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Pool Houses and Public Policy: The Uncollectability of Contractual Attorney Fees in Missouri

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NOTE

Pool Houses and Public Policy: The Uncollectability of Contractual Attorney Fees in Missouri

Arrowhead Lake Ests. Homeowners Ass'n, Inc. v. Aggarwal, 624 S.W.3d 165 (Mo. 2021) (en banc)

Evan Miller[*]

I. INTRODUCTION

Homeowners associations ("HOAs") are a foundational piece of life in the United States for people of all socioeconomic backgrounds.[1] These planned communities provide stable living arrangements that many homeowners desire,[2] and protect buyers' expectations of a neighborhood's character.[3] Despite the ostensibly beneficial goals of HOAs, they have generated substantial controversy.[4] Columbia, Missouri, was the backdrop

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[1] *See generally* Rachel Furman, *Collecting Unpaid Assessments: The Homeowner Association's Dilemma When Foreclosure Is No Longer A Viable Option*, 19 J.L. & POL'Y 751, 752 (2011).

[2] Paula A. Franzese, *Common Interest Communities: Standards of Review and Review of Standards*, 3 WASH. U. J.L. & POL'Y 663, 671 (2000).

[3] Michael C. Pollack, *Judicial Deference and Institutional Character: Homeowners Associations and the Puzzle of Private Governance*, 81 U. CIN. L. REV. 839, 847 (2013).

[4] *See generally* Janet M. Bollinger, *Homeowners' Associations and the Use of Property Planning Tools: When Does the Right to Exclude Go Too Far?*, 81 TEMP. L. REV. 269, 270–71 (2008) (describing the constitutional controversies of Ave Marie, a

of a garden-variety HOA dispute between Ajay Aggarwal and Megha Garg ("the Homeowners") and the Arrowhead Lake Estates Homeowners Association ("Arrowhead").[5] The Homeowners submitted a plan for several outdoor improvements but failed to include a small shed that would cover pool equipment.[6] After a trial judge's denial of a substantial sum of attorney fees, the parties litigated whether the HOA should receive its attorney fees.[7] What originally seemed like a petty dispute over a small shack became a four-year march through all three levels of Missouri's judicial system to arrive at a result that may frustrate future litigants and harm homeowners.[8]

Part II of this Note examines the details and procedural posture that gave rise to this dispute. Part III provides context to governance and dispute resolution in HOAs and the role courts play in interpreting contracts that award attorney fees. Part IV details the majority's reasoning for overriding the lower court's award of attorney fees in the instant case and focuses on how the majority and the dissenting opinions approached interpretation of the declaration. Part V addresses the extent to which the majority's approach contrasts with that taken by the weight of case authority and discusses the broader policy implications of the majority's opinion on HOA governance and attorney fee provisions.

II. FACTS AND HOLDING

The Homeowners own property in Arrowhead Lake Estates,[9] which is subject to the "Declaration of Covenants, Easements, and Restrictions of Arrowhead Lake Estates Subdivision" ("the Declaration").[10] Among other things, the Declaration has an attorney-fee clause for any disputes that arise under the Declaration.[11] Arrowhead enforces the Declaration

planned Roman Catholic stronghold which pledged to outlaw pornography, and Celebration, owned by Disney, which may have curtailed political speech).

[5] Arrowhead Lake Ests. Homeowners Ass'n, Inc. v. Aggarwal, 624 S.W.3d 165, 166 (Mo. 2021) (en banc).

[6] Substitute Brief of Respondents Ajay Aggarwal and Megha Garg, *Aggarwal*, 624 S.W.3d 165 (No. SC98772), 2021 WL 1086434, at *5.

[7] *Aggarwal*, 624 S.W.3d at 168. The Supreme Court of Missouri stated that their preference for the phrase "attorney fees" is no apostrophe. *Id.* at 166 n.1.

[8] *See infra* notes 166–77.

[9] *Aggarwal*, 624 S.W.3d at 166.

[10] *Id.*

[11] *Id.* at 168.

through a committee,[12] and requires homeowners to submit plans for lot improvements to a separate committee before executing them.[13] As expected, when the Homeowners wanted to improve the property, they submitted a plan with several outdoor improvements to the proper committee for approval.[14] The plans the committee received did not contain a shed for pool equipment.[15] The committee approved the Homeowners' plans within twenty-four hours,[16] but warned the Homeowners that if they made any other improvements to the original submission, the committee would need to approve the changes before any construction could begin.[17] Shortly thereafter, the Homeowners began building the shed,.[18]

In August 2017, Arrowhead learned of the shed and told the Homeowners that the committee had not approved it and the Homeowners must remove it.[19] After ten days, the Homeowners had not complied,[20] prompting a letter from Arrowhead's attorney requesting that the Homeowners comply with HOA policy.[21] The Homeowners did not comply with the letter.[22] Arrowhead filed a petition in the circuit court of Boone County for a temporary restraining order to enjoin the construction of the structure, a permanent injunction, and for an award of their attorney fees on September 8, 2017.[23]

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[12] Appellant's Substitute Reply Brief, *Aggarwal*, 624 S.W.3d 165 (No. SC98772), 2021 WL 1086431, at *3.

[13] Substitute Brief of Respondents Ajay Aggarwal and Megha Garg, *supra* note 6.

[14] *Aggarwal*, 624 S.W.3d at 166 (naming improvements like decking, a hot tub, a swimming pool, a fence, and a fire pit).

[15] Substitute Brief of Respondents Ajay Aggarwal and Megha Garg, *supra* note 6.

[16] *Id.*

[17] *Aggarwal*, 624 S.W.3d at 166. In Arrowhead's brief to the Missouri Court of Appeals, Western District, Arrowhead Lake stated the provisions of the declaration they accused homeowners of violating. Section 9e of the Declaration stated that nothing "[shall] be constructed unless it has been first approved, in writing, by the Architectural Control Committee." Appellant's Substitute Brief, *Aggarwal*, 624 S.W.3d 165 (No. SC98772), 2021 WL 1086428, at *8.

[18] *Aggarwal*, 624 S.W.3d at 166.

[19] Appellant's Substitute Reply Brief, *supra* note 12, at *9–10.

[20] *Id.* at *10.

[21] *Id.* (stating that the cease-and-desist letter came from Arrowhead's attorney).

[22] *Aggarwal*, 624 S.W.3d at 167.

[23] *Id.*; CASENET, https://www.courts.mo.gov/cnet/caseNoSearch.do (last visited Nov. 5, 2021) (search case number "17BA-CV03335" to show temporary restraining order issued) [hereinafter *Aggarwal* TRO].

On October 23, 2017, the court granted Arrowhead Lake's temporary restraining order.[24] Following an eight-day bench trial spanning several months, the circuit court awarded permanent injunctive relief to Arrowhead.[25] At the close of the trial, the circuit court ordered both sides to pay their own attorney fees.[26] Both parties filed motions for amendment, clarification, and reconsideration.[27] The final judgement bore a series of small "x"s across the attorney fee provision.[28] Arrowhead Lake appealed the refusal of an attorney fee award to the Missouri Court of Appeals, Western District.[29]

A three-judge panel treated the Declaration as a contract, so its meaning was treated as a question of law requiring a *de novo* review.[30] The court of appeals held that the trial court was required to award attorney fees and could only exercise its discretion regarding the amount of attorney fees.[31] The court of appeals, therefore, reversed the circuit court and remanded the case for determination the appropriate amount of attorney fees as required by the plain reading of the contract.[32]

On December 29, 2020, the Supreme Court of Missouri granted transfer.[33] Without mentioning the decision from the court of appeals, the Supreme Court of Missouri upheld the circuit court's decision not to award

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[24] *Aggarwal* TRO, *supra* note 23.

[25] *Aggarwal*, 624 S.W.3d at 167; *Aggarwal* TRO, *supra* note 23.

[26] *Aggarwal*, 624 S.W.3d at 167.

[27] *Aggarwal* TRO, *supra* note 23.

[28] *Id.*; *Aggarwal* TRO, *supra* note 23. This may seem like a confusing chronology of events, but the June 19, 2019, docket contains two entries form Judge Shaw, one awarding attorney fees and one refusing to award attorney fees. Neither Missouri Casenet nor any related documents expand on why Judge Shaw released two conflicting orders on the same day.

[29] Arrowhead Lake Ests. Homeowners Ass'n, Inc. v. Aggarwal, No. WD 83019, 2020 WL 5160693, at *1 (Mo. Ct. App. Sept. 1, 2020).

[30] *Id.* at 2.

[31] *Id.* at 3.

[32] *Id.*

[33] Arrowhead Lake Ests. Homeowners Ass'n, Inc. v. Aggarwal, 624 S.W.3d 165, 166 n.2 (Mo. 2021) (en banc) (stating the basis for the Missouri Supreme Court's jurisdiction in Article V, § 10 of the Missouri Constitution, which provides, in relevant part, "Cases…may be transferred to the supreme court by order of the majority of the judges of the participating district of the court of appeals, after opinion, or by order of the supreme court before or after opinion because of the general interest or importance of a question involved in the case, or for the purpose of reexamining the existing law, or pursuant to supreme court rule." MO. CONST. art. V, § 10. The Supreme Court acts as a court of original appellate jurisdiction for cases with questions of general importance. State v. Bradshaw, 593 S.W.2d 562, 565 (Mo. Ct. App. 1979)).

attorney fees to Arrowhead.[34] The provision in the Declaration stating "the prevailing party *shall* be entitled to receive an aware [sic] of attorney's fees and court costs *as deemed appropriate* by a court of competent jurisdiction" allowed the circuit court to exercise its discretion in not awarding any attorney fees.[35]

III. LEGAL BACKGROUND

The first half of this Part surveys the ecosystem of HOAs, including their mechanisms for enforcing covenants and financing their services. The second half examines how courts interpret attorney fee provisions in contracts.

A. Framing the Debate: Homeowners' Associations in the United States

Property owners living in common interest communities ("CICs") governed by HOAs purchase their property subject to covenants governing the use of the land within the HOA's boundaries.[36] Elected boards are required to enforce the declarations governing CICs.[37] These declarations can be very restrictive.[38] While HOA stories range from amusing to disturbing, membership in an HOA is quickly becoming the norm in American life.[39] Finding a home outside of a CIC has become increasingly difficult.[40] Nevertheless, property owners do not always agree with the

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[34] *Id.* at 171.

[35] *Aggarwal*, 624 S.W.3d at 168 (emphasis added).

[36] Whispering Valley Lakes Imp. Ass'n v. Franklin Cty. Mercantile Bank, 879 S.W.2d 572, 574 (Mo. Ct. App. 1994) (describing covenants that "run" with the land to bind all future possessors of the property).

[37] Lori A. Roberts, *Topping Palm Trees in the Name of CC&R Enforcement: A Proposal to Temper CC&R Enforcement with Common Sense*, 51 S. TEX. L. REV. 413, 421 (2009).

[38] Franzese, *supra* note 2, at 664 (telling the story of an HOA that attempted to force a family to remove a treehouse they built while the homeowners' son was fighting cancer).

[39] *Record Number of Homeowners live in HOA Communities*, NAT'L ASS'N OF REALTORS (Sept. 23, 2020), https://magazine.realtor/daily-news/2020/09/23/record-number-of-homeowners-live-in-hoa-communities [https://perma.cc/V9FQ-2229].

[40] Rebecca Crooker, *Hey, Neighbor: Homeowners' Associations, Super-Priority Liens, and the Need for Balanced Rights in Nevada*, 19 NEV. L.J. 313, 316–17 (2018) (municipalities often require developers to create an HOA before the developer receives a permit to buld the subdivision).

enforcement of the Covenants, Conditions, and Restrictions ("CC&Rs")[41] and these disagreements frequently lead to litigation.[42] To meet the expectations of homeowners and quash CC&R violations, declarations typically provide two distinct functions: a governance and enforcement structure and an ability to finance the association.[43]

The HOA must prudently consider many priorities when budgeting resources for the coming year to avoid shortfalls.[44] Homeowners living in a CIC expect that the HOA will maintain common areas and fulfill other functions as stated in the CC&Rs.[45] Additionally, economically-stressed municipalities assign duties such as road care and utilities, like sewer and trash disposal, to HOAs.[46] The HOA raises funds to discharge these duties by levying assessments against each property owner.[47] Assessments are a function of the HOA's expenses spread evenly across its members and are typically the only form of income for the HOA.[48] HOAs are often financially vulnerable because they only collect the minimum amount of assessments to fund the HOA regime.[49] Thus, when property owners do not pay their assessments, the HOA may not have adequate operating funds and may therefore not offer expected amenities.[50]

Declarations also often limit property use within a CIC, creating contention between the HOA and individual homeowners.[51] Courts have

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[41] Pollack, *supra* note 3, at 843–44.

[42] *Id.*

[43] Roberts, *supra* note 37, at 415; Pollack, *supra* note 3, at 842–43; Brandt H. Stitzer, *HOA Fees: A BAPCPA Death-Trap*, 70 WASH. & LEE L. REV. 1395, 1400 (2013).

[44] James L. Winokur, *Critical Assessment: The Financial Role of Community Associations*, 38 SANTA CLARA L. REV. 1135, 1150 (1998) (listing "utilities water, landscaping and grounds maintenance, exterior repairs, recreational expenses, payroll, management, legal and accounting fees, insurance, telephone, communication and newsletters, miscellaneous contingency fees, and contributions to reserves for extraordinary expenses" as considerations for yearly budgeting).

[45] RESTATEMENT (THIRD) OF PROP. § 6.5, cmt. b (AM. L. INST. 2000).

[46] Paula A. Franzese & Steven Siegel, *Trust and Community: The Common Interest Community as Metaphor and Paradox*, 72 MO. L. REV. 1111, 1112–13 (2007).

[47] RESTATEMENT (THIRD) OF PROP. § 6.5(1)(a)(2).

[48] Furman, *supra* note 1, at 754–55.

[49] Winokur, *Critical Assessment: The Financial Role of Community Associations*, *supra* note 44 at 1142.

[50] Furman, *supra* note 1, at 755; Roberts, *supra* note 37, at 415.

[51] Laura T. Rahe, *The Right of Exclude: Preserving the Autonomy of the Homeowners' Association*, 34 URB. LAW. 521, 523 (2002); *see, e.g.*, Franzese & Siegel, *supra* note 46 (citing reports of contention between the HOA board its constituent members).

interpreted declarations as contracts and require board members to act reasonably in enforcing CC&Rs.[52] As HOAs resolve these disputes, courts have traditionally applied the "business judgment rule," native to reviewing corporate governance decisions, to HOA board actions.[53] Thus, so long as board members exercise honest judgment and do not act out of self-interest, their decisions are insulated from judicial second-guessing.[54] For example, when an architectural committee denies an improvement to a lot, the disappointed lot owner seeking to overturn the decision must prove that the board acted with bad faith.[55] While this standard may seem like "common sense,"[56] board members are not always prepared to govern their neighbors benevolently.[57] In one infamous case, an HOA informed a boy, sick with leukemia, that the tree house he built with his father as a symbol of hope violated the CC&Rs.[58] The HOA retreated from its position only after intense public backlash.[59]

While telling a boy with a serious illness that his treehouse is diminishing property values might seem unfathomable, HOAs may feel compelled to enforce the restrictions absolutely because lax enforcement may lead to a judicial determination that the HOA abandoned the covenants and cannot enforce them.[60] Therefore, to preserve the objectives of the declaration and their enforcement authority, HOAs may litigate solely on principle.[61] Because litigating on principle may not return large settlements, courts have stated HOAs should receive attorney fee awards in their efforts to enforce the covenants, pursuant to relevant fee-shifting provisions in the CC&Rs.[62]

Homeowners disappointed with their HOA's governance may be limited to running for a position on the board of directors or changing the

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[52] Roberts, *supra* note 37, at 422.

[53] Franzese, *supra* note 2, at 676.

[54] *Id.* at 677; *see also* Levandusky v. One Fifth Ave. Apartment Corp., 553 N.E.2d 1317, 1322 (N.Y. 1990).

[55] Pollack, *supra* note 3, at 875.

[56] Franzese, *supra* note 2, at 677.

[57] James L. Winokur, *The Mixed Blessings of Promissory Servitudes: Toward Optimizing Economic Utility, Individual Liberty, and Personal Identity*, 1989 WIS. L. REV. 1, 64 (1989).

[58] Franzese, *supra* note 2, at 664.

[59] *Id.*

[60] *See, e.g.*, Gabriel v. Cazier, 938 P.2d 1209, 1212 (1997) (Schroeder, J., concurring).

[61] Arches Condo. Ass'n v. Robinson, 131 A.3d 122, 135 (Pa. Commw. Ct. 2015).

[62] *Id.*

declaration through the amendment process.[63] Amending the CC&Rs is not easy and usually requires a supermajority of lot owners to vote in favor of the amendment.[64] Some friction between HOAs and homeowners occurs because the CC&Rs are drafted by the developer, whose interests are not always congruent with those of homeowners.[65] Commentators accuse developers of "dead hand control" of the HOA that mires residents in "draconian" restrictions that are "remarkably resistant" to any amendment.[66] In addition, procedural roadblocks can stifle homeowners' ability to adapt declarations to changing circumstances in CICs.[67]

CC&Rs providing for attorney fee awards allow the HOA to recoup its expenses sustained to enforce the covenants.[68] Without an award of attorney fees to the prevailing HOA, the homeowners who are not violating the CC&Rs must pay the attorney fees generated by the contumacious, disruptive homeowner.[69] Some CC&Rs style the shifting of fees from the prevailing party to the losing party as a "special assessment" against the offending lot owner, further demonstrating the reliance of HOAs on homeowner-paid assessments as the sole source of funding.[70] Further, one court observed that "chaos" would ensue if all homeowners had to pay tens of thousands of dollars in attorney fees to collect delinquent balances of less than $1000.[71] Several state legislatures have codified the mandate for attorney fees in actions to uphold CC&Rs, recognizing the importance of attorney fee awards to the viability of CICs.[72]

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[63] Bollinger, *supra* note 4, at 272; Franzese & Siegel, *supra* note 46, at 1112.

[64] Franzese & Siegel, *supra* note 46, at 1114.

[65] *Id.* at 1113.

[66] *Id.* at 1114.

[67] Pollack, *supra* note 3, at 865–66 (developers can retain three votes for each unsold lot, appoint the initial board members, and require a supermajority to change anything in the declaration).

[68] Mulligan v. Panther Valley Prop. Owners Ass'n, 766 A.2d 1186, 1196 (N.J. Super. Ct. App. Div. 2001).

[69] *Id.*

[70] *See, e.g.*, Northwoods Condo. Owners' Assn. v. Arnold, 770 N.E.2d 627, 632 (Ohio 2002).

[71] Arches Condo. Ass'n v. Robinson, 131 A.3d 122, 135 (Pa. Commw. Ct. 2015) (holding that an attorney fee award of more than $26,000 to collect a balance of $939.83 was justified under the declaration and statutes governing HOAs).

[72] *See, e.g.*, 68 Pa. Cons. Stat. § 3315(f) (2016); CAL. CIV. CODE § 5975 (West 2014) (interpreted in Salehi v. Surfside III Condo. Owners' Assn., 132 Cal. Rptr. 3d 886, 889 (2011), stating that "The words 'shall be [awarded]' reflect a legislative intent that [the prevailing party] receive attorney fees as a matter of right"); COLO. REV. STAT. § 38-33.3-123 (2006); OR. REV. STAT. § 94.719 (2007) (the prevailing

B. Contractual Attorney Fees: From Contract to Litigation to Appeal

The "American Rule," which provides that each side pay its own attorney fees, derives from *Arcambel v. Wiseman*, a case about a privateered boat.[73] The prevailing attorney asked the judge for his attorney fees as "damages."[74] The court denied his request and unequivocally stated, "The general practice of the United States is in opposition to [attorney fee awards to the prevailing party]; and… it is entitled to the respect of the court."[75] The opinion was brief, but American jurisprudence has relied upon the rule in *Arcambel* since 1797 as courts have decided whether to award attorney fees to prevailing parties.[76] In contrast, the "English Rule" provides that the losing litigant pay a more significant share of the litigation expenses, including attorney fees.[77] While the American Rule stands as the current default rule for attorney fees in Missouri,[78] parties to a dispute can agree to allocate liability for attorney

party *shall be entitled* to recover reasonable attorney fees therein and in any appeal therefrom) (emphasis added); Goodsell v. Eagle-Air Ests. Homeowners Ass'n, 383 P.3d 365, 372 (Or. 2016) ("Thus it is a compulsory fee statute, (not a discretionary one)"); VA. CODE ANN. § 55.1-1915 (2019) ("the prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter."); Lambert v. Sea Oats Condo. Ass'n, Inc., 798 S.E.2d 177, 183 (Va. 2017) ("Second, [shall be entitled] makes an award of reasonable attorney's fees to the prevailing party mandatory, in contrast to other statutes making such an award discretionary"); MICH. COMP. LAWS § 559.206(b) (2001) (Michigan statute authorizing recovery of attorney fees: "In a proceeding arising because of an alleged default by a co-owner, the association of co-owners or the co-owner, if successful, shall recover the costs of the proceeding and reasonable attorney fees, *as determined by the court*, to the extent the condominium documents expressly so provide") (emphasis added); OKLA. STAT. tit. 60, § 856 (1986).

[73] Arcambel v. Wiseman, 3 U.S. 306 (1797). The boat at issue was allegedly outfitted by private citizens to capture enemy boats on the high seas. Aaron Bartholomew & Sharon Yamen, *The American Rule: The Genesis and Policy of the Enduring Legacy on Attorney Fee Awards*, 30- OCT UTAH B.J., SEPTEMBER/OCTOBER 2017, at 15.

[74] Bartholomew & Yamen, *supra* note 73, at 16.

[75] *Arcambel*, 3 U.S. 306 at 306.

[76] Oelrichs v. Spain, 82 U.S. 211, 230 (1872) (calling the rule declared in Arcambel v. Wiseman settled law almost 100 years later).

[77] John F. Vargo, *The American Rule on Attorney Fee Allocation: The Injured Person's Access to Justice*, 42 AM. U. L. REV. 1567, 1601–14 (1993) (describing that the alleged "winner takes all" system in England is not as clear as opponents of the American Rule sometimes describe the English Rule).

[78] *See generally* Berry v. Volkswagen Grp. of Am., Inc., 397 S.W.3d 425, 431 (Mo. 2013) (en banc); Nelson v. Hotchkiss, 601 S.W.2d 14, 21 (Mo. 1980) (en banc);

fees differently.[79] Trial courts often work to define the extent of contractual attorney fee provisions through settled contract interpretation principles.[80] Trial courts in Missouri are allowed vast deference in their determination of the amount of attorney fee awards.[81] However, where the parties contest the court's legal determination that the contract provides for an award of attorney fees as a matter of right, the appellate must apply a *de novo* standard of review .[82]

1. Basis for the Award: Trial Court Discretion and Appellate Review

Attorney fees can become quite large, especially in protracted litigation.[83] In addition to asking for relief related to substantive issues, losing parties sometimes appeal the trial court's decision to award attorney fees and the amount of the attorney fees.[84] In Missouri, trial courts are considered experts on the amount of reasonable attorney fees and are allowed to use their discretion in determining them.[85] An appellate court will only overturn a trial court's award of attorney fees if the trial court has abused its discretion.[86] The reviewing court may only find an abuse of discretion where "the award is so 'clearly against the logic of the circumstances and so arbitrary and unreasonable as to shock one's sense of justice,'"[87] or where the award indicates a "lack of proper judicial consideration."[88] The burden is on the complaining party to prove that the trial court abused its discretion in setting the amount of the attorney fee

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Arnold v. Edelman, 392 S.W.2d 231, 239 (Mo. 1965); St. Louis R. Co. v. S. Ry. Co., 138 Mo. 591, 39 S.W. 471, 472 (1897).

[79] Essex Contracting, Inc. v. Jefferson Cty., 277 S.W.3d 647, 657 (Mo. 2009) (en banc).

[80] Trimble v. Pracna, 167 S.W.3d 706, 714–15 (Mo. 2005) (en banc); WingHaven Residential Owners Ass'n, Inc. v. Bridges, 457 S.W.3d 383, 385–86 (Mo. Ct. App. 2015).

[81] *WingHaven*, 457 S.W.3d at 386 (Mo. Ct. App. 2015) (stating that the trial court did not need to explain its reasoning for not awarding attorney fees).

[82] Ely v. Alter, 561 S.W.3d 1, 5 (Mo. Ct. App. 2018).

[83] Bangerter v. Hat Island Cmty. Ass'n, 472 P.3d 998, 1013, *review granted in part sub nom*, Surowiecki v. Hat Island Cmty. Ass'n, 479 P.3d 1162 (2021) (awarding attorney fee of $240,923.65).

[84] *See, e.g.*, Berry v. Volkswagen Grp. of Am., Inc., 397 S.W.3d 425, 429 (Mo. 2013) (en banc).

[85] Nelson v. Hotchkiss, 601 S.W.2d 14, 21 (Mo. 1980) (en banc).

[86] *Id.*

[87] Hills v. Greenfield Vill. Homes Ass'n, Inc., 956 S.W.2d 344, 350 (Mo. Ct. App. 1997).

[88] *Nelson*, 601 S.W.2d at 21.

award.[89] Trial courts in Missouri are not required to provide any reasoning to support their award of attorney fees.[90] In *Winghaven Residential Owners Association, Inc. v. Bridges*, the court recognized that proving the court abused its discretion without the court giving a rationale for its decision is an onerous burden to carry.[91] The hardship in establishing abuse of discretion is further exacerbated by Supreme Court Rule 73.01(c), which states that there is an automatic presumption of correctness for decisions that have no specific findings of fact.[92] In *Dewalt v. Davidson Service/Air, Inc.*, the court even confessed that it could not determine whether the trial court abused its discretion without findings of fact or law.[93]

Different rules govern where the issue becomes one solely of contract interpretation.[94] The trial court's legal conclusions do not bind the Supreme Court of Missouri on appeal.[95] Further, the Court owes no deference to the trial court when the sole issue on appeal is the "construction of documents based on the language they employ."[96] A trial court's failure to award attorney fees when required by contract is erroneous.[97] While trial court discretion applies in determining the amount and reasonableness of an award of attorney fees,[98] the court has no

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[89] *Id.*

[90] *Compare Nelson*, 601 S.W.2d at 21 *with* Lambert v. Sea Oats Condo. Ass'n, Inc., 798 S.E.2d 177, 182 (Va. 2017) (stating that a statute or precedence may circumscribe the range of correct decisions available to a judge in exercising their discretion).

[91] *See* WingHaven Residential Owners Ass'n, Inc. v. Bridges, 457 S.W.3d 383, 386 (Mo. Ct. App. 2015).

[92] MO. SUP. CT. R. 73.01(c).

[93] DeWalt v. Davison Serv./Air, Inc., 398 S.W.3d 491, 507–08 (Mo. Ct. App. 2013).

[94] Anchor Ctr. Partners, Ltd. v. Mercantile Bank, N.A., 803 S.W.2d 23, 32 (Mo. 1991) (en banc); *see also* Brown v. Brown-Thill, 437 S.W.3d 344, 348 (Mo. Ct. App. 2014) (stating that, while denials of attorney fees are usually reviewed for abuse of discretion, review of contract provisions is *de novo*, and the Court must award attorney fees provided for in a contract).

[95] *Anchor Ctr.*, 803 S.W.3d at 32.

[96] Obermeyer v. Bank of Am., N.A., 140 S.W.3d 18, 22 (Mo. 2004) (en banc), *as modified on denial of reh'g* (Aug. 24, 2004).

[97] Ely v. Alter, 561 S.W.3d 1, 11 (Mo. Ct. App. 2018); Frontenac Bank v. GB Invests., LLC, 528 S.W.3d 381, 396 (Mo. Ct. App. 2017); Magna Bank of Madison Cty. v. W.P. Foods, Inc., 926 S.W.2d 157, 162–63 (Mo. Ct. App. 1996); Hills v. Greenfield Vill. Homes Ass'n, Inc., 956 S.W.2d 344, 350 (Mo. Ct. App. 1997).

[98] WingHaven Residential Owners Ass'n, Inc. v. Bridges, 457 S.W.3d 383, 385–86 (Mo. Ct. App. 2015) ("However, *the determination of the amount of attorneys' fees*

discretion where the contract provides attorney fee awards as a matter of right.[99] Missouri appellate courts therefore review the lower court's interpretation of a contract *de novo*.[100] In *Trimble v. Pracna*, the Supreme Court of Missouri corrected a trial court's interpretation of a contractual attorney fee provision.[101] The Supreme Court interpreted the contract *de novo*, found it was ambiguous, and adjusted the results accordingly.[102] While the amount of attorney fees remained in the province of the trial court, the Supreme Court instructed the trial court to award attorney fees in a manner consistent with the correct interpretation of the disputed contract.[103]

2. Contract Interpretation: How are Attorney Fee Awards Construed?

When interpreting a contract, a Missouri trial court's primary focus is on giving effect to the intentions of the parties.[104] The court must give words their plain meanings,[105] and when a contract has conflicting provisions and is ambiguous, the court should strive to give meaning to all words in the contract.[106] In applying these rules, courts should not interpret any word in a manner that renders other terms meaningless.[107] In the instant case, the court struggled with the construction of the provision "the prevailing party *shall be entitled* to [an award] of attorney's fees and court costs *as deemed appropriate* by a court of competent jurisdiction."[108]

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is within the sound discretion of the trial court.") (emphasis added)); *See also DeWalt*, 398 S.W.3d at 506.

[99] Trimble v. Pracna, 167 S.W.3d 706, 714 (Mo. 2005) (en banc).

[100] Kelly v. State Farm Mut. Auto. Ins. Co., 218 S.W.3d 517, 522 (Mo. Ct. App. 2007).

[101] *Trimble*, 167 S.W.3d at 715.

[102] *Id.* at 714–15.

[103] *Id.* at 715.

[104] DeBaliviere Place Ass'n v. Veal, 337 S.W.3d 670, 676 (Mo. 2011) (en banc); *see also* John R. Schleppenbach, *Winning the Battle but Losing the War: Towards A More Consistent Approach to Prevailing Party Fee Shifting in the Contractual Context*, 12 FLA. A & M U.L. REV. 185, 211 (2017) (summarizing approach in other jurisdictions).

[105] Trs. of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC, 585 S.W.3d 269, 280 (Mo.) (en banc), *reh'g denied* (Nov. 19, 2019).

[106] *See* Ritchie v. Allied Prop. & Cas. Ins. Co., 307 S.W.3d 132, 140–41 (Mo. 2009) (en banc).

[107] Dunn Indus. Grp., Inc. v. City of Sugar Creek, 112 S.W.3d 421, 428 (Mo. 2003) (en banc).

[108] Arrowhead Lake Ests. Homeowners Ass'n, Inc. v. Aggarwal, 624 S.W.3d 165, 168, 170 (Mo. 2021) (en banc). (emphasis added).

Common law from other states illustrate how other courts have interpreted declarations similar to Arrowhead's.

In *Parker Estates Homeowners Association v. Pattison*, the homeowners failed to pay assessments, alleging a procedural defect in the election of board members.[109] The HOA successfully pursued an action against them for the unpaid assessments.[110] The declaration stated that "the prevailing party shall be entitled to [attorney fees] as the court may adjudge reasonable…at trial…"[111] On appeal, the Washington Court of Appeals held that the prevailing HOA deserved attorney fees and remanded the case to the trial court to determine the award amount.[112]

In *Highfield Beach at Lake Michigan v. Sanderson*, a Michigan Court of Appeals affirmed a trial court's award of attorney fees.[113] In Michigan, declarations are governed by statute.[114] The statute included the provision, "…if successful, [he/she] shall recover the costs of the proceeding and reasonable attorney fees, as determined by the court, to the extent the condominium documents expressly so provide."[115] The relevant condominium documents provided "…if successful, shall [he/she] recover the costs of the proceeding and reasonable attorney fees…as determined by the Court."[116] The court stated that this was an "indemnity" clause, and the trial court was correct in awarding attorney fees.[117]

In summary, these cases and others are instructive because they illustrate how other state courts have interpreted attorney fee-shifting clauses. In *Parker Estates*, the court stated that an "unambiguous" reading of the declaration yielded an outcome that awarded attorney fees to the prevailing party.[118] The decision in *Highfield Beach* noted the critical role attorney fee clauses play in HOA litigation,[119] and that the attorney fee clause was "nondiscretionary" for the trial judge.[120] Additionally, in

[109] Parker Ests. Homeowners Ass'n v. Pattison, 391 P.3d 481, 485 (Wash. Ct. App. 2016).

[110] *Id.* at 490.

[111] *Id.* at 489–90.

[112] *Id.* at 490.

[113] 954 N.W.2d 231, 249 (Mich. Ct. App. 2020).

[114] MICH. COMP. LAWS § 559.206 (2022).

[115] *Id.* § 559.206(b).

[116] Highfield Beach at Lake Michigan v. Sanderson, 954 N.W.2d 231, 249 (Mich Ct. App. 2020).

[117] *Id.* at 252.

[118] *Id.* at 251.

[119] *Id.* at 252.

[120] *Id.* at 252 (Gadola, P.J., concurring).

Delaware,[121] Florida,[122] Idaho,[123] New York,[124] and the District of Columbia,[125] courts awarded attorney fees in situations where the governing declaration phrased its award provision similarly to "the prevailing party shall be entitled to [an award] of attorney's fees" with different forms of qualifying language.[126] The reviewing court found in each case that the prevailing party is entitled to its attorney fees notwithstanding the qualifying language.[127]

IV. INSTANT DECISION

This Part considers the majority's construction of the Declaration and rationale for upholding the circuit court's decision to deny attorney fees to Arrowhead. It also gives the dissenting opinion's argument in favor of construing the declaration to award attorney fees to Arrowhead.

A. Majority Opinion

The majority began by rehearsing the default rules in Missouri for attorney fee awards and contract interpretation.[128] Arrowhead's first claim for attorney's fees arose under Section 18(d) of the Declaration, which stated that "if the Claim is litigated in whole or in part, the prevailing party shall be entitled to receive an aware [sic] of attorney's fees and court costs

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[121] Rsrvs. Mgmt., LLC v. Am. Acquisition Prop. I, LLC, 86 A.3d 1119 (Del. 2014) ("[I]n the event a judgment is obtained, such judgment shall include . . . *reasonable attorneys' fees to be fixed by the Court*. . . . [T]he Declaration effectively precluded the application of the American rule.").

[122] Tison v. Clairmont Condo. F Ass'n, Inc., 288 So. 3d 699, 701 (Fla. Dist. Ct. App. 2019) ("The prevailing party shall be entitled to recover…reasonable attorney's fees as may be determined by the court").

[123] Fletcher v. Lone Mountain Rd. Ass'n, 452 P.3d 802, 805 (Idaho 2019) ("Any Owner . . . shall have the right to enforce . . . all restrictions . . . and . . . shall be entitled to . . . reasonable attorneys' fees as are ordered by the Court.").

[124] Bd. of Managers v. Lamontanero, 579 N.Y.S.2d 557, 560–61 (1991), *aff'd*, 616 N.Y.S.2d 744 (N.Y. App. Div. 1994) ("[T]he prevailing party shall be entitled to…reasonable attorneys' fees as may be determined by the Court.").

[125] Ochs v. L'Enfant Tr., 504 A.2d 1110, 1119 (D.C. 1986) ("[T]he prevailing party shall be entitled to recover . . . reasonable attorney's fees as may be determined by the court.").

[126] *Cf.* Arrowhead Lake Ests. Homeowners Ass'n, Inc. v. Aggarwal, 624 S.W.3d 165, 168 (Mo. 2021) (en banc).

[127] *Compare id.* at 169 (trial court had discretion in awarding attorney fees), *with* Highfield Beach at Lake Mich. v. Sanderson, 954 N.W.2d 231, 253 (Mich. Ct. App. 2020) (Gadola, J., concurring) (the declaration did not give the trial court discretion).

[128] *Aggarwal*, 624 S.W.3d at 167.

as deemed appropriate by a court of competent jurisdiction."[129] The majority proceeded to engage in contract interpretation and defined "entitled" as qualifying Arrowhead to receive an award of attorney fees.[130] The majority gave the definition for "entitle,"[131] but did not discuss how "shall" and "entitled" should be read together.[132] The majority recounted a group of cases with similar factual circumstances to the instant case.[133] In each of the cases, "shall" entitled the prevailing parties to receive an attorney fee award.[134] However, the language "as deemed appropriate" in the present Declaration, permitted the circuit court to choose not to award any attorney fees to Arrowhead Lake, despite prevailing on its claim.[135] The majority opinion critiqued the dissenting opinion for ignoring the clause "as deemed appropriate."[136] The physical modification of the proposed orders with a line of "x"s demonstrated that the circuit court judge was appraised of the issues and consciously chose not to award attorney fees to the prevailing party.[137] Under the rules of contract law and reading the plain language of the Declaration, the court determined that the circuit court had discretion in the amount of attorney fees it awards to the prevailing party.[138] Therefore, the trial court did not abuse its discretion by not awarding any attorney fees to Arrowhead.[139]

B. Dissenting Opinion

Joined by Judge Powell, Chief Justice Wilson dissented from the majority's opinion.[140] Focusing on "shall" and "as deemed appropriate," the dissent stated that section 18(d)(2) contained conflicting provisions because it entitled the prevailing party to receive an award of attorney fees, then removed that entitlement with the phrase "as deemed appropriate."[141] According to Chief Justice Wilson, the interpretation must give meaning

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[129] *Id.* at 168.

[130] *Id.*

[131] *Id.* (citing *Entitle*, WEBSTER'S NEW INT'L DICTIONARY (3d ed. 2002)).

[132] *See id.*

[133] *Id.*

[134] *Id.*

[135] *Id.*

[136] *Id.* at 169 n.7.

[137] *Id.* at 170 ("The circuit court's decision-making process also is reflected by its physical modification of the proposed judgment it adopted.").

[138] *Id.* at 168, 170.

[139] *Id.* at 170.

[140] *Id.* at 171 (Wilson, C.J., dissenting).

[141] *Id.*

to all the language used in section 18(d)(2) and resolve the apparent contradiction,[142] and the better view of the Declaration would have been to apply the entitlement to an award of attorney fees, but not the amount.[143] Chief Justice Wilson hinted that the majority's opinion amounted to the court's determination of what was "fair" and not what the parties agreed to in the declaration.[144] By allowing the circuit court not to award attorney fees to the prevailing party, the court had read the phrase "shall" completely out of the declaration.[145] The circuit court seemed to assume that the attorney fees were worth $0.00.[146] An award of zero dollars could have theoretically been a reasonable conclusion. Still, the dissent reasoned that this could not be an acceptable outcome because there was no factual development at the circuit court level to suggest that an award of $0.00 was appropriate in this situation.[147] Such an award would have been contrary to the evidence and therefore an abuse of discretion.[148] The dissent would have remanded the case back to the trial court to determine the correct amount of attorney fees.[149]

V. COMMENT

The majority's holding conflicts with the typical standard of review in contract disputes,[150] and its interpretation of the Declaration does not seem logical when compared with similar out-of-state disputes.[151] Additionally, the majority's approach is unwise from a public policy perspective because it threatens to substantially interfere with the legitimate expectations of homeowners in CICs and the financial governance of HOAs.

[142] *Id.*
[143] *Id.*
[144] *Id.* at 171–72.
[145] *Id.* at 171.
[146] *Id.* at 171–72.
[147] *Id.*
[148] *Id.* at 172.
[149] *Id.*
[150] *E.g.*, Ely v. Alter, 561 S.W.3d 1, 11 (Mo. Ct. App. 2018).
[151] *See infra* notes 109–27.

A. Fundamental Contract Interpretation Issues

Review for abuse of discretion and de novo review are different legal standards on appeal.[152] By characterizing this dispute as an improper award of fees, counsel for both parties confined the issue on appeal to whether the trial court abused its discretion instead of whether the trial court correctly interpreted the contract.[153] Whether the trial court had the discretion in the first place to award attorney fees was a legal conclusion determined through contract interpretation.[154] The majority proves they should have applied a *de novo* review by launching into contract interpretation,[155] but then states the court did not abuse its discretion by not awarding attorney fees.[156] If this dispute was really about an abuse of discretion, there was no need to interpret the Declaration because, under Missouri law, trial courts are free to set the amount of attorney fees.[157] As the Western District Court of Appeals for Missouri stated, the correct standard for analyzing the Declaration was a *de novo* review.[158] The Declaration was a contract.[159] Deciding the meaning of the attorney fees clause requires a legal conclusion because the court applies contract construction principles to the language in the declaration and determines the resulting legal positions of the parties.[160]

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[152] *Compare Ely*, 561 S.W.3d at 11 (trial court's legal conclusions are reviewed de novo), *with* WingHaven Residential Owners Ass'n, Inc. v. Bridges, 457 S.W.3d 383, 386 (Mo. Ct. App. 2015) (appellate court will only overturn the trial court's decision if the trial court has abused its discretion).

[153] Appellant's Substitute Reply Brief, *Aggarwal*, 624 S.W.3d 165 (No. SC98772), 2021 WL 1086431, at *1; Respondent's Brief, Arrowhead Lake Ests. Homeowners Ass'n, Inc. v. Aggarwal (No. SC98772) 2021WL 1086434, at *9.

[154] *E.g.*, Ely, 561 S.W.3d at 11.

[155] Arrowhead Lake Ests. Homeowners Ass'n, Inc. v. Aggarwal, 624 S.W.3d 165, 167 (Mo. 2021) (en banc).

[156] *Id.* at 170.

[157] *See* WingHaven Residential Owners Ass'n, Inc. v. Bridges, 457 S.W.3d 383, 386 (Mo. Ct. App. 2015).

[158] Arrowhead Lake Ests. Homeowners Ass'n, Inc. v. Aggarwal, 2020 WL 5160693, at *2. (Mo. Ct. App. Sept. 1, 2020) *transferred to* Mo. S.Ct. 624 S.W.3d 165 (Mo. 2021) (en banc). *Compare* Ely v. Alter, 561 S.W.3d 1, 11 (Mo. Ct. App. 2018) (trial court's legal conclusions are reviewed *de novo*), *with* WingHaven Residential Owners Ass'n, Inc. v. Bridges, 457 S.W.3d 383, 386 (Mo. Ct. App. 2015) (appellate court will only overturn the trial court's decision if the trial court has abused its discretion).

[159] *Aggarwal*, 624 S.W.3d at 167.

[160] *Aggarwal*, 2020 WL 5160693, at *2 (Mo. Ct. App. 2020).

The contract in the instant case required an award of reasonable fees "as deemed appropriate."[161] The dissenting opinion correctly points out a harmonious reading of the Declaration that honors all words.[162] A review of similar declarations in other states supports the dissenting opinion's interpretation.[163] When declarations featured "shall" and other language implying some element of discretion, similar courts stated that the amount was discretionary, and not the award itself.[164] On de novo review, the Supreme Court of Missouri should have interpreted this contract to mean that the party prevailing in litigation receives its attorney fees in an amount the trial court deems appropriate.[165]

B. Public Policy Implications of the Arrowhead Lake Decision

The unfortunate decision in the instant case may have far-reaching consequences. HOAs preserve the value of the land within CICs through their ability to protect homeowners' expectations of how property is used in a community setting.[166] HOAs meet these expectations by levying assessments against their lot owners.[167] Unexpected, extraordinary expenses such as protracted litigation may threaten the financial viability of an HOA in two ways: current year budget shortfalls and inability to finance and protect the covenant regime in the future.

The budgeting process is an important event each year because the HOA board makes significant decisions that impact homeowners' quality of life.[168] When discussing the needs of the community, the board probably does not contemplate an expansive budget for attorney fees, particularly when the declaration contains a provision entitling the HOA to its attorney fees if it prevails in enforcing its CC&Rs.[169] After all, the Declaration governing Arrowhead Lake Estates contained such a

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[161] *Aggarwal*, 624 S.W.3d at 168.

[162] *Id.* at 171 (Wilson, C.J., dissenting).

[163] *See supra* notes 109–27.

[164] *See supra* notes 109–27.

[165] *Aggarwal*, 624 S.W.3d at 171.

[166] Franzese, *supra* note 2, at 695.

[167] RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 6.5(1) (2000).

[168] Winokur, *Critical Assessment: The Financial Role of Community Associations*, *supra* note 44, at 1149.

[169] Many board members are novices in corporate governance and may not appreciate the risk of litigation. *See id.* at 1144–48.

provision.[170] If the HOA incurs a large attorney fee bill and is denied recovery for its attorney fees, there could be a sizable shortfall in the budget. In the current year, the HOA may decide to collect trash less frequently, mow common areas fewer times each month, plow the roads less often if there is a severe winter, or curtail other services to cure the deficit. The resulting lack of services may frustrate residents and create future litigation due to the failure of the HOA to abide by the CC&Rs.[171]

The HOA may face another challenge: enforcing and financing CC&Rs throughout the CIC's lifetime. In a context where the losing party pays the HOA's attorney fees, the offending homeowner makes the HOA whole by reimbursing its expenses, allowing the HOA to continue providing services and uniformly enforce the covenants as it is obligated to do.[172] It seems entirely inappropriate that a homeowner can purchase property subject to publicly recorded restrictions, flout those restrictions, and not be required to indemnify the HOA.[173] Unfortunately, where the HOA cannot recover its attorney fees, those costs must be distributed across other homeowners.[174] In light of the instant case, it appears that such inequitable outcomes and distributions are more likely. Armed with the majority opinion in the instant case, obstreperous homeowners may feel emboldened to push the limits of what is allowed under the CC&Rs.[175]

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[170] *Supra* note 35. This assumes that a straight-forward reading of the Declaration requires an award of attorney fees as a matter of right, a position the which weight of case law supports in contexts similar to *Arrowhead Lake*.

[171] *See* Wayne S. Hyatt, *Common Interest Communities: Evolution and Reinvention*, 31 J. MARSHALL L. REV. 303, 359 (1998).

[172] Pollack, *supra* note 3, at 847.

[173] Arrowhead Lake Ests. Homeowners Ass'n, Inc. v. Aggarwal, 624 S.W.3d 165, 167 (Mo. 2021) (en banc). In the instant case, the trial court decided that Dr. Aggarwal and Dr. Garg did not have a legal right to construct the Out-building and Arrowhead had a right to demand they cease construction of the structure. *Id.*; *see also* Highfield Beach at Lake Michigan v. Sanderson, 954 N.W.2d 231, 252 (2020) (attorney fees indemnify the HOA for enforcing the CC&Rs).

[174] Franzese & Siegel, *supra* note 46, at 1135; Mountain View Condo. Ass'n v. Bomersbach, 734 A.2d 468, 471 (Pa. Commw. Ct. 1999) (citing the trial court, which stated: "The Association had the option of either backing off or enforcing it rights under the Declaration and the decisional law. The fact that it elected not to compromise, to stand on principal and to uphold the law requires that its attorney's fees be covered. Any holding to the contrary would cause chaos in Condominium Associations *whose compliant members would have to bear the cost of dealing with non-compliant members.* [Appellant] had numerous opportunities to reevaluate her position and put an end to the litigation. On December 12, 1991 the error of her position should have been manifestly clear by virtue of the award of arbitrators in favor of the [Association] and against her.") (emphasis added).

[175] *See* Fink v. Miller, 896 P.2d 649, 654 (Utah Ct. App. 1995).

In the face of such defiance, HOAs may shy away from enforcing the CC&Rs to maintain a balanced budget.[176] Without enforcement of the rules, the expectations of homeowners regarding preservation of value or character of neighborhood might not be met, mooting the purpose of a CIC regime. This tension seems to create an impracticable puzzle for HOAs to solve. HOAs may have inadequate reserves to bankroll the extensive "trench warfare" required to force renegade owners into compliance with the CC&Rs.[177] Awarding attorney fees provided as a contractual matter of right is a simple solution to buttress the benefit of the bargain homeowners expect when joining a CIC, an outcome that could be reached by judicial restraint or legislative action.

VI. CONCLUSION

The majority's holding in *Aggarwal* takes a position diverging from the weight of case authority.[178] By failing to interpret the Declaration as a mandate of attorney fees as a matter of right, the majority complicates present and future CIC governance by denying HOA boards a contractually guaranteed manner of recourse against recalcitrant homeowners. Because declarations are somewhat standard legal documents,[179] it seems possible that other declarations in Missouri will contain similarly worded attorney fee provisions. Amending a declaration to include a more definite attorney fee provision may be impracticable in many cases due to the rising number of renters in CICs.[180] Appealing an adverse judgment can be an expensive and time-consuming process,[181] so another chance to reconsider this ruling may not arrive soon. Additionally, the Supreme Court of Missouri may be wary of overturning itself so

[176] Lambert v. Sea Oats Condo. Ass'n, Inc., 798 S.E.2d 177, 185 (2017) (stating "When the case is covered by a fee-shifting provision and the court weighs the reasonable amount of attorney's fees to award, it cannot dismiss out of hand the costs of litigation inflicted on the prevailing party by the losing party's insistence on its losing argument, based solely on the dollar value of the claim. To do so deprives the parties of the benefit of their bargain if the fee-shifting provision is contractual…").

[177] Arches Condo. Ass'n v. Robinson, 131 A.3d 122, 132 (Pa. Commw. Ct. 2015).

[178] *Aggarwal*, 624 S.W.3d at 168–69 (holding 6 cases on point are distinguishable from the case at bar).

[179] *See* Hyatt, *supra* note 171, at 336.

[180] Franzese & Siegel, *supra* note 46, at 1114.

[181] *Cf.* Goins v. Goins, 406 S.W.3d 886, 888 (Mo. 2013) (en banc) (party struggled to fund defense of ex-husband's appeal to reduce the amount of maintenance he owed to his former wife).

quickly and risking confusing attorneys.[182] In the meantime, the holding of this case is already appearing in Missouri practical guides.[183] When this issue does reappear, the court should seize that opportunity to overrule *Aggarwal* and remedy the uncollectibility of attorney's fees in Missouri.

[182] Interview with the Honorable Paul C. Wilson, Chief Justice, Supreme Court of Missouri (Feb. 15, 2022).

[183] *See* § 1:9. Homeowners' Associations (HOA) Rights and Obligations to repair; ability to collect attorney's fees, 36 Mo. Prac., Landlord-Tenant Handbook § 1:9.