

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2013 JUL -1 PM 3:36 ✓

SANDRA K HARKMAN, CLERK
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Attorneys for Property Owner James Varilek

9 SUPERIOR COURT OF ARIZONA

10 YAVAPAI COUNTY

11 JOHN B. CUNDIFF and BARBARA C.
12 CUNDIFF, husband and wife; ELIZABETH
13 NASH, a married woman dealing with her
14 separate properly; KENNETH PAGE and
15 KATHRYN PAGE, as Trustee of the
16 Kenneth Page and Catherine Page Trust,

17 Plaintiffs,

18 v.

19 DONALD COX and CATHERINE COX,
20 husband and wife, et al., et ux.,

21 Defendants.

22 P1300
23 Case No. CV 2003-0399

24 Division 4

25 (Assigned to Hon. Kenton Jones)

26 MOTION FOR AWARD OF
27 ATTORNEYS' FEES

28 James Varilek ("Varilek") hereby moves pursuant to ARCP 54(g) for an award of his reasonable attorneys' fees incurred in this matter. Varilek has incurred attorneys' fees totaling \$90,490.00, as is fully supported by the *Affidavit of David K. Wilhelmsen in Support of Award of Attorneys' Fees* filed concurrently with this motion.

Varilek's claim for attorneys' fees is based upon A.R.S. § 12-341.01(A), *Pinetop Lakes Ass'n v. Hatch*, 135 Ariz. 196, 198, 659 P.2d 1341, 1343 (App. 1983) ("We ... hold that an action to enforce a restrictive covenant 'arises out of contract' pursuant to A.R.S. § 12-341.01 and attorney's fees are awardable in this action"), *Westwood Homeowners Ass'n v. Tenhoff*, 155 Ariz. 229, 236, 745 P.2d 976, 983 (App. 1987) (same), and the numerous other Arizona decisions holding that an action to enforce restrictive covenants

1 is, in essence, an action to enforce mutual contractual obligations and that the successful
2 party is entitled to an award of attorneys' fees pursuant to section 12-341.01(A).

3 RESPECTFULLY SUBMITTED July 1, 2013.

4 FAVOUR & WILHELMSSEN, PLLC

5
6 By: 

7 David K. Wilhelmsen

8 Lance B. Payette

9 Attorneys for Property Owner James Varilek

10 Original and one copy of the
11 foregoing *Application for Award
12 of Attorneys' Fees* filed July 1,
13 2013 with:

14 Clerk, Superior Court of Yavapai County
15 120 S. Cortez Street
16 Prescott, AZ 86302

17 Copy of the foregoing
18 *Application for Award of
19 Attorneys' Fees* hand-delivered
20 July 1, 2013 to:

21 The Honorable Kenton Jones
22 Yavapai County Superior Court
23 120 S. Cortez Street
24 Prescott, AZ 86303

25 Copy of the foregoing
26 *Application for Award of
27 Attorneys' Fees* mailed July 1,
28 2013 to:

29 Jeff Adams
30 THE ADAMS LAW FIRM PLLC
31 125 Grove Avenue
32 P.O. box 2522
33 Prescott, AZ 86302
34 Attorney for Defendants listed in *Answer*

1 *to First Amended Complaint by Joined*
2 *Property Owner Defendants*
3 dated October 5, 2010

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By 
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