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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Arizona Bank & Trust, an Arizona corporation,

No. CV 08-1193-PHX-JAT

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Plaintiff,

ORDER

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vs.

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Mark A. Ramundo; Jane Doe Ramundo, husband and wife,

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Defendants.

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Pending before the Court is Plaintiff Arizona Bank & Trust's Motion for Award of Attorneys' Fees and Expenses (Doc. 69). For the reasons that follow, the Court grants Plaintiff's motion.

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After a two day bench trial, the Court found that Plaintiff was entitled to a deficiency judgment in the amount of \$592,553.64. Plaintiff now seeks its reasonable attorneys' fees an costs.

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Under Arizona law, "[i]n any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney fees." A.R.S. § 12-341.01(a). In order to award attorneys' fees to Plaintiff under this statute, the Court must find that Plaintiff is the successful party, that the action arose out of a contract, that the award of attorney's fees is appropriate, and that the fees are reasonable.

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1 Third, there is no evidence, nor does Defendant so suggest in his opposition to
2 Plaintiff's request for an award of fees, that assessing fees against Defendant will cause him
3 extreme hardship. This factor weighs in favor of awarding fees.

4 Fourth, Plaintiff prevailed on the entirety of its claims, and judgment was entered for
5 the full amount of the deficiency Plaintiff was seeking. The fourth factor weighs in favor of
6 awarding fees.

7 Fifth, Plaintiff brought a deficiency judgment claim against Defendant. These matters
8 are adjudicated on a routine basis. Additionally, there was nothing novel about the facts or
9 issues of this particular case. Thus, this factor weighs in favor of awarding attorneys' fees.

10 Finally, the Court cannot see why an award of attorneys' fees would discourage other
11 parties with tenable claims from defending legitimate contract issues for fear of incurring
12 liability for substantial amounts of attorneys' fees. Contrary to discouraging the assertion of
13 colorable defenses, awarding attorneys' fees in this case would encourage litigants to put
14 forth the effort to support their defenses with sufficient law and evidence. Awarding
15 attorneys' fees in this case would also have the effect of dissuading litigants from taking a
16 case to trial when there is an insufficient basis for doing so.

17 Therefore, after considering the six *Warner* factors, the Court finds that an award of
18 attorney's fees is appropriate in this case.

19 *REASONABLENESS*

20 The final step in the attorneys' fees analysis is to determine whether the fees sought
21 are reasonable. Plaintiff seeks an award of fees and costs in the amount of \$45,641.20. In
22 *Schweiger v. China Doll Rest., Inc.*, 673 P.2d 927 (Ariz. Ct. App.1983), the Arizona Court
23 of Appeals held that an attorney's affidavit supporting a fee application should include "the
24 type of legal services provided, the date the service was provided, the attorney providing the
25 service . . . and the time spent in providing the service." 673 P.2d at 932. The affidavit
26 submitted by Plaintiff's counsel sets forth this information with sufficient detail.

