

w/o

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

<p>JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; ELIZABETH NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE; as Trustee of the Kenneth Page and Catherine Page Trust,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>DONALD COX and CATHERINE COX, husband and wife, et al., et ux.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. P1300CV20030399</p> <p style="text-align: center;">RULING</p>	<p style="text-align: right;">FILED ✓</p> <p>DATE: <u>APR 07 2015</u> <u>4:42</u> O'Clock <u>P</u> M.</p> <p style="text-align: center;">DONNA McQUALITY, CLERK</p> <p>BY: <u>J. HARSHMAN</u> Deputy</p>
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<p>HONORABLE JEFFREY G. PAUPORE</p> <p>DIVISION PRO TEM A</p>	<p>BY: Tiffany Kolar, Judicial Assistant</p> <p>DATE: April 3, 2015</p>
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The Court has considered Defendant Coxes' Motion for Reconsideration re: August 25, 2014 Ruling Re: Attorneys' Fees Awarded in Favor of Varilek; Varilek's Motion to Strike Exhibits 5-12 to Motion for Reconsideration re: August 25, 2014 Ruling re: Attorneys' Fees Awarded in Favor of Varilek; Coxes' Response to Varilek's Motion to Strike Exhibits 5-12 to Motion for Reconsideration re: August 25, 2014 Ruling re: Attorneys' Fees Awarded in Favor of Varilek; Varilek's Reply to Response to Motion to Strike Exhibits 5-12 to Motion for Reconsideration re: August 25, 2014 Ruling re: Attorneys' Fees Awarded in Favor of Varilek; Varilek's Voluntary Withdrawal of Reply to Response to Motion to Strike Exhibits 5-12 to Motion for Reconsideration re: August 25, 2014 Ruling re: Attorneys' Fees Awarded in Favor of Varilek; Plaintiffs' Rule 54(g) Motion for Award of Attorneys' Fees and Non-Taxable Costs, Affidavits of J. Jeffrey Coughlin and David K. Wilhelmsen in support of Application for Attorneys' Fees and Costs, Plaintiffs' Statement of Taxable Costs Paid to J. Jeffrey Coughlin, PLLC; Coxes' Response and Objection to Plaintiffs' Request for Award of Attorneys' Fees; Robert H. Taylor and Teri A. Thomson-Taylor's Joinder in Defendant Veres's Response to Plaintiffs' Motion for Award of Attorneys' Fees and Non-Taxable Costs; Veres Response to Plaintiffs' Cundiff, Nash and Page Rule 54(g) Motion for Award of Attorneys' Fees and Non-Taxable Costs; Reply in Support of Plaintiff's Motion for Award of Attorneys' Fees and Non-Taxable Costs; Plaintiffs' Withdrawal of Application for Attorneys' Fees Against Joined Defendants and Request that Remaining Matters be Returned to Judge Jones for Consideration; Coxes' Response to Plaintiffs' Withdrawal of Application for Attorneys' Fees Against Joined Defendants and Request that Remaining Matters be Returned to Judge Jones for Consideration; and Reply in Support of Plaintiffs' Withdrawal of Application for Attorneys' Fees Against Joined Defendants and Request that Remaining Matters be Returned to Judge Jones for Consideration; and Notice of Lodging of Proposed Final Judgment.

IT IS ORDERED, Denying Defendant Coxes' Motion for Reconsideration re: August 25, 2014 Ruling Re: Attorneys' Fees Awarded in Favor of Varilek.

In order for the Court to make a determination that hours claimed in attorneys' fees applications are justified, the application must be in sufficient detail to enable the court to assess the reasonableness of the time incurred; practitioners should prepare the summaries based upon contemporaneous time records which indicate work performed by each attorney for whom fees are sought, and if counsel expects that the fee application will be opposed on grounds that hours claimed are excessive, counsel may find that it is useful to submit actual time records to support the fee request. *Schweiger v China Doll Restaurant, Inc.*, 138 Ariz. 183 (1983).

Plaintiff withdrew their claim for attorneys' fees and costs against all Defendants with the exception of Defendants Cox.

Plaintiff's Motion for Attorneys' Fees included supporting affidavits with billing statements from the law firms of Favor, Moore and Wilhelmsen, P.A. ("Wilhelmsen") and J. Jeffrey Coughlin, PLLC, ("Coughlin").

Wilhelmsen's monthly billing statement identified the clients as Mr. and Mrs. John Cundiff v. Donald and Katherine Cox, Deed Restriction Enforcement. The Wilhelmsen affidavit avows "The Client has agreed to or has paid the hourly billing rates..."

Coughlin's monthly billing statement identified the client as Alfie Ware, Coyote Springs. The Coughlin affidavit avows "The Client has paid or agreed to pay the total charges ..." The Coughlin affidavit does not explain the nexus between the deed restriction enforcement case against the Coxes and Mr. Ware. The Court could find no reference in this lengthy civil litigation case where Mr. Ware was identified as a party Plaintiff. Therefore, Plaintiff's request for reasonable attorneys' fees under the Coughlin affidavit are denied.

This case has been litigated for over 12 years with each side winning a skirmish or two with Plaintiffs declared the ultimate winner by the Under Advisement Ruling dated June 14, 2013. The matter arises out of a contract and pursuant to A.R.S. §12-341.01(A). Pursuant to this Court's discretion, Plaintiffs are entitled to their reasonable attorneys' fees and costs.

IT IS ORDERED attorneys' fees are awarded against Defendants Cox and in favor of Plaintiffs in the amount of **\$258,986.52**, and costs are awarded to Plaintiffs in the amount of **\$4,117.74**.

Plaintiffs have lodged an initial proposed Final Judgment. Cox and those joined property owners aligned as Defendants ("Defendants") objected to the proposed Final Judgment claiming their Rule 19 Motion to Dismiss is still pending. Judge Jones' ruling in favor of Plaintiffs' and Varilek's Motion for Summary Judgment rendered Varilek's Motion to Require Defendants Cox to Serve the Indispensable Parties with Documents Comporting with Due Process *Moot*. Based upon the forgoing, the Court deems Defendant's Rule 19 Motion to Dismiss *Moot*.

In *Reply*, Plaintiffs revised the proposed Final Judgment to address some of Defendants' concerns and attacked Defendants' transfer of the subject property in the midst of litigation to Defendant Coxes newly created LLCs. Defendants argument that the transfer of the subject property to newly created LLCs is not properly before

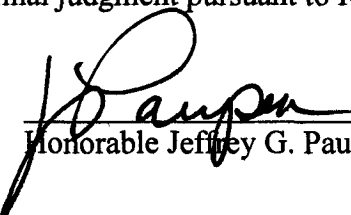
the Court is disingenuous at best. This Court has personal jurisdiction over the Defendants and Judge Jones granting of Plaintiffs' summary judgment touches, concerns, and runs with the subject property. The language in the proposed Final Judgment paragraph 13 is appropriate under the circumstances.

IT IS ORDERED Defendant's Rule 19 Motion to Dismiss is *Moot*.

IT IS FURTHER ORDERED Plaintiff's revised Final Judgment is approved and signed by the Court on the date set forth below.

There are no further matters pending and this is a final judgment pursuant to Rule 54(c).

Dated: April 7, 2015



Honorable Jeffrey G. Paupore

cc: J. Jeffrey Coughlin – electronically via Clerk's Office
Jeffrey R. Adams – electronically via Clerk's Office
Mark W. Drutz/Sharon M. Flack – Musgrove, Drutz & Kack – electronically via Clerk's Office
David K. Wilhelmsen/Lance B. Payette – Favour & Wilhelmsen – electronically via Clerk's Office
Robert E. Schmitt – Murphy, Schmitt, Hathaway & Wilson – electronically via Clerk's Office
Noel J. Hebets- Noel J. Hebets, PLC, 2515 North 48th Street #3, Phoenix, AZ 85008
William H. "Bill" Jensen, 14556 Howard Mesa Loop, Williams, AZ 86046
Gary and Sabra Feddema- 9601 East Far Away Place, Prescott Valley, AZ 86315
William R. and Judith K. Stegeman Trust- 9200 East Far Away Place, Prescott Valley, AZ 86315
Karen L. and Michael P. Wargo- 9200 East Spurr Lane, Prescott Valley, AZ 86315
Linda J. Hahn- 10367 W. Mohawk Lane, Peoria, AZ 85382
Sergio Martinez and Susana Navarro- 10150 N. Lawrence Lane, Prescott Valley, AZ 86315
Lloyd E. and Melva J. Self- 9250 E. Slash Arrow Drive, Prescott Valley, AZ 86315
Rynda and Jimmy Hoffman- 9650 East Spurr Lane, Prescott Valley, AZ 86315
William and Shaunla Heckethorn- 9715 East Far Away Place, Prescott Valley, AZ 86315
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James C. and Leslie M. Richie- 9800 E. Plum Creek Way, Prescott Valley, AZ 86315
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