

STATE OF MICHIGAN
COURT OF APPEALS

WINDEMERE COMMONS I ASSOCIATION,

Plaintiff-Appellant,

v

JOHN P. O'BRIEN and JOANNE H. O'BRIEN,

Defendants-Appellees.

UNPUBLISHED
January 10, 2006
APPROVED FOR PUBLICATION
February 14, 2006
9:05 a.m.

No. 264001
Macomb Circuit Court
LC No. 04-004783-CH

Official Reported Version

Before: O'Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right that portion of the trial court's order denying its request for costs and attorney fees. We reverse that portion of the order, and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff is a condominium association made up of co-owners of units at Windemere Commons I condominiums in Macomb Township. Defendants own a condominium in the complex. Plaintiff informed defendants that they were in violation of various sections of the condominium bylaws because they had attached a flag holder to the outside of their unit and had displayed a Marine Corps flag without obtaining prior written permission to do so.

Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10), seeking a permanent injunction prohibiting defendants from displaying any flag other than the American flag on the outside of their unit. Plaintiff also requested an award of costs and reasonable attorney fees. The trial court granted plaintiff's motion for summary disposition, but declined to award costs and fees. The trial court stated no reason for its decision not to award costs and fees.

The decision to award attorney fees, and the determination of the reasonableness of the fees requested, is within the discretion of the trial court. *Jordan v Transnational Motors, Inc.*, 212 Mich App 94, 97; 537 NW2d 471 (1995).

As a general rule, an award of attorney fees as an element of costs or damages is prohibited unless it is expressly authorized by statute or court rule. *Rafferty v Markovitz*, 461 Mich 265, 270; 602 NW2d 367 (1999). MCL 559.206(b) states that a condominium association, if successful in an action arising out of the alleged default of a co-owner, shall recover the costs and reasonable attorney fees associated with the action, "as determined by the court, to the extent

the condominium documents expressly so provide." Article XIX, § 2 of plaintiff's condominium bylaws provides for an award of costs and reasonable attorney fees to the association if the association is successful in an action arising out of the alleged default of a co-owner.

The party claiming entitlement to costs and fees has the burden of proving that the amount requested is reasonable. The trial court should consider the following nonexclusive list of factors when assessing the reasonableness of requested attorney fees: (1) the time and effort required, the novelty and difficulty of the issue involved, and the skill needed to perform the service properly; (2) the likelihood that acceptance of the case will preclude other employment for the attorney; (3) the fee customarily charged in the same locality for similar legal services; (4) the amount of money involved and the result obtained; (5) the time limitations imposed by the circumstances of the case or the client; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the attorney performing the service; and (8) whether the fee is fixed or contingent. *In re Condemnation of Private Property for Highway Purposes*, 209 Mich App 336, 340-341; 530 NW2d 183 (1995).

In this case, the trial court denied plaintiff's request for costs and fees, but gave no explanation for its decision to do so. However, plaintiff prevailed in its action against defendants, and therefore, pursuant to MCL 559.206(b) and the association bylaws, it was entitled to costs and reasonable attorney fees. We reverse that portion of the trial court's order denying plaintiff's request for costs and fees, and remand this case for a determination of the costs and fees to which plaintiff is entitled.

Reversed in part and remanded for further proceedings. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Michael J. Talbot