association express authorization to enter Appellants' property to correct the maintenance and landscaping problems. Also the Stipulated Injunction imposed a court-ordered and judicially enforceable obligation on Appellants in addition to the contractual obligation under the CC&Rs and so is not an inconsequential success. Nor does the Association's waiver of the accumulated fines undermine its success in obtaining the injunction, as the waiver was conditional: Appellants agreed that the Association could reassert those fines should Appellants violate the stipulation.

¶14 The Association requests an award of attorney fees on appeal pursuant to the CC&Rs and A.R.S. §§ 12-341.01, -349, -350 (2003) and 33-1807.H (2007). In our discretion, we award the Association its reasonable attorney fees and costs on appeal upon its compliance with Arizona Rule of Civil Appellate Procedure 21(c).

**CONCLUSION**

¶15       The record provides a reasonable basis for the trial court's conclusion that the Association was the prevailing party. The Association succeeded in obtaining the injunction it sought in the first count of its complaint and reserved the right to reassert the fees owed in the event of a violation of the injunction. We affirm the trial court's decision awarding attorney fees to the Association.

/S/

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PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

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DIANE M. JOHNSEN, Judge

/S/

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JON W. THOMPSON, Judge