

1 **JACKSON WHITE**

2 **ATTORNEYS AT LAW**

3 *A Professional Corporation*

4 40 North Center, Suite 200  
5 Mesa, Arizona 85201  
6 Phone: (480) 464-1111  
7 Fax: (480) 464-5692  
8 Attorneys for Plaintiff  
9 By: Eric M. Jackson, No. 005449

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MARICOPA**

9  
10 APACHE WELLS HOMEOWNERS  
11 ASSOCIATION, INC., an Arizona non-  
12 profit corporation,

12 Plaintiff,

13 v.

14 DEPARTMENT OF FIRE, BUILDING  
15 AND LIFE SAFETY; OFFICE OF  
16 ADMINISTRATIVE HEARINGS, an  
17 independent agency; WALTER A.  
18 STROMME and JUDITH A.  
19 STROMME a married man,

20 Defendants.

Case No.: LC2007-000189

**MOTION AND APPLICATION FOR  
ATTORNEYS FEES AND COSTS**

**(Assigned to the Honorable Margaret  
H. Downie)**

19 Plaintiff Apache Wells Homeowners Association, Inc., as prevailing party, hereby applies  
20 for an award of reasonable attorneys' fees and costs incurred in defending and appealing this  
21 case pursuant to this Court's minute entry dated November 2, 2007, holding "Plaintiff's  
22 requested relief is granted."<sup>1</sup>

23 CALENDARED BY: JEM 11/19/07  
24 FOR: SWC/SPG/MCM/RC 23304

25 Response to Mot RE Atty Fees - 12/5/07  
26 Reply to Costs / ORJ TO Form of Judgment 11/27/07

<sup>1</sup>Plaintiff requested its attorneys' fees and costs pursuant to the Contract and A.R.S. §§12-341 and 12-341.01. See Complaint ¶20 and Prayer for Relief ¶C.

1 The Superior Court Rules of Appellate Procedure-Civil (“S.C.R.A.P.C.”), Rule 13(a) and  
2 (b) govern this appeal. A.R.S. §12-914. S.C.R.A.P.C., Rule 13(b) provides that:

3  
4 When attorneys’ fees are recoverable by statute or contract, the claim  
5 for such fees in connection with the prosecution or defense of an  
6 appeal may be included in the statement of costs prescribed by this  
7 rule. The claim for attorneys’ fees for the prosecution or defense of  
8 the case in the trial court may also be included, provided that the trial  
9 court has not previously awarded such fees.

10 In other words, Plaintiff is entitled to its attorneys’ fees and costs incurred in defending this  
11 matter at the administrative level and in appealing this matter to this court pursuant to the  
12 contract embodied in the Declaration of Covenants, Conditions, and Restrictions (“declaration”)  
13 and/or A.R.S. §§12-341 and 12-341.01.

14 The declaration constitutes a “contract” between Plaintiff and Defendants Stromme.  
15 Powell v. Washburn, 211 Ariz. 553, 555 ¶8, 125 P.3d 373, 375 ¶8 (2006). Paragraph 6 of the  
16 declaration provides:

17 In the event the Company [Plaintiff] recovers judgment against any  
18 person for a violation or threatened violation of any of the covenants  
19 herein, the Company shall also be entitled to from such person  
20 reasonable attorneys’ fees and costs.

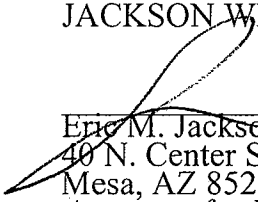
21 Here, Defendants Stromme alleged that the increase in transfer fee was a violation of the  
22 special assessment provisions of the community documents. Plaintiff defended and prevailed  
23 against their violation claims. The contractual provision of paragraph 6 of the declaration must  
24 be strictly enforced. McDowell Mountain Ranch Community Ass’n, Inc. V. Simons, 216 Ariz.  
25 266, 165 P. 3d 667, 670, ¶14 (App. 2007). Unlike fees awarded under A.R.S. §12-341.01, the  
26 court lacks discretion to refuse to award fees under a contractual provision. Id.; see also Sweis  
v. Chatwin, 120 Ariz. 249, 252, 585 P. 2d 269, 272 (App. 1978). Indeed, “contracts for payment

1 of attorneys' fees are strictly enforced in accordance with the terms of the Contract." The  
2 obligation is not discretionary. Heritage Heights Home Owners Ass'n v. Esser, 115 Ariz. 330,  
3 334, 565 P.2d 207 (App. 1977). Plaintiff is entitled to its attorneys fees under the contract. In  
4 any event, they are also awardable under A.R.S. §12-341.01.

5  
6 In conclusion, the award of costs and attorneys' fees is authorized by the contractual  
7 provisions of the homeowners association's Declaration of Conditions, Covenants, and  
8 Restrictions, and/or A.R.S. §§12-341 and 12-341.01. The total amount of attorney time spent on  
9 this matter prior to appeal is 24.6 hours. The total amount of attorney time spent on this appeal  
10 is 22.9 hours. Costs incurred total \$990.00. An affidavit of counsel in support of the  
11 application, accompanied by a summary and detailed itemization of legal services rendered and a  
12 statement of fees and costs, are attached. Wherefore, Plaintiffs request this court award them  
13 \$11,498.02 in attorneys fees and \$990.00 in costs.

14 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of November, 2007.

15  
16 JACKSON WHITE, P.C.

17  
18   
19 Eric M. Jackson  
40 N. Center Street, Suite 200  
Mesa, AZ 85201  
*Attorneys for Plaintiff*

20 ORIGINAL filed this 15<sup>th</sup> day of  
21 November, 2007, with the Clerk  
of the Court

22 A copy of the foregoing **hand-delivered**  
23 this same day to:

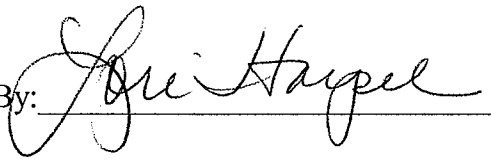
24 Honorable Margaret H. Downie  
25  
26

1 Copy of the same mailed this  
2 Same day to:

3 Department of Fire, Building and Life Safety  
4 1110 West Washington, #100  
5 Phoenix, AZ 85007  
6 Defendant

7 Office of Administrative Hearings  
8 1400 West Washington, #101  
9 Phoenix, AZ 85007  
10 Defendant

11 Steven W. Cheifetz, Esq.  
12 Cheifetz, Iannitelli, Marolini, PC  
13 1850 North Central Avenue, 19<sup>th</sup> Floor  
14 Phoenix, AZ 85004  
15 *Attorneys for Walter A. Stromme*

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By: 

1 **JACKSON WHITE**  
2 **ATTORNEYS AT LAW**  
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4 40 North Center, Suite 200  
5 Mesa, Arizona 85201  
6 (480) 464-1111  
7 *Attorneys for Apache Wells*  
8 By: Eric M. Jackson, No. 005449

**RECEIVED**

NOV 19 2007

**CHEIFETZ IANNITELLI  
MARCOLINI, P.C.**

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF MARICOPA**

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13 ASSOCIATION, INC., an Arizona non-profit  
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15 Plaintiff,

16 v.

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18 DEPARTMENT OF FIRE, BUILDING AND  
19 LIFE SAFETY; an independent office;  
20 WALTER A. STROMME and JUDITH A.  
21 STROMME a married man,

22 Defendants.

Case No.: LC2007-000189

**AFFIDAVIT OF ATTORNEYS  
FEES AND STATEMENT OF  
COSTS**

**(Assigned to the Hon. Margaret  
Downie)**

23 Eric M. Jackson, being duly sworn and upon his oath, states as follows:

24 1. I have been a licensed attorney in the State of Arizona since 1978, with Bar  
25 number 005449.

26 2. The total amount of fees expended by Plaintiff in connection with the above-  
27 referenced matter is set forth as follows:  
28

DATE	TMKR	TIME	AMOUNT	DESCRIPTION
11/27/2006	EMJ	0.20	50.00	Phone conference with Brian Johnson regarding Stromme Administrative complaint.
12/6/2006	CGG	3.50	560.00	Drafting answer and motion to dismiss.
12/6/2006	EMJ	0.20	50.00	Phone conference with client to provide status of Answer to Stromme Administrative Complaint.
12/7/2006	EMJ	1.00	250.00	Preparation of modifications to Answer and Motion to Dismiss.
12/8/2006	EMJ	0.40	100.00	Finalized and changes to Answer and Motion to Dismiss.
1/12/2007	EMJ	0.40	100.00	Conversations and review of Request for Production.
1/16/2007	EMJ	0.50	125.00	Phone conference with Brian Johnson and Marvin Stoll regarding upcoming hearing; Preparation of Reply to Response to Motion to Quash Subpoena and Objection.
1/17/2007	EMJ	0.80	200.00	Meeting with Marvin Stoll and Brian Johnson to discuss hearing.
1/18/2007	EMJ	1.10	275.00	Receipt and review of Order of Dismissal without prejudice mistakenly entered by Department of Fire Safety; Preparation of Response to Subpoena; Finalization of Hearing Memorandum; Phone conference with attorney Michael Hair regarding pleadings; Review and consideration of case filed by opposition in support of petitioner's position that board acted improperly by purchasing building without vote of membership.
1/19/2007	CF	3.40	544.00	Research cases on use of Home Owners Association general funds; meet to discuss findings.
1/19/2007	EMJ	0.70	175.00	Review of research and discussion of Response; Preparation of modifications to Supplemental Memorandum.
1/19/2007	JLT	0.80	200.00	Research regarding hearing at Office of Administrative Hearings.
1/20/2007	EMJ	2.20	550.00	Receipt and review of Response to supplemental memorandum; Review of minutes and documents verifying authorization for negotiating purchase of building and increase of transfer fees in preparation of Administrative Law hearing.
1/22/2007	EMJ	7.00	1,750.00	Continued preparation for hearing before Administrative Law Judge; Attendance at hearing.
1/24/2007	EMJ	0.20	50.00	Preparation of Notice of Submission of authorities to Administrative Law Judge.
1/27/2007	EMJ	0.30	75.00	Receipt and review of supplemental memorandum; Letter to client regarding same.
2/15/2007	EMJ	1.00	250.00	Review of Administrative Law Judge decision; Phone conference with Brian Johnson regarding outcome of hearing; Letter to clients regarding same.
2/16/2007	EMJ	0.70	175.00	Phone conferences with Brian Johnson regarding how to notify members of association of administrative law judge's order and discussion relating to appeal of the order; Meeting to discuss time parameters of motion for rehearing and appeal.
2/20/2007	EMJ	0.20	50.00	Phone conference with Brian Johnson regarding transfer fee issue.

DATE	TMKR	TIME	AMOUNT	DESCRIPTION
2/28/2007	EMJ	0.20	50.00	Phone conference with client regarding pursuing appeal.
3/6/2007	EMJ	0.20	50.00	Review of statutory language regarding time for filing post ruling motions and appeal.
3/9/2007	EMJ	3.20	800.00	Preparation of opening brief
3/23/2007	EMJ	0.80	200.00	Preparation of modifications to Complaint and Motion to Stay.
4/2/2007	EMJ	0.30	75.00	Letter to client regarding hearing to set briefing schedule.
4/11/2007	EMJ	0.20	50.00	Phone conference with client regarding verification of Stromme's address for service.
4/17/2007	EMJ	0.60	150.00	Phone conference with Michele Wood of Department of Fire & Safety regarding dismissing department from action; Meeting with Clint Goodman to research ability to ratify prior board action; Preparation of Notice of service and Notice of hearing of stay request.
4/30/2007	EMJ	0.60	150.00	Letter to Marvin Stoll regarding Answer of Department of Fire & Safety; Letter to Marvin Stoll regarding Answer of Stromme and Limited Response of Office of Administrative Law Hearings.
5/3/2007	EMJ	0.80	200.00	Phone conferences with clients regarding meaning of minute entry denying motion to stay, other strategy.
5/5/2007	EMJ	0.40	100.00	Review of correspondence from attorney Cheifetz; Letter to attorney Cheifetz in response to payment to Stromme and transfer fee issue.
5/30/2007	EMJ	0.90	225.00	Receipt and review of pleadings from Cheifetz regarding Order to Show Cause regarding contempt of order on transfer fee; Research basis of seeking stay.
6/4/2007	EMJ	0.30	75.00	Communication with Brian Johnson; Receipt and Review of Order from Administrative Law Judge rejecting Motion for Sanctions for lack of jurisdiction.
6/5/2007	EMJ	0.30	75.00	Letter to client regarding briefing schedule.
6/6/2007	EMJ	0.30	75.00	Letter to client enclosing minute entry from Office of Administrative Hearings rejection petition for contempt.
6/11/2007	EMJ	0.80	200.00	Preparation of modifications to Response to Stromme's Motion for Order to Show Cause regarding Contempt; Preparation of modifications to Application for Stay of Administrative Order regarding increase in transfer fees.
6/14/2007	EMJ	3.20	800.00	Preparation of Application to Stay and Response to Motion for Order to Show Cause regarding Contempt; Preparation of modifications to Opening Brief on Appeal.
6/30/2007	EMJ		244.02	Westlaw research on issues to be addressed in appeals brief
7/12/2007	EMJ	1.10	275.00	Preparation of modifications to Reply.
7/16/2007	EMJ	0.20	50.00	Preparation of modifications to Reply to Response to Motion to Stay.

DATE	TMKR	TIME	AMOUNT	DESCRIPTION
8/3/2007	EMJ	0.80	200.00	Receipt and review of Stromme's Answering Brief; Letter to Marvin Stoll regarding same.
8/14/2007	EMJ	0.30	75.00	Phone conference with Brian Johnson.
8/16/2007	EMJ	0.70	175.00	Preparation of additional modifications to Reply Brief; office conference regarding arguments and supplementation.
8/20/2007	EMJ	0.80	200.00	Preparation of modifications to Reply Brief; Letter to clients regarding minute entry from court.
8/23/2007	EMJ	0.20	50.00	Phone call from Brian Johnson regarding status.
8/27/2007	EMJ	0.50	125.00	Research additional and new case law regarding business judgment rule and reasonableness standard.
9/5/2007	EMJ	3.20	800.00	Preparation for oral argument on appellate briefs; Attendance at hearing.
11/15/2007	EMJ	2.00	500.00	Preparation of Application and Affidavit of Fees; Preparation of Form of Judgment; Preparation of Motion for Fees and Costs
		47.5	\$11,498.02	

3. I am the principal attorney responsible for this case and acting on behalf of Plaintiff. I was admitted to practice in the state of Arizona in October 1978. My primary emphasis is commercial litigation. Plaintiff is billed at a preferred hourly rate of \$250.00 per hour for my time. The attorneys' fees expended in this case are reasonable and customary for the services rendered by me or others in the community with my experience. All of the fees incurred were reasonable and necessary to the successful prosecution of Plaintiff's claim. The fees listed above and the time entries therein stated were executed on the date services were performed. The client is billed for services on a monthly basis.

4. The billing rates agreed upon by Jackson White and Plaintiff are as follows:

EMJ - Eric M. Jackson @ \$250.00 per hour  
 JLT - James L. Tanner @ \$250.00 per hour  
 SLP - Scott L. Potter @ \$160.00 per hour  
 CF - Christine Farnsworth @ \$160.00 per hour

Eric M. Jackson (EMJ), Bar No. 005449, was admitted to practice law in Arizona in 1978. His primary area of practice is commercial litigation.

James L. Tanner (JLT), Bar No. 004078, was admitted to practice law in Arizona in 1975. His primary area of practice is commercial litigation.



1 Scott L. Potter (SLP), Bar No. 025157, was admitted to practice law in Arizona in  
2 2007. His primary emphasis of practice is commercial litigation.

3 Christine Farnsworth (CF), Bar No. 024828, was admitted to practice law in  
4 Arizona in 2006. Her primary emphasis of practice is commercial litigation.

5 The rates charged by the above attorneys are consistent with those charged by  
6 attorneys with similar experience in Arizona.

7 5. The costs incurred in this case as set forth below are as follows:

DATE	DESCRIPTION	AMOUNT
3/1/07	White & Associates – Electronic Transcript from 1/22/07	\$ 760.00
3/27/07	Filing Fee – Complaint	230.00
	TOTAL:	\$ 990.00

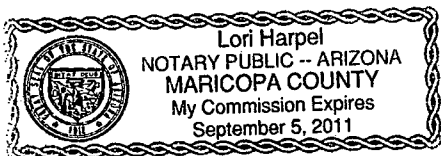
11  
12 6. Based on the above, Plaintiff respectfully requests this Court to award all of its  
13 attorneys' fees and costs incurred stated above as reasonable and necessary in moving for a  
14 Judgment in this case.

15  
16  
17   
ERIC M. JACKSON

18  
19 SUBSCRIBED AND SWORN to before me on this 15<sup>th</sup> day of November, 2007, by  
20 Eric M. Jackson.

21   
Notary Public

22 My Commission Expires:



1 ORIGINAL of the foregoing filed  
2 with the Clerk of the Court and a  
3 COPY of the same hand-delivered  
4 this 15<sup>th</sup> day of November, 2007 to:

5 The Honorable Margaret Downie  
6 Maricopa County Superior Court  
7 201 W. Jefferson, Room 4A  
8 Phoenix, AZ 85003-2243

9 COPIES of the forgoing mailed  
10 this same day to:

11 Department of Fire, Building, and Life Safety  
12 1110 W. Washington, #100  
13 Phoenix, AZ 85007

14 Melanie C. McKeddie, Esq.  
15 Cheifetz Iannitelli Marcolini, P.C.  
16 1850 N. Central Avenue, 19<sup>th</sup> Floor  
17 Phoenix, AZ 85004  
18 *Attorneys for Defendants Stromme*

19 By:   
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21  
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15 AND LIFE SAFETY; OFFICE OF  
16 ADMINISTRATIVE HEARINGS, an  
17 independent agency; WALTER A.  
18 STROMME and JUDITH A.  
19 STROMME a married man,

18 Defendants.

Case No.: LC2007-000189

**NOTICE OF LODGING FINAL  
JUDGMENT**

**(Assigned to the Honorable Margaret  
H. Downie)**

19 Plaintiff Apache Wells Homeowners Association, Inc. hereby serves Notice of Lodging  
20 the attached proposed Form of Judgment.

21 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of November, 2007.

JACKSON WHITE, P.C.

22  
23  
24  
25 Eric M. Jackson  
26 40 N. Center Street, Suite 200  
Mesa, AZ 85201  
Attorneys for Plaintiff

CALENDARED BY: TBM 11/19/07  
FOR: SWC/SPG/mem/gre 23304  
OSJ to Fam of Judgment 11/27/07

1 ORIGINAL filed this 15<sup>th</sup> day of  
2 November, 2007, with the Clerk  
3 of the Court

4 A copy of the foregoing **hand-delivered**  
5 this same day to:

6 Honorable Margaret H. Downie

7 Copy of the same mailed this  
8 Same day to:

9 Department of Fire, Building and Life Safety  
10 1110 West Washington, #100  
11 Phoenix, AZ 85007  
12 Defendant

13 Office of Administrative Hearings  
14 1400 West Washington, #101  
15 Phoenix, AZ 85007  
16 Defendant

17 Steven W. Cheifetz, Esq.  
18 Cheifetz, Iannitelli, Marolini, PC  
19 1850 North Central Avenue, 19<sup>th</sup> Floor  
20 Phoenix, AZ 85004  
21 *Attorneys for Walter A. Stromme*

22 By:   
23  
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25  
26

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16 ADMINISTRATIVE HEARINGS, an  
17 independent agency; WALTER A.  
18 STROMME and JUDITH A.  
19 STROMME a married man,

18 Defendants.

Case No.: LC2007-000189

**FINAL JUDGMENT**

**(Assigned to the Honorable Margaret  
H. Downie)**

19 This matter came having come before the Court as an appeal of the written decision of  
20 Administrative Law Judge Lewis D. Kowal finding that “the determination as to the amount of  
21 the increase of the transfer fee was arbitrarily and capriciously selected and not reasonably  
22 related to specific expenses that are anticipated;” and the Court having considered the entire  
23 record on appeal, as well as briefing by the parties and the arguments of counsel, and good cause  
24 appearing, and no just cause for further delay;  
25  
26

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that final judgment be and  
2 hereby is entered in favor of Plaintiff and against Defendants, reversing the decision of the  
3 Administrative Law Judge entered on the 12<sup>th</sup> day of February, 2007, resolving the claims of the  
4 parties in this matter, as follows:  
5

6 1. The transfer fee is not a special assessment within the meaning of the governing  
7 documents.

8 2. Plaintiff, by and through its Board of Directors, did not violate the governing  
9 documents and Arizona statutes that regulate planned communities in approving the transfer fee  
10 increase from \$300.00 to \$950.00.

11 3. The transfer fee increase from \$300.00 to \$950.00 is valid and authorized under  
12 the governing documents of the planned community and Arizona statutes that regulate planned  
13 communities.  
14

15 IT IS FURTHER ORDERED awarding Plaintiff its attorneys' fees of \$ \_\_\_\_\_  
16 and costs of \$ \_\_\_\_\_ pursuant to the Contract and/or A.R.S. §§12-341 and 12-  
17 341.01, with interest on fees and costs at the legal rate of 10% per annum from the date of the  
18 award of judgment until paid.

19 IT IS FURTHER ORDERED reversing the Administrative Law Judge Decision ordering  
20 Plaintiff pay Defendants Walter A. Stromme and Judith A. Stromme ("Defendants Stromme")  
21 the \$550.00 filing fee, and ordering Defendants to refund the \$550.00 filing fee to Plaintiff.  
22

23 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.  
24  
25  
26

\_\_\_\_\_  
Honorable Margaret H. Downie