

**SUPERIOR COURT, STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF YAVAPAI**

<p><b>TALKING ROCK LAND, LLC</b>, an Arizona limited liability company,</p> <p>Plaintiff,</p> <p>vs.</p> <p><b>INSCRIPTION CANYON RANCH SANITARY DISTRICT</b>, an Arizona sanitary district; <b>DAVID BARREIRA</b>, District Board Member; <b>BOB SUMMERS</b>, District Board Member; and <b>BOB HILB</b>, District Board Member,</p> <p>Defendants.</p>	<p><b>Case No. P1300CV201800380</b></p> <p><b>ORDER RE: APPLICATION FOR ATTORNEYS' FEES AND COSTS</b></p>
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<p><b>HONORABLE JOHN NAPPER</b></p> <p><b>DIVISION 2</b></p>	<p><b>BY:</b> Felicia L. Slaton, Judicial Assistant</p> <p><b>DATE:</b> March 1, 2019</p>
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The Court has received and reviewed the *Application for Attorneys' Fees and Costs* filed by Talking Rock LLC, the *Response* and the *Reply*. Neither party asked for an evidentiary hearing on the issues addressed in these pleadings. The Court previously found Talking Rock the prevailing party in this litigation. Pursuant to A.R.S. §48-2033, the Court finds it appropriate to exercise its discretion and award Talking Rock a portion of its attorneys' fees. The Court finds the appropriate amount of attorneys' fees to be \$50,000.

**PROCEDURAL HISTORY**

The Court has made several findings of facts in this case. Some of the findings were made on the record and other in the prior written decision. The Court relies on these prior findings in deciding this issue.

The Plaintiff filed a complaint pursuant to *A.R.S. §48-2033*. The complaint sought declaratory relief, asking the Court to find the District enacted an illegal moratorium. The Defendant denied this claim. The Defendant also demanded the Court set a hearing on this issue. The trial court warned the parties of the possibility that an award of attorney's fees would be possible at the conclusion of the hearing.

Just prior to the hearing, the Defendant moved to vacate the hearing. This motion sought to vacate the hearing because it claimed the Plaintiff had not provided the forms necessary for the District to sign the approvals. Important to this issue, the District refused to agree that once the appropriate forms were produced it would sign the approvals. It continued to maintain that it could not sign the approvals, even if the appropriate documentation was provided, due to a lack of capacity. Therefore, since the forms were not dispositive on the moratorium issue, the Court denied the request to vacate the hearing.

An evidentiary hearing was held on June 19, 2018. It started at 8:35 am and ended at 12:13 pm. There was also a morning break. Six witnesses were called during the three-hour plus hearing.

At the hearing, the District continued to maintain it did not have the capacity to accommodate the Plaintiff's new development. However, there was no evidence produced to support this contention. Instead, the Court determined the District had imposed a moratorium and Plaintiff was the prevailing party. The Court allowed the Plaintiff to file a request for attorney's fee pursuant to A.R.S. §48-2033(F). The Court limited the application to time spent preparing for the evidentiary hearing and conducting the evidentiary hearing. The Court further limited the application to billing for two attorneys and one paralegal.

The Plaintiff has filed an *Application* seeking approximately \$83,000 in attorney's fees.

#### APPLICATION OF LAW

The Arizona code allows for a grant of attorney's fees to the prevailing party in a case brought pursuant to A.R.S. §48-2033(F). The statute states, "the trial court shall have the authority to award reasonable attorney's fees." *Id.* Based on the language of the statute, the court has discretion to award attorney's fees and the discretion to determine a reasonable amount of those fees.

The Defendants have raised several arguments suggesting this portion of the code is not applicable in this case. These arguments are repeats of arguments previously made and rejected by the Court. The Court reiterates its finding that the Defendants had enacted a moratorium as defined in A.R.S. §48-2033(G)(A). Therefore, the Plaintiff was the prevailing party in the trial.

The Court has not found any case law providing direction to the courts in determining the reasonableness of a request for attorney's fees pursuant to this statute. In a similar context, the Arizona Appellate Courts have provided a list of factors for Courts to use in determining a reasonable amount of attorney's fees. Those include: 1) whether the claim could have been avoided or settled; 2) whether the successful party's efforts were completely superfluous in achieving the result; 3) whether the assessment of fees against the unsuccessful party would cause an extreme hardship; 4) the novelty of the legal question presented; and 5) whether an award to the prevailing party would discourage other parties with tenable claims from litigating similar claims for fear of a substantial amount of attorney's fees. *See, Uyleman v. D.S. Rentco*, 194 Ariz. 300, 305 ¶27 (App. 1999); *Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 570 (1985).

#### *Could the Claim have been Avoided*

The Court finds the entire evidentiary hearing could have been avoided. The Defendants insisted the Court hold an evidentiary hearing on the issue of whether or not the plant had the capacity to handle the Plaintiff's new builds. The District, when it sought to vacate the hearing, refused to abandon this position. At the evidentiary hearing, the Defendant was unable to produce any evidence there was any issue related to capacity. Instead, all of the evidence produced at the hearing showed there was more than enough capacity. After hearing the evidence, the Court found the hearing was entirely unnecessary and the Defendants capacity argument meritless. This hearing could have, and should have, been avoided.

*Superfluous in Achieving the Result*

The Court finds the Plaintiff's efforts at the hearing were necessary for it being the prevailing party. Much of the compelling evidence at the hearing was produced during the Plaintiff's case. The expert witnesses called by Plaintiff proved there were no capacity issues for the plant.

*Undue Hardship*

The District does not allege that an award of attorney's fees would create an extreme hardship.

*Novelty of Legal Issues*

The statute at issue has not been addressed often by the appellate courts. While the subject appears to be litigated rarely, the Court does not find the issues presented in this case were factually complicated. The entire hearing took less than 4 hours to complete. Several witnesses were called but none of their testimony was complex or difficult to present.

*Discouraging Similar Claims*

The Court does not find that a reasonable award of attorney's fees would preclude other districts from litigating these types of cases in the future.

Imposition of Fees

The Court finds an award of attorney's fees is appropriate in this case. The Plaintiff was the prevailing party. Due to the Plaintiff's efforts, the Defendant's position was shown to be meritless. The Court finds these are the exact circumstances under which the legislature intended for the Court to award fees.

Reasonable Award of Fees

The Court limited the Plaintiff's request for attorney's fees to time spent preparing and conducting the evidentiary hearing. The Court finds this limitation to be reasonable because the Defendants appropriately pointed out that it could not sign the necessary CAAs based on the inadequacy of the documents provided by the Plaintiff. Accordingly, some of the objections raised by the Defendants were legitimate. Had they simply maintained this position, the Court would not have held the evidentiary hearing. Therefore, the Court finds a reasonable award of fees in this case should be limited to the work preparing for the unnecessary hearing.

In this case, the Court finds \$50,000 is a reasonable fee. The Court reaches this conclusion based on the lack of complexity of the factual issues and the time actually expended conducting the hearing. Again, there were six witnesses called at the hearing and it lasted less than one-half of one day. The issues addressed at the hearing also were not novel. The issues addressed in the *Application for Attorneys' Fees* also were not novel. Under all the circumstances, an award of \$50,000 is reasonable and appropriate.

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**IT IS THEREFORE ORDERED**, granting the Plaintiff's *Application* for an award of attorney's fees.

**IT IS FURTHER ORDERED**, the award of attorney's fees shall be in the amount of \$50,000.

**IT IS FURTHER ORDERED**, no further matters remain pending and that this Judgment is entered under 54(C).

DATED this 1<sup>st</sup> day of March, 2019.



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HON. JOHN NAPPER  
Judge of the Superior Court, Division 2

cc: Sean Hood/Dawn Meidinger/Taylor Burgoon- Fennemore Craig, P.C. (e)  
Robert S. Lynch/Todd A. Dillard- Robert S. Lynch & Associates (e)  
Hans Clugston- Hans Clugston, PLLC (e)