

FILED
PATRICIA A. NOLAND
CLERK, SUPERIOR COURT

2007 SEP 14 AM 8:47

ARIZONA SUPERIOR COURT, PIMA COUNTY

JUDGE: HON. JOHN E. DAVIS

BY: R. ST. GERMAIN, DEPUTY CLERK

C20024299

COURT REPORTER: NONE

DATE:

September 13, 2007

APRIL ABAD, et al.
Plaintiffs

vs.

CREEKSIDE PLACE HOLDINGS, LLC., et al
Defendants

* * *****

ALICIA SWIGART, et al
Plaintiffs

VS.

WASATCH PROPERTY MANAGEMENT, INC.,
A foreign corporation, et al
Defendants

RULING

IN CHAMBERS: Under Advisement

After further argument and the submission of corrected financial information the pending matter of the defendants' applications for attorneys fees was submitted to the Court. The Court affirms its previous findings and further finds as to both the Hansen and Wasatch defendants as follows:

- 1: Defendants' burden was a burden of preponderance of the evidence.
- 2: Defendants have met the burden and have shown that plaintiffs' counsel did unreasonably expand and delay the litigation. The record supports the conclusion that this case became, to an extraordinary extent, about Mr. Hyams behavior, omissions and mistakes rather than about the merits of plaintiffs' claim. An extraordinary amount of time and effort was expended resolving questions

Brenda Goode

Judicial Administrative Assistant

RULING

Page: 2

Date: September 13, 2007

Case No: C20024299

about Mr. Hyams' behavior, omissions and mistakes. The Court also notes, in support of this finding, the extensive record of Mr. Hyams' misstatements of the record in oral argument, motion papers, statements of fact and motions for reconsideration. (Exhibit 86 to Wasatch motion).

3: Mr. Hyams is due subtraction for the award of attorneys' fees for sanctions previously imposed. The Wasatch defendants take the position that this would be a subtraction of \$31,839.00.

4: The financial information supplied by Mr. Hyams which was unsealed and corrected is accepted by the Court over the defendants' objections. The Court finds that information regarding the relative financial position of the parties is sufficient to weigh under A.R.S. § 12350(4) even though it does not reveal Mr. Hyams' net-worth.

The Court finds that Mr. Hyams financial position relative to the Hansen defendants is such that subsection (4) is weighed in favor of Mr. Hyams. The Court also finds that Mr. Hyams financial position relative to the Wasatch defendants is such that subsection (4) is weighed in favor of Mr. Hyams. The Court's award of attorneys fees takes into account this finding to the extent possible without a statement of net-worth.

The Court's finding that Mr. Hyams unreasonably expanded and delayed this litigation is based upon his conduct from the commencement of the proceedings. As stated in detail in earlier minute entries every Court that has been involved with this case has sanctioned Mr. Hyams. (Exhibit 86 to Wasatch motion). The defendants in this case are entitled under A.R.S. § 12-349 to recover their reasonable attorney's fees for all stages of this litigation from its commencement. *Larkin v. State ex.rel. Rottas*, 175 Ariz. 417, 859 P 2d 1271 (App 1993); *Hamm v. Y and M Enterprises, Inc.* 157 Ariz. 336, 757 P 2d 612 (App 1988). The Court rejects the argument that because Mr. Hyams was sanctioned at every state of these proceedings no further sanctions under A.R.S. § 12-349 can be made. By minute entry of March 15, 2007. Mr Hyams was credited for \$31,839.00 of sanctions previously imposed.

Brenda Goode
Judicial Administrative Assistant

RULING

Page: 3

Date: September 13, 2007

Case No: C20024299

The Court further finds that the billing records and exhibits submitted by both the Hansen defendants and the Wasatch defendants establish the fees sought by both defendants are reasonable. Mr. Hyams financial information submission pursuant to A.R.S. § 12-350 (4) states that he expended over \$1 million dollars to litigate this case. The information submitted does not reveal Mr. Hyams net worth but measured by the resources Mr. Hyams spend on the case the attorney's fees requested by defendants are reasonable.

Pursuant to A.R.S. § 12-349 the Hansen defendants are awarded attorneys fees in the amount of \$200,000.00 minus any sanctions previously imposed and paid by Mr. Hyams to Jennings, Strouss and Salmon, P.L.C. any sanctions not paid as of today's date may not be deducted from this award.

Pursuant to A.R.S. § 12-349 the Wasatch defendants are awarded attorneys fees in the amount of \$500,000.00 minus any sanctions previously imposed and paid by Mr. Hyams to Rusing and Lopez P.L.L.C. Any sanctions not paid as of today's date may not be deducted from this award.

Pursuant to the Hansen defendants' request for fees pursuant to A.R.S. § 12-341.0. The Court awards the Hansen defendants the additional sum of \$50,000.00 as the prevailing party on the contract and warranty claims brought against the Hansens. In making this award the Court has considered:

1. The fee affidavits and exhibits submitted on behalf of the Hansens.
2. The relative financial positions of the plaintiffs and the Hansen defendants.
3. The work expended by Mr. Turk defending similar claims brought by these plaintiffs against another defendant.
4. Mr. Hyams performance on behalf of the plaintiffs.

These are extraordinary awards but the record in this case supports them. Mr. Hyams' misconduct impacted every aspect of this case from its commencement up to this point. The affidavit of Marshall Humphrey supports the Court's conclusion that the record of misconduct in this case was extraordinary. (Exhibit #85 to Wasatch motions). The affidavit of Mr. Humphrey's is uncontradicted

Brenda Goode
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RUSING & LOPEZ

RULING

Page: 4

Date: September 13, 2007

Case No: C20024299

except by Mr. Hyams opinions and arguments.

cc: Hon. John E. Davis

Clerk of the Court-Under Advisement Clerk

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