

Court Awarded Legal Costs of \$600,000 Reasonable for a Simple Fine

Comment by Colorado HOA Forum: Whenever you hear the term “reasonable” think about this HOA court case. Whenever you hear the term “reasonable” in legislation concerning attorney fees and legal costs (that occurred in HOA 2022 legislation passed into law) you can bet attorneys were involved, made sure any dollar limit on their fees was removed from the legislation or they know they could work around any limit.. Before you go to court with your HOA complaint consider the cost-benefit, read your governing documents and understand your simple case can cost you thousands.

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This case involved a dispute over a trial court’s award of attorney’s fees to a homeowner’s association (“Association”) in a lawsuit it filed against two members of the Association that were the co-owners of a property subject to Association’s governing documents. Association’s action against Owners alleged violations of community standards consisting of erecting a large tarp adjacent to their home and failing to replace two trees that Owners removed from their yard. Owners filed a cross-complaint against Association alleging claims of selective enforcement or nonenforcement of rules in multiple instances involving other parties.

The trial court found in favor of Association on its complaint, and on the cross-complaint filed by Owners. The trial court’s judgment included an award of attorney fees in the amount of \$290,000 for prevailing on its complaint, and an additional award of \$286,000 for prevailing as the defendants on Owners’ cross-complaint (nearly \$600,000 total). Owners appealed the trial court’s attorney fee order.

The appellate court stated that a trial court’s award of attorney fees must be reversed where it is either “manifestly excessive” or “clearly wrong.” The appellate court further stated that, while a determination of what constitutes reasonable attorney fees is left to the discretion of the trial judge, there are a number of factors that the judge must consider in making its determination.

Those factors include: “the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case.” Additional factors to consider were identified as “the intricacies and importance of the litigation, the labor and the necessity for skilled legal training and ability in trying the cause, and the time consumed.”

In applying the above-described factors to the facts of this case, the appellate court found that there was no apparent justification for the huge attorney fee award. As such, the trial court should have the opportunity to consider those factors when making its attorney fee award and, if the record is unclear as to whether the trial court properly considered the stated factors, the appellate court could reverse the award and remand the case back to the trial court for further consideration and amplification of its reasoning. Thus, the appellate court having determined that the trial court’s fee award for the issues involved in the case appeared to be “manifestly excessive,” the appellate court remanded the case back to the trial court to reconsider its order in line with the governing principals that were articulated by the court.