

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

**HONORABLE DEREK CARLISLE, SUPERIOR COURT JUDGE
DIVISION II
DATE: JUNE 11, 2018**

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COURT NOTICE / ORDER / RULING

NANCY KNIGHT, et al.

Plaintiff(s),

CASE NO. CV2018-04003

and

GLEN LUDWIG, et al.

Defendant(s).

On April 4, 2018, the plaintiff filed a motion for stay of execution of summary judgment. The defendants filed a response on April 11 opposing the motion, arguing that no judgment had been entered when the motion was filed. The motion for stay of execution was filed prior to any judgment being entered.

IT IS ORDERED denying the motion for stay of execution of judgment.

On April 11, the defendants lodged a proposed form of order, which included proposed findings. The defendants contemporaneously filed an application for attorney’s fees and supporting affidavit. On April 13, the plaintiff filed an objection to the defendants’ proposed order and lodged proposed findings of her own. The plaintiff filed an objection to the defendants’ application for attorney’s fees on April 17. The defendants filed an objection to the plaintiff’s proposed findings and order.

With respect to the issue of attorney’s fees, the Court finds that the defendants would generally be entitled to attorney’s fees since the CCR’s are a contract. However, one of the factors the Court has to consider is whether the successful party prevailed on all relief sought. *Associated Indemnity Corp. v. Warner*, 143 Ariz. 567, 570 (1985). The second count has not been resolved, so the Court cannot determine whether the defendants have prevailed on all the counts. The issue of attorney fees should be resolved when all of the counts have been resolved. *See, e.g.*, Rule 54(g)(3)(B) of the Arizona Rules of Civil Procedure (“ARCP”) (“If a decision or judgment adjudicates fewer than all claims and liabilities of a party, a motion for fees must be

filed no later than 20 days after any decision is filed that adjudicates all remaining claims in the action.”). The proper time to determine attorney’s fees is when the case has been resolved.

The Court recognizes that dismissal of count one resolves the case with respect to the Roberts defendants. However, the defendants did not include the Rule 54(b) language in the proposed order. Additionally, although the defendants estimated how much of the fees incurred were devoted to count one, the defendants did not provide the Court with any breakdown of the amount of fees for which the Roberts defendants were responsible.

IT IS ORDERED denying the defendants’ application for attorney’s fees without prejudice, subject to being resubmitted when count two has been resolved or the case has been dismissed.

The Court has reviewed the findings and orders submitted by each party. The primary difference is whether count one should be dismissed with prejudice. The Court finds it is appropriate to dismiss count one with prejudice.

IT IS ORDERED granting the defendants’ objections to the plaintiff’s proposed findings and order. The Court will not sign the plaintiff’s proposed findings and orders.

IT IS ORDERED denying the plaintiff’s objections to the defendants’ proposed findings and order. The Court has signed the defendants’ proposed findings and orders, deleting the paragraph regarding attorney’s fees.

On May 2, the plaintiff filed a motion to amend the complaint. The defendants filed a response and the plaintiff filed a reply. Although the proposed amended complaint contained some cosmetic changes, the primary modification was that the plaintiff was seeking reimbursement for the expense of the taxpayers in determining whether to grant one of the defendant’s request for a variance of the set back requirements. Additionally, the plaintiff sought relief for other property owners. The Court finds that the plaintiff’s attempts to expand the scope of this case should be denied. The plaintiff has presented no authority for the proposition that she has the authority to represent the taxpayers or other property owners. Therefore, the amendment would be futile.

IT IS ORDERED denying the motion for leave to amend the complaint.

Finally, on May 21, the defendant filed a proposed finding of fact and order with respect to count two. However, count two has not been resolved. The plaintiff has not even requested a hearing pursuant to ARCP Rule 65(a). The Court will take no action on the proposed findings of fact and order with respect to count two.

cc:

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Plaintiff

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Honorable Derek Carlisle
Superior Court Judge