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### **New Arizona Court of Appeals Case Discusses Attorneys' Fees Incurred By Community Associations**

#### **Bocchino v. Fountain Shadows Homeowners Association Arizona Court of Appeals – Division 1 CA-CV 16-0710**

#### **Executive Summary:**

On April 3, 2018, the Arizona Court of Appeals issued a decision regarding attorneys' fees incurred by an association when obtaining an injunction prohibiting harassment against an owner. In this case, the Court of Appeals stated that an association cannot charge an owner for the attorneys' fees incurred by the association in obtaining a justice court injunction prohibiting harassment against that owner when the association did not ask the court issuing the injunction for attorneys' fees and the court did not award attorneys' fees. This is a common-sense decision by the Arizona Court of Appeals. Under Arizona law [A.R.S. Section 12-1810(o)], when a person obtains an injunction prohibiting harassment against another person, if either side wants their attorneys' fees awarded, the party must ask the court for the attorneys' fees incurred, there must be notice of this request to all parties, a hearing by the court on the attorneys' fees issue and then the court either grants or does not grant the attorneys' fees through a written court order. In this case, the association neglected to follow this procedure outlined under Arizona law and therefore the Court of Appeals ruled that the association acted improperly by adding attorneys' fees incurred obtaining an injunction prohibiting harassment to an owners account without a court order.

For a more detailed summary and a link to this case, see below.

#### **Full Summary:**

Patricia Bocchino ("Ms. Bocchino") purchased a home in the Fountain Shadows Homeowners Association ("Association"). Soon after she moved in, she began harassing certain Board members and disrupting Association meetings. After one particularly volatile meeting, Ms. Bocchino was escorted from the premises by the off-duty police officer the Association hired to "keep the peace." The Association then requested, and was granted by the Manistee Justice Court, an injunction prohibiting harassment against Ms. Bocchino. The Association did not request its attorney fees from the court (\$3,887.28) and the court did not grant any attorneys' fees in this matter. However, the association later

posted attorneys' fees for obtaining the injunction (\$3,887.28) to Ms. Bocchino's account. Ms. Bocchino paid the attorneys' fees when she later sold her home.

Ms. Bocchino challenged the posting of the attorney fees to her account (and her requirement to pay those attorneys' fees when she sold her home) in Maricopa Court Superior Court, and the Court ruled in her favor. The Association then appealed, and the Arizona Court of Appeals also ruled in Ms. Bocchino's favor in a ruling with a very limited scope. The Court of Appeals supported its ruling by finding that:

1. the association waived its claim for attorneys' fees when the association failed to request those fees from the court as required by law [A.R.S. Section 12-1810(o)] when obtaining an injunction prohibiting harassment; and
2. the association's declaration (CC&Rs) did not allow the association to assess, directly against a homeowner, attorney fees incurred in a judicial proceeding that have not been awarded by a qualified tribunal.

**Will This Ruling Adversely Affect an Association's Ability to Charge Attorney Fees to Owners for assessment collection or enforcement actions?**

**Answer: No.**

First, it is Mulcahy Law Firm's policy to always seek an award of attorneys' fees in any judicial proceeding.

Further, this case will not change the way our law firm currently handles attorneys' fees incurred in collection of assessments or enforcement of governing documents going forward.

It is important to note that under Arizona law (A.R.S. Section 33-1807 and 33-1256) and under most association's documents, an association has an automatic lien (without obtaining a court order) for unpaid assessments, late fees for late payment of those assessments and reasonable collection fees and reasonable attorneys' fees and costs incurred with respect to those assessments. As such, a court order is not required to add attorneys' fees incurred in the collection of assessments to an owner's ledger.

However, almost every association has different language in its CC&Rs pertaining to how and when attorneys' fees for enforcement matters can be added to an owner's account and when a court order is necessary to add attorneys' fees to an owner's account. It is important for an association's legal counsel to review an association's CC&Rs at the time the attorneys' fees are incurred in an enforcement matter to determine if the attorneys' fees can be added to the account at that time or if a court order is required prior to adding the attorneys' fees to an account. The attorney for the association should instruct the association in the billing statement as to whether the attorneys' fees can be charged to the owner now or charged to the association (with the possibility that down the road a court will order that the fees be charged to the owner's account).

If you'd like to read the entire case, please go to the following link (or Google "Bocchino v. Fountain Shadows):

<https://cases.justia.com/arizona/court-of-appeals-division-one-published/2018-1-ca-cv-16-0710.pdf?ts=1522771248>

Please feel free to contact our office with any questions on this case or any legal matter pertaining to associations.