STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK OF DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

ALPHA HOLDINGS, LLC, *Plaintiff*,

vs.

BETTY CHANEY, ET AL, *Defendants*.

Case No. **CV 2012 7948**

MEMORANDUM DECISION AND ORDER ON DEFENDANTS' REQUEST FOR ATTORNEY FEES AND COSTS

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on defendants' (collectively Chaney) Affidavit in Support of Award of Attorney Fees and Costs, and Memorandum in Support of Award for Attorney Fees and Costs, both filed on September 30, 2013; and on plaintiff Alpha Holdings, LLC's (Alpha) Motion to Disallow Defendants' Request for Attorneys' Fees and Costs filed October 15, 2013.

On August 30, 2013, this Court filed its "Memorandum Decision and Order Denying Plaintiff's Motion for Summary Judgment, Granting Summary Judgment for Defendants, and Vacating Jury Trial." In that decision, this Court ordered as follows:

> **IV. CONCLUSION AND ORDER.**
>
> For the reasons set forth above;
>
> IT IS HEREBY ORDERED plaintiff Alpha Holdings LLC's Motion for Summary Judgment is DENIED.
>
> IT IS FURTHER ORDERED that all attorney fees sought by Alpha Holdings LLC against defendants, as a result of Alpha's lien foreclosure in this lawsuit, are DENIED.
>
> IT IS FUTHER ORDERED summary judgment is GRANTED in favor of defendants against plaintiff Alpha Holdings LLC, in that Alpha Holdings, LLC must: 1) immediately record a "satisfaction and release of

> the lien" for each of the individual defendants; and 2) immediately return to the defendants from the $23,941.13 tendered by defendants into the Clerk of Court (which were then dispersed to Alpha Holdings, LLC), the amount which is in excess of the $8,070.74 total amount of the legal liens, said amount being $15,870.39.
>
> IT IS FURTHER ORDERED defendants are the prevailing parties in this case and, as such, defendants are entitled to costs and fees against plaintiff to be determined.
>
> IT IS FURTHER ORDERED the jury trial scheduled for November 4, 2013, is VACATED.

Memorandum Decision and Order Denying Plaintiff's Motion for Summary Judgment, Granting Summary Judgment for Defendants, and Vacating Jury Trial, pp. 24-25. On September 23, 2013, this Court filed a Judgment submitted by defendants.

On November 20, 2013, this Court heard oral argument on Chaney's Affidavit in Support of Award of Attorney Fees and Costs, and Memorandum in Support of Award for Attorney Fees and Costs; and on plaintiff Alpha's Motion to Disallow Defendants' Request for Attorneys' Fees and Costs.

This Court has previously set forth the factual and procedural history of this case in its April 11, 2013, Memorandum Decision and Order Denying Defendants' Motion for Summary Judgment, and on Motions to Strike:

> **A. Factual Background.**
>
> On March 28, 2011, Black Bay Village Home Owners Association (Association) recorded a Notice of Homeowner's Association Lien against property owned by Nancy Chaney (Chaney) and other defendants. The property is a condominium unit subject to CC&Rs which were recorded in 2006 (hereinafter, "Declaration"). The Declaration required each condominium owner to pay monthly assessments to the Association.
>
> Defendants Chaney, Joslin, Newman, Stanic, and Vezina are condominium owners who on October 31, 2012, were sued by plaintiff Alpha Holdings, LLC, (Alpha), assignee of the homeowners association, to foreclose on its lien it has on defendants condominiums, for non-payment of assessments. Complaint, p. 9. Black Bay Village Condominiums were advertised as a full maintenance, gated townhome community with a homeowners association. Affidavit of Melanie Baillie (Baillie Affidavit), Exhibit 2, Exhibit A, H. There are three primary documents that govern Black Bay Village Condominiums. The Articles of Incorporation, filed on August 11, 2006, created Black Bay Village Owners Association, Inc. (Association). *Id.,* Exhibit 1, Exhibit B. In addition to the Articles of

Incorporation, the Association is governed by association bylaws. *Id.,* Exhibit 2, Ex. E. The final document that governs Black Bay Village Condominiums is the Declaration. *Id.,* Exhibit 1, Ex. B. This was submitted by the condominium project developer, Defendant Northwest Group, LLC, who is also the Declarant of the CCRs. *Id.* The CCRs were filed with the Kootenai County Recorder on August 16, 2006. *Id.* In addition to the CCRs, and referenced in paragraph A of the CCRs, plats for the units and common area of Black Bay Village were recorded with Kootenai County on August 17, 2006. *Id.* at ¶ A; Exhibit 1, Ex. A. No more recent plats have been submitted to this Court. On the plats filed for Black Bay Village Condominiums, Unit O is labeled as a "club house." *Id.,* Exhibit 1, Ex. A, p. 3. Additionally, according to the legend provided on the recorded plat, Unit O is demarcated as a common area. *Id.* The clubhouse also contains a pool. *Id.,* Exhibit 4, ¶ 6; Exhibit 5, ¶ 6; Exhibit 6, ¶ 6.

Defendants, owners of some of the condominium units, began to have concerns with the operation of Black Bay Village Condominiums. Some unit owners communicated their concerns to the Association. *Id.*, Exhibit 2, Exhibit B; Exhibit 3, Exhibit A. Additionally, at least two individuals requested copies of the Association's financial statements. Attorney Erika Grubbs, representing several condominium owners, requested copies of operation budgets and financial statements for 2007 and 2008 from the Association. *Id.,* Exhibit 3, Exhibit A. Between September 2009 and September 2010, condominium owner Nancy Conley made five written requests for a copy of the Association's financial statements. *Id.,* Exhibit 2, Exhibit J.

Developer Northwest Group defaulted on a financial obligation, and on April 6, 2012, Idaho Trust Bank foreclosed Black Bay Village Condominiums. *Id.,* Exhibit 1, Exhibit G. On that date, Northwest Group's interest in the development was transferred to the bank. *Id.* Each unit transferred included an individual condominium and an undivided interest in the common area, referring to the areas that had been identified in the CCRs as they were recorded with Kootenai County on August 17, 2006. *Id.* The CCRs refer to the plats that were filed on the same date and are described above. *Id.,* Exhibit 1, Exhibit A. On August 14, 2012, Northwest Group repurchased Units A and B of the Black Bay Village Condominiums, which included each individual unit and an interest in the common areas that were identified in the CCRs recorded on August 17, 2006. *Id.,* Exhibit 1, Exhibit H.

The Declaration required each owner in the condominium complex to pay monthly assessments to the Association. Chaney withheld her assessments in response to a lack of communication from the Board of Directors of the Association (Board). Chaney Affidavit, p. 2, ¶ 8. Instead Chaney deposited the assessments in an account in Kootenai Case Number CV-2011-7723 *Conley v. Black Bay Village Association*. *Id*. Presumably, Chaney deposited the assessments in that case because she was a party to that case, keeping in mind the instant case was not filed until October 31, 2011. After Judge Simpson on April 6, 2012, granted

summary judgment to Alpha in *Alpha Holdings v. Conley*, Kootenai Case Number CV-2011-9436, (a case in which Chaney was not a party), Alpha, on May 15, 2012, at 4:39 p.m., through an email by its attorney Peter J. Smith, IV to Chaney's (and others) attorney, Steven Wetzel, extended the deadline for payment by Chaney and others to Alpha, until May 17, 2012. *Id*., Affidavit of Peter J. Smith IV, filed March 28, 2013, Exhibit A. Also in that email, Alpha dictated that if that deadline were not met, an additional $500 would be added per client of Wetzel's, for attorney fees for preparation of the foreclosure complaint. *Id.* Since that demand was made at the end of that day, the deadline imposed by Alpha's attorney was two business days away. On May 17, 2012, Steven C. Wetzel, as Chaney's attorney (and also as the attorney for Collins, Stanic, Venzona, Joslin and Newman) sent counsel for Alpha, Peter J. Smith, IV, a letter in which Chaney authorized the release of funds deposited with the court in CV 2011 7723, which included a copy of the "Order Granting Disbursal of Funds Deposited With Court", signed by Judge Lansing Haynes, on behalf of Judge Luster, which ordered release of the funds to Lukins & Annis, PS Trust Account on behalf of Alpha Holdings, LLC. *Id*., and Affidavit of Melanie Baillie, Exhibit 13, Order Granting Disbursal of Funds Deposited With Court, p. 2. However, the check actually dispersing the funds to Lukins & Annis, PS, was available to be picked up only by Lukins & Annis, PS, from the Kootenai County Auditor's office on May 21, 2012. Affidavit of Melanie Baillie, Exhibit 16.

Essentially, this lawsuit was filed because: 1) the funds which were timely ordered released by court on behalf of Chaney ($8,814.37) and others, were not available to Alpha's attorney on the date which Alpha's attorney had demanded only two days earlier, and 2) because of that, Chaney wouldn't then pay the extra $500 demanded by Alpha's attorney. The attorney fees and costs involved by both sides in preparation of one hundred pages of briefing and over a thousand pages of affidavits and attachments, must be astonishing and must pale in light of the amounts in controversy.

. . .

C. Procedural Background of Related Cases.

There are two related Kootenai County civil cases which have had decisions made by two other First District Court District Judges, which must be noted.

The first case in which there was a decision made by a District Judge was *Alpha Holdings, LLC v. David Michael Conley and Nancy Ann Conley as Co-Trustees of the David and Nancy Conley Living Trust (Conley),* Kootenai County Case No. CV 2011 9436. In that case, on April 6, 2012, District Judge Benjamin R. Simpson filed a "Memorandum Decision and Order Granting in part and Denying in Part Plaintiff's Motion to Strike, Granting Plaintiff's Motion for Summary Judgment, Denying Defendants' Motion to Continue and Denying Defendants' Motion to Consolidate". This case is the most similar to the present case, as in this case, Black Bay Village Homeowners Association recorded a Notice of Lien against the defendants property owners (the Conleys and their trust).

April 6, 2012, CV 2011 9436, Memorandum Decision, pp. 1-2. Black Bay Village Homeowner's Association assigned to PITA Group, LLC on July 7, 2011, and PITA Group, LLC assigned to Alpha Holdings on November 22, 2011. *Id.,* p. 2. Judge Simpson found it was undisputed that the Conleys failed to pay the assessments levied by Black Bay Village Homeowner's Association. *Id.* Alpha Holdings sought to foreclose the $8,897.94 lien against Conleys' property. *Id.* Judge Simpson found Alpha Holdings had the right to sue Conleys for the foreclosure of the lien and/or collection of the assessments. *Id.,* pp. 7-18. This portion of Judge Simpson's decision will be discussed in detail below.

The second case in which there was a decision made by a District Judge was *Nancy Conley and David Conley, Betty Chaney, Bill Joslin, Lynda Nutt, Ray Vezina Jim Collins, and Zoran Stanic, v. Black Bay Village Owner's Association, Inc., Mike Rai, Nick Rail Tammy Morris and Northwest Group, LLC.* Kootenai County Case No. CV 2011 7723. In that case, on January 17, 2013, District Judge John P. Luster filed a "Memorandum Opinion and Order Re: Plaintiffs' Motion for Partial Summary Judgment." In that case, seven condominium owners, including Betty Chaney in the present case, sued their homeowners association, the association's board of directors and the original developer. January 17, 2013, CV 2011 7723, Memorandum Decision, p. 2. The developer, defendant Northwest Group, LLC, was also the declarant of the CCRs. *Id.* Defendant Northwest Group defaulted on its financial obligation to Idaho Trust Bank, and on April 6, 2012, Idaho Trust Bank foreclosed on Black Bay Village Condominiums. *Id.,* p. 3. Idaho Trust Bank then owned all of the developer, Northwest Group, LLC's interest in the project. The group of homeowners sought summary judgment that Unit O (which contained a clubhouse and pool) was a common area with each separate condominium owner owning a 2.5 percent interest in such. *Id.,* p. 4. Defendant developer Northwest Group argued that Paragraph B of the CCRs did not require the developer to designate the common area until the thirtieth unit had sold, and due to the fact that only sixteen condominium units had been sold, Northwest Group argued its obligation to designate a community center or clubhouse had not been triggered. *Id.,* pp. 6-7. Judge Luster disagreed and granted summary judgment in favor of the homeowners, finding that once Idaho Trust Bank foreclosed on April 6, 2012, on the twenty-four unsold and unconstructed units, there were as of that date no more unsold units and thus, the foreclosure triggered the duty to designate the community center and clubhouse. *Id.,* p. 7. Judge Luster also found that the foreclosure by Idaho Trust Bank on April 6, 2012, converted all Class B memberships (those memberships or units owned by the declarant developer Northwest Group, and which held three votes per unit) to Class A memberships (those memberships or units owned by those who actually purchased their condominium units, and which only held one vote per unit). *Id.,* pp. 8-9. Again, Judge Luster held the foreclosure resulted in a sale to Idaho Trust Bank, and declarant, developer Northwest Group ceased to own anything. *Id.,* p. 9.

Memorandum Decision and Order Denying Defendants' Motion for Summary Judgment, and on Motions to Strike, pp. 1-7.

In that decision, this Court denied defendants' motion for summary judgment and held: a) there is a dispute of fact as to whether defendants owe money to the Association/Alpha, and a dispute of fact as to "actual attorney fees"; b) even if the Association materially breached the declaration, such breach does not excuse defendants' performance; c) the Board did not violate the Bylaws in conducting its meetings; d) the Idaho Collection Agency Act does not apply, so Alpha has a right to foreclose on Chaney's condominium, and Alpha and PITA have a legal right to foreclose on a lien in the State of Idaho; e) Alpha has a valid assignment from PITA; f) the Declaration allows Alpha the right to sue defendants to foreclose its lien or to collect the Assessments; g) the directors who allegedly assigned the right to collect the Assessments against defendants and the right to foreclose on the liens had the authority to act for the Association; and h) Alpha has not violated the Fair Debt Collection Practices Act (FDCPA). *Id*., pp. 21-41.

At no point in defendants' motion for summary judgment was the issue raised by either side as to the legal effect of the *amount* of the various liens that were recorded. That same legal issue was not discussed by either side in the plaintiff's motion for summary judgment which was before the Court for oral argument on July 29, 2013. In this Court's August 30, 2013, Memorandum Decision and Order Denying Plaintiff's Motion for Summary Judgment, Granting Summary Judgment for Defendants, and Vacating Jury Trial, this Court discussed that issue, and found it to be dispositive of this lawsuit. Memorandum Decision and Order Denying Plaintiff's Motion for Summary Judgment, Granting Summary Judgment for Defendants, and Vacating Jury Trial, p. 5.

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II. GRANT OF SUMMARY JUDGMENT TO CHANEY AS NON-MOVING PARTY.

Before discussing Chaney's request for attorney fees as the prevailing party, and Alpha's objection thereto, the issue of how the Chaney defendants became the prevailing party should be discussed. This Court should have more fully discussed this issue in its August 30, 2013, Memorandum Decision and Order Denying Plaintiff's Motion for Summary Judgment, Granting Summary Judgment for Defendants, and Vacating Jury Trial. The parties deserve this Court's reasoning as to why, when Alpha moved for summary judgment, Chaney, the non-moving party, was found by the Court to be entitled to summary judgment. In that August 30, 2013, decision, this Court held:

> The Idaho Supreme Court has held summary judgment can be granted to a non-moving party. *Harwood v. Talbert*, 136 Idaho 672, 677, 39 P.3d 612, 617 (2001). In *Harwood*, the Idaho Supreme Court held:
>
> > The district court may grant summary judgment to a non-moving party even if the party has not filed its own motion with the court. A motion for summary judgment allows the court to rule on the issues placed before it as a matter of law, the moving party runs the risk the court will find against it . . . .
>
> *Id*. A district court may also not decide an issue not raised in the moving party's motion for summary judgment. *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 530, 887 P.2d 1034, 1037 (1994). In instances where summary judgment is granted to the non-moving party, the appellate courts liberally construe the record in favor of the party against whom summary judgment was entered. *Harwood*, 136 Idaho 672, 677-78, 39 P.3d 612, 617-18.

Memorandum Decision and Order Denying Plaintiff's Motion for Summary Judgment, Granting Summary Judgment for Defendants, and Vacating Jury Trial, pp. 23-24. That alone is not sufficient reason why this Court granted summary judgment against Alpha, the party who brought the motion for summary judgment.

As this Court stated in that August 30, 2013, decision, "The issues presented by Alpha in its argument on summary judgment are: 1) what amount is due under the liens; and 2) whether Alpha may foreclose on those liens." *Id.*, p. 11. This Court noted:

"Alpha also argues this case is no longer appropriate for jury trial, **as it claims the only remaining issue is the foreclosure claim**, which is an equitable action." *Id.,* p. 8, citing Plaintiff's Reply Memorandum in Support of Motion for Summary Judgment, p. 3. (bold in original). This Court also stated:

> On June 4, 2013, Alpha filed its "Plaintiff's Reply Memorandum in Support of Motion for Summary Judgment". Alpha states the only issue for this Court to decide is whether Alpha may foreclose on the Liens. Plaintiff's Reply Memorandum in Support of Motion for Summary Judgment, p. 2.

Id., pp. 7-8. This Court concluded its prefatory remarks as follows:

> Oral argument on plaintiff's motion for summary judgment was held on July 29, 2013. At the conclusion of that hearing, counsel for defendants complained that counsel for Alpha had not brought up two new legal arguments regarding I.C. § 55-1518 until Alpha's response at oral argument, thus depriving counsel for defendants the opportunity to respond. Specifically, defendants claim at that point Alpha argued for the first time that: 1) I.C. § 55-1518 did not apply because it allowed additional attorney's fees to be added; and 2) the attorney fees added were related to work that was completed and charged for services between May 1, 2012, and May 22, 2012, and not the $3,000 drafting project. Defendants/Counterclaimants' Supplemental Memorandum Re: New Issues Argued by Alpha Holdings in Reply Oral Argument, p. 2. At oral argument, at the request of defendants' counsel, this Court allowed both sides to file additional briefs as to how I.C. § 55-1518 applies to this case. On August 7, 2013, defendants filed "Defendants/ Counterclaimants' New Issues Argued by Alpha Holdings in Reply Oral Argument," and an "Affidavint of Steven C. Wetzel in Support of Defendants/Counterclaimants' Supplemental Memorandum re: New Issues Argued by Alpha Holdings in Reply Oral Argument." On August 14, 2013, Alpha filed "Plaintiff's Supplemental Memorandum." The filing of that last brief placed Alpha's motion for summary judgment at issue before this Court.
>
> Unfortunately, as this decision will illustrate, even the supplemental briefing on I.C. § 55-1818 filed by each side entirely misses the boat as pertains to that statute.

Id., pp. 8-9. Then, this Court began its analysis as follows:

> **B. The Dispositive Issue.**
>
> Defendants are correct in stating the relief that is required (that Alpha must file a notice stating satisfaction and release of the lien), but defendants fail to articulate the portion of that statue that mandates the

legal conclusion *why* the defendants are entitled to that relief. Idaho Code § 55-1518 states:

> An assessment upon any condominium made . . . shall be a debt of the owner thereof at the time the assessment is made. The amount of any such assessment, **together with those other charges thereon**, such as interest, costs (including attorney's fees), and penalties, which may be provided for in the declaration, **shall be and become a lien upon the condominium assessed <u>when the management body causes to be recorded with the country recorder</u> of the county in which such condominium is located <u>a notice of assessment</u>, which shall state the amount of the assessment *and any other charges* thereon as may be authorized by the declaration,** a description of the condominium against which the same has been assessed, and the name of the record owner thereof. Upon such payment of said assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the management body shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof.

I.C. § 55-1518 (bold and underlining added). Even a cursory look at that statute shows an assessment becomes a **debt** the moment the assessment is made, but an assessment becomes a **lien** on a condominium only when the management body causes to be *recorded* a notice of assessment which states the amount of the assessment and any other charges. The assessment may include attorney fees, collection costs and interest, to be included in that lien, but the lien is limited to what is in the assessment that is filed with the recorder. In other words, just because a management body records an assessment for a certain amount does not mean that the management body can magically create a lien *for more than* that certain amount to also include additional or other costs, attorney fees and interest. That is exactly what Alpha is trying to do here, and Alpha claims it has the legal ability to do so by misreading the statute.

The Court finds I.C. § 55-1518 is not ambiguous. It is clear that the only way an association (a "management body") can create a "lien" under that statute is when it "records" the "notice of assessment." In preparing that "notice of assessment", the "management body" is free to include "other charges thereon, such as interest, costs (including attorney's fees), and penalties", but it is not free to include those amounts after it files the lien.

Id., pp. 15-17. (emphasis in original).

As this Court obliquely mentioned above: "The district court may grant summary judgment to a *non-moving party* even if the party has not filed its own motion with the

court." *Aardema v. U.S. Dairy Systems, Inc.,* 147 Idaho 785, 793, 215 P.3d 505, 513 (2009), citing *Harwood v. Talbert,* 136 Idaho 672, 677, 39 P.3d 612, 617 (2001). (italics added by Idaho Supreme Court to quote from *Harwood* in *Aardema*). In *Harwood,* the Idaho Supreme Court held that summary judgment could be awarded in favor of the non-moving party in a situation where the moving party moved for summary judgment on the legal significance of dotted lines on a map. The moving party felt there were factual disputes as to whether a road existed. "The district court found the legal significance of the dotted line on the map was that the 'road' was in fact a road in existence at the time of the creation of the easement and that the dotted line merely indicated the road was unimproved, not that that the road did not exist." 136 Idaho 672, 677-78, 39 P.3d 612, 617-18. The Idaho Supreme Court upheld the district court, holding:

> Talbert's assertion that her motion only raised the legal significance of the dotted line in Exhibit A is flawed. Her motion and supporting memorandum filed with the district court challenged all of the claims in the plaintiff's complaint. Although the motion stated "the issue to be decided, is the legal significance of the 'dotted line' in the ... easement," the motion went on to contest all of the bases (express easement and easement by implication, necessity or prescription) raised by Harwood's complaint. Talbert's motion for summary judgment essentially called Harwood's entire case into question and ultimately asked the district court to dismiss the case.
>
> By challenging Harwood's entire case, Talbert made the existence of the road at the time of the creation of the easement an issue properly before the district court. *Mason* requires a notice sufficient to alert a party to present evidence to show why summary judgment should not be entered against him. Talbert had such notice. The district court found that the road in question existed at the time of creation of the easement because Talbert raised and addressed this issue in her motion for summary judgment and supporting memorandum.
>
> This Court affirms the district court's grant of partial summary judgment to Harwood by finding that the "road" existed at the time the easement was created.

136 Idaho 672, 678, 39 P.3d 612, 618. In *Harwood*, the Idaho Supreme Court cited *Mason v. Tucker and Associates*, 125 Idaho 429, 871 P.2d 846 (Ct.App.1994). In *Mason*, the Idaho Court of Appeals agreed the district court erred in granting summary judgment against the plaintiff Mason, on bases not asserted in the defendant's Tucker and Associates motion for summary judgment. 125 Idaho 429, 431, 871 P.2d 846, 848. The Idaho Court of Appeals held:

> …the district court granted summary judgment on issues raised *sua sponte,* without giving notice to Mason of the need to present evidence or legal authority in support of his position on these issues. The statute of limitation defense raised by the defendants' summary judgment motion created no need for Mason to present evidence on the unrelated factual issue of whether he was an intended beneficiary of any contract between the federal court and the defendants. Nor did the defendants' motion alert him to a need to submit legal authorities and argument regarding the adequacy of his allegations to state a claim or regarding the existence of a duty of care owed to him by the court reporter.

125 Idaho 429, 431-32, 871 P.2d 846, 848-49.

This Court finds the present situation is not at all like the situation in *Mason*, where summary judgment on a purely legal argument regarding statute of limitations turned into a *sua sponte* ruling by the court against the moving party on the factual issue of intended beneficiary under a contract. This Court finds the present situation much less likely to deprive Alpha of notice of a legal issue than even the situation in *Harwood* where *sua sponte* summary judgment was allowed. As mentioned above, "Alpha also argues this case is no longer appropriate for jury trial, **as it claims the only remaining issue is the foreclosure claim**, which is an equitable action." Memorandum Decision and Order Denying Plaintiff's Motion for Summary Judgment, Granting Summary Judgment for Defendants, and Vacating Jury Trial, p. 8 (citing Plaintiff's Reply Memorandum in Support of Motion for Summary Judgment, p. 3). (bold in original). While Alpha did not initially discuss I.C. §55-1518 in its opening brief on

Motion for Summary Judgment, Alpha did raise such in its Plaintiff's Reply Memorandum in Support of Motion for Summary Judgment: "This case is an action to foreclose a homeowners' association lien pursuant to Idaho Code § 55-1518, which is not an action at law. Plaintiff's Reply Memorandum in Support of Motion for Summary Judgment, p. 4. Additionally, this Court gave both sides additional opportunity to brief the impact of I.C. § 55-1518 on this case. Thus, the concerns discussed in *Harwood* and *Mason* have more than been met and Alpha has not been deprived of notice.

III. STANDARD OF REVIEW.

The district court's decision to award attorney fees is a discretionary decision, subject to the abuse of discretion standard of review. *Bailey v. Sanford,* 139 Idaho 744, 753, 86 P.3d 458, 467 (2004).

IV. ANALYSIS OF CHANEY'S REQUEST FOR ATTORNEY'S FEES AND COSTS.

A. Introduction.

This Court has thoroughly reviewed Chaney's Affidavit in Support of Award of Attorney Fees and Costs, and Memorandum in Support of Award for Attorney Fees and Costs, as well as Alpha's Motion to Disallow Defendants' Request for Attorneys' Fees and Costs.

Chaney requests $26,378.75 for attorney fees, $4,175.00 in paralegal fees, and $1,277.32 in costs. Memorandum in Support of Award of Attorney Fees and Costs, p. 3, 13. Chaney does an admirable job of discussing the I.R.C.P. 54(e)(3)(A-K) factors that would support that amount. *Id.,* pp. 2-13.

Alpha argues, "Defendants have not established that there is any authority entitling them to an award of fees and costs in this case, and in any event, Defendants have not and cannot establish that they are the prevailing party on all issues for which

they seeks [sic] an award of attorney fees." Motion to Disallow Defendants' Request for Attorneys' Fees and Costs, p. 2. Alpha's argument is misplaced as this Court has previously held: "IT IS FURTHER ORDERED defendants are the prevailing parties in this case and, as such, defendants are entitled to costs and fees against plaintiff to be determined." Memorandum Decision and Order Denying Plaintiff's Motion for Summary Judgment, Granting Summary Judgment for Defendants, and Vacating Jury Trial, p. 24. Alpha clarifies its argument that Chaney has failed to identify an "authority" entitling them to an award of attorney fees because Chaney has failed to cite a specific statute or court rule. Motion to Disallow Defendants' Request for Attorneys' Fees and Costs, p. 2. Alpha claims, "In their Memorandum in Support of Award for Attorney Fees and Costs, Defendants do not identify the particular rule, statute or contract that supports their request for fees." *Id.,* p. 3. Alpha also clarifies its argument that Chaney "…cannot establish that they are the prevailing party on all issues for which they seeks [sic] an award of attorney fees" because a court may exercise its discretion and determine a party has "prevailed in part and did not prevail in part." *Id.,* p. 3, citing I.R.C.P. 54(d)(1)(B).

B. Failure by Chaney to State a Basis for an Award of Attorney Fees.

Alpha is *partially* correct in its claim that Chaney has failed in its Memorandum in Support of Attorney Fees and Costs (or in their Affidavit [of Melanie E. Baillie] in Support of Award of Attorney Fees and Costs), to directly enumerate the basis, that is the statute or rule, under which they seek attorney fees. Chaney clearly failed in this regard to make a *direct* statement of the basis for attorney fees. But Chaney did write, buried under the heading "Use of Paralegal":

> In Section 16.1 of the Declaration Owners are granted a right to attorney fees and costs as follows:

> [A]ny owner…shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys [sic] fees as are ordered by the Court.

Memorandum in Support of Award for Attorney Fees and Costs, p. 9. This Court finds Chaney, albeit tangentially, stated the basis for its claim for attorney fees. The Court finds this was enough to put Alpha on notice.

The Court makes the following analysis if there is a question as to the sufficiency of that indirect statement of the basis of Chaney's claim for attorney fees by Chaney's counsel in briefing. At oral argument on November 20, 2013, Chaney's counsel made a clear and direct statement their attorney fee request was made on a contractual basis.

Alpha contends Idaho follows the "American rule" of awarding fees, meaning fees are awarded, "only where they are authorized by statute or contract." Motion to Disallow Defendants' Request for Attorneys' Fees and Costs, p. 2, citing *Hellar v. Cenarrusa,* 106 Idaho 571, 578, 682 P.2d 524, 531 (1984). Alpha argues, "It is up to the requesting party to establish that the fees sought are warranted by the property [sic] authority, and '[a] trial judge cannot award attorney fees on a basis not asserted by the party requesting them." *Id.,* citing *Hobson Fabricating Corp. v. SE/Z Const. LLC,* 154 Idaho 45, 52, 294 P.3d 171, 178 (2012); and *Stephen v. Sallaz & Gatewood, Chtd.,* 150 Idaho 521, 529, 248 P.3d 1256, 1264 (2011). Alpha claims Chaney's "…generic request for fees 'under the rules, statutes and contract' is insufficient to place Alpha Holdings on notice of the basis for their request." *See Bingham v. Montane Res. Assocs.,* 133 Idaho 420, 424, 987 P.2d 1035, 1039 (1999)." *Id.,* p. 3.

At oral argument, counsel for Chaney, directly, perhaps for the first time, enlightened the Court and Alpha as to the basis for attorney fees. Counsel for Chaney

argued that Section 16.1 of the homeowners association declaration provides for attorney fees and costs, and that Chaney's original Answer requested attorney fees and costs. In response at oral argument, counsel for Alpha noted the declaration only allowed the homeowners association fees, not the homeowners themselves. If counsel for Alpha were correct in her assertion, this Court could not apply a reciprocal provision: "If the contract provides for attorney fees for only one party, this provision cannot be given reciprocal effect so as to award attorney fees to the other party." A Primer for Idaho Trial Judges in Awarding Attorney Fees, Idaho Supreme Court, p. 54 (2011), citing *Barnes v. Hinton,* 103 Idaho 619, 621, 651 P.2d 555, 557 (Ct.App. 1982). In turn, *Barnes* cites *Jenkins v. Commercial National Bank,* 19 Idaho 290, 297, 113 P. 463, 465 (1911), which indicates reciprocal fees will not be implied to a contract absent fraud, wilful wrongdoing or gross negligence. "The express provisions of the contract must be examined to determine whether attorney fees are appropriate." A Primer for Idaho Trial Judges in Awarding Attorney Fees, Idaho Supreme Court, p. 54. Reviewing the declarations shows counsel for Alpha did not speak the truth at oral argument. Section 16.1 reads:

> 16.1 Enforcement. The Association (acting through the Board), *any Owner*, and any governmental or quasi-governmental agency or municipality having jurisdiction over the Project shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court.

Affidavit of Melanie Baillie in Support of Motion for Summary Judgment, Exhibit A, Exhibit B, p. 26, ¶ 16.1. (italics added). This Court finds Chaney has set forth a contractual basis for an award of attorneys' fees. The question then becomes, "Is the eleventh hour disclosure of that basis by counsel at oral argument on the issue of attorneys' fees enough?"

Other than case citations for paralegal fees, counsel for Chaney have cited no case law or statutes in support of their request for attorney fees. The Court will turn to the cases cited by Alpha. As mentioned above, Alpha cites *Hobson Fabricating Corp. v. SE/Z Const. LLC,* 154 Idaho 45, 52, 294 P.3d 171, 178, for the proposition that "It is up to the requesting party to establish that the fees sought are warranted by the property [sic] authority, and '[a] trial judge cannot award attorney fees on a basis not asserted by the party requesting them." *Hobson* makes it clear that failing to provide the trial court with the basis for your fee request cannot be cured by providing the basis for the first time on appeal. The Idaho Supreme Court in *Hobson* held:

> Because the Contractors did not properly present a request pursuant to I.C. § 12–117(2) below, they are not allowed to pursue that request on appeal. *Pines Grazing Ass'n, Inc. v. Flying Joseph Ranch, LLC,* 151 Idaho 924, 930, 265 P.3d 1136, 1142 (2011) ("This court will not address issues not raised in the lower court.") (quoting *Idaho Dairymen's Ass'n, Inc. v. Gooding Cnty.,* 148 Idaho 653, 660, 227 P.3d 907, 914 (2010)).

154 Idaho 45, 53, 294 P.3d 171, 179. On appeal is too late. In reaching that conclusion, the Idaho Supreme Court in *Hobson* also gave some general guidance as to "notice":

> A request for attorney fees should "alert the other party to the basis upon which attorney fees are requested in order that the other party may have a sufficient opportunity to object." *Id.* "A trial judge cannot award attorney fees on a basis not asserted by the party requesting them." *KEB Enterprises, L.P. v. Smedley,* 140 Idaho 746, 754, 101 P.3d 690, 698 (2004). This Court has awarded fees where the specific subsection of an attorney fees statute was not cited, but in those cases sufficient argument was made to put the other party on alert as to what provisions they were asserting. *See Eighteen Mile Ranch,* 141 Idaho at 720, 117 P.3d at 134; *Clark v. State, Dep't of Health & Welfare,* 134 Idaho 527, 532, 5 P.3d 988, 993 (2000). In *Eighteen Mile Ranch,* this Court found that it was not dispositive for the prevailing parties in the action to fail to cite specifically to I.C. § 12–120(3) when they only cited generally to I.C. § 12–120. 141 Idaho at 720, 117 P.3d at 134. In addition to citing to I.C. § 12–120 generally, the parties also described in their fee requests that their request was based on "a commercial transaction as defined by Idaho Code § 12–

> 120." *Id.* This Court stated that while the parties' request did "not specifically refer to subsection (3) of I.C. § 12–120, it adequately identifie[d] the ground under which fees [we]re sought." *Id.* Similarly, in *Clark,* this Court found that the prevailing party had "made an adequate request" for attorney fees under I.C. § 12–120(3) even though it only claimed attorney fees generally under I.C. § 12–120. 134 Idaho at 532, 5 P.3d at 993. An adequate request had been made because the prevailing party also cited to a case where fees had been specifically awarded pursuant to I.C. § 12–120(3). *Id.*

154 Idaho 45, 52, 294 P.3d 171, 178.

The Idaho Supreme Court provided more guidance in *Stephen v. Sallaz & Gatewood, Chtd.,* 150 Idaho 521, 248 P.3d 1256 (2011). Upholding the district court's denial of attorney fees to both sides, the Idaho Supreme Court held:

> It is oft repeated by this Court that, "If the party is claiming that a statute provides authority for an award of attorney fees, the party must cite to the statute and, if applicable, the specific subsection of the statute upon which the party relies." *Bream v. Benscoter,* 139 Idaho 364, 369, 79 P.3d 723, 728 (2003). We continued:
>
> > For example, if the party seeks an award of attorney fees under Idaho Code § 12–120(3) on the ground that the case is an action to recover in a commercial transaction, the party should, to the extent necessary, provide facts, authority, and argument supporting the claim that the case involves a "commercial transaction" and that such transaction is the gravamen of the lawsuit.
>
> *Id.* at 369–70, 79 P.3d at 728–29 (2003). Neither party paid heed to this holding in district court.
>
> Pamela failed to request attorney fees pursuant to any provision of I.C. § 12–120. Therefore, she was not entitled to a fee award under that section. In his fee request, Sallaz got a little closer to the mark but did not go far enough. In his motion for an award of fees, he cited I.C. §§ 12–120 and 12–121. He did not appeal the denial of fees under I.C. § 12–121 and did not identify the specific provision of I.C. § 12–120 pursuant to which he sought fees. In his memorandum of costs and fees, he identified I.C. § 12–121, I.C. § 12–123, and several civil procedure rules in support of his fee request. He did hint at I.C. § 12–120(3), stating "[p]ursuant to Rule 54(e)(3), *Idaho Rules of Civil Procedure ,* as well as *Idaho Code § 12–120(3),* I hereby state that the total amount of attorney's fees incurred by Defendant ..." However, the document does not disclose whether he purports to seek fees based on a contract or on the commercial transaction ground. Thus, the fee request was deficient and the district court properly denied his fee request, albeit for other reasons.

150 Idaho 521, 529-30, 248 P.3d 1256, 1264-65. There is no indication by the Idaho Supreme Court what citations were made at oral argument in that case. Finally, Alpha cites *Bingham v. Montane Res. Assocs.,* 133 Idaho 420, 424, 987 P.2d 1035, 1039 (1999). In that case, the Idaho Supreme Court, finding the district court erred in awarding attorney fees under a different statute than those submitted to the district court in the request for fees, held:

> The district judge's underlying assumption that he had the power to award fees on a basis not asserted by Montane is erroneous. In order to be awarded attorney fees, a party must actually assert the specific statute or common law rule on which the award is based; the district judge cannot sua sponte make the award or grant fees pursuant to a party's general request. The Idaho Court of Appeals addressed this issue in *Fournier v. Fournier,* 125 Idaho 789, 791–92, 874 P.2d 600, 602–03 (Ct.App.1994). In *Fournier,* Barbara Fournier brought a motion to compel Dayton Fournier to comply with a stipulation for a professional evaluation. Barbara also sought attorney fees. The motion did not specify under which statute it was being filed nor did the request for attorney fees state any statute or rule upon which the request was made. After a hearing, the magistrate judge ordered Dayton to comply with the stipulation and also awarded attorney fees, but did not state the basis for the award, only noting that it did so "[a]cting as a court of equity." *Id.* at 790, 874 P.2d at 601. On review, the Court of Appeals stated that in Idaho, "there is no equitable authority to award attorney fees generally." *Id.* at 791, 874 P.2d at 602. The court noted that although attorney fee awards had previously been approved based on the "right result/wrong theory" rule, due process considerations require additional limitations to the rule. The court stated:
>
> > *At the very least, a statutory or contractual justification for an award of fees must be advanced below by the party seeking such an award. Without such a limitation, a party may be subject to an award against it while being given no opportunity to raise relevant facts or to argue applicable legal principles. The opportunity to be heard and advance legal argument on dispositive issues is essential to proper procedure.*
>
> *Id.* The court then held that if a particular statute, rule or contract is not advanced below, it cannot be a basis for upholding an award of attorney fees on appeal. *Id.* at 792, 874 P.2d at 602–03. While in that case there were various valid post hoc justifications for awarding attorney fees, the court noted that it was not the task of the reviewing court to search out statutory support for the award of fees below; rather, the "support must be garnered by the court and counsel at the time the award is requested ...." *Id.*

> Similarly, this Court has held that where a party does not state the basis for a claim for attorney fees on appeal, the claim will be denied. **We stated that I.A.R. 35(a)(5), which requires a statement of the basis for a claim for attorney fees on appeal to be included in the claimant's brief, is "necessary in order to allow the responding party a due process opportunity to challenge such claims**." *Curr v. Curr,* 124 Idaho 686, 694, 864 P.2d 132, 140 (1993).
>
> We find that the Idaho Court of Appeals' reasoning in *Fournier* is sound and similarly hold that it is incumbent on the moving party to assert the grounds upon which it seeks an award of attorney fees. The district judge is not empowered to award fees on a basis not asserted by the moving party. As the *Fournier* court noted, "[t]he opportunity to be heard and advance legal argument on dispositive issues is essential to proper procedure." 125 Idaho at 791, 874 P.2d at 602. Accordingly, a request for attorney fees should alert the other party to the basis upon which attorney fees are requested in order that the other party may have a sufficient opportunity to object. Moreover, the district judge cannot award fees, on what he determines to be a correct basis, without providing the nonmoving party with an opportunity to raise relevant facts and legal principles in its defense. Regardless of whether the award would have been proper if the party had requested fees on that basis, it is patently unfair to deprive the opposing party of an opportunity to present arguments against the award. Here, the Binghams were never provided any opportunity to raise a defense to an award of attorney fees under I.C. § 45–413; therefore, we must reverse the award of fees to Montane.

133 Idaho 420, 423-24, 987 P.2d 1035, 1038-39. (italics and bold added). Again, there was no discussion by the Idaho Supreme Court as to what, if any, citation was made at oral argument on the issue of attorneys' fees. The bold portion makes it clear that at least on appeal, the request must be *made in the brief* on appeal. This is under a specific Idaho Appellate Rule concerning the content of briefs, I.A.R. 35(a)(5), and there is no such similar counterpart concerning the content of briefs in the Idaho Rules of Civil Procedure. The italicized portion makes it clear notice to the opposing party must be given at the trial court level.

Idaho Rules of Civil Procedure 54(e)(5) provides the claim for attorney fees must be supported by an attorney's affidavit "stating the basis and method of computation of the attorney fees claimed." The Idaho Supreme Court in *Eighteen Mile Ranch, LLC v.*

Nord Excavating & Paving, Inc., 141 Idaho 716, 721, 117 P.3d 130, 135 (2005), held, "And, of course, a party must specify, in its Idaho R. Civ. P. 54(e)(5) fee request, the code section or contract provision pursuant to which it makes the fee request." In *Hooper v. State*, 127 Idaho 945, 949, 908 P.2d 1252, 1256 (Ct.App. 1995), citing *Farber v. Howell,* 111 Idaho 132, 721 P.2d 731 (Ct.App.1986), the Idaho Court of Appeals held I.R.C.P. 54(d)(5) and 54(e)(5) provide for notice and an opportunity to be heard and to present objections before the trial court, thus satisfying the right to due process: "Furthermore, because I.R.C.P. 54(d)(5) and 54(e)(5) provide for notice and an opportunity to be heard and to present objections before the trial court, the right to due process has been satisfied." While Chaney failed to strictly comply with I.R.C.P. 54 by failing to put the exact basis in either their attorney's affidavit or their memorandum, the holding in *Camp v. Jiminez,* 107 Idaho 878, 693 P.2d 1080 (Ct.App. 1984) does not support the harsh result advocated by Alpha in the present case. In *Camp,* the party seeking fees filed a memorandum, but it was not verified. The Idaho Court of Appeals held:

> The answer to this apparent dilemma lies in a comparative analysis of particular language employed in the applicable rules. As we have noted, Rule 54(d)(5) provides a time deadline for filing the cost memorandum and requires it to be verified. The rule further provides that "[f]ailure to file such memorandum of costs within the period prescribed by this rule shall be a waiver of the right to costs." This language plainly prescribes waiver as the consequence of an untimely filing, but it does not explicitly impose the bar of waiver for failing to verify a memorandum. Concededly, the phrase "such memorandum" might be interpreted to mean a verified memorandum. But we think it unwise to postulate a jurisdictional consequence upon an isolated, ambiguous phrase. The rule as a whole should be considered, in relation to its companion rules.

107 Idaho 878, 883, 693 P.2d 1080, 1085. In *Camp v. Jiminez,* whether a memorandum was timely filed is jurisdictional, and whether a memorandum was timely filed but deficient in some aspect, did not impose the bar of waiver. In the present

case, Chaney timely filed her memorandum for attorney fees, but in that memorandum failed to mention the basis for those fees. However, at oral argument, counsel for Chaney stated attorney fees were sought under the declaration. This entire lawsuit is a dispute as to the parties' rights under the declaration. If the purpose of I.R.C.P. 54(e)(5) and (6), as stated in *Hooper,* is to "provide for notice and an opportunity to be heard and to present objections before the trial court, the right to due process has been satisfied." 127 Idaho 945, 949m 908 P.2d 1252, 1256. This is consistent with the portion of *Bingham* taken from *Fournier,* and italicized above, all of which convinces this Court that citation at oral argument is sufficient. Counsel for Chaney, in his opening argument, stated the basis for attorney fees and costs, cited I.R.C.P. 54, I.C. §12-123 and I.C. § 12-121, and stated the request was "under the contract."

Moreover, in Chaney's Answer and Counterclaim, filed December 6, 2012, Chaney claims the defendants are "…entitled to recover reasonable costs and attorneys' fees incurred in the prosecution of this matter pursuant to I.R.C.P. 54, I.S. §§ 12-120(3), 12-121, other applicable Idaho and federal laws, and the Governing Documents." Defendants Answer and Counterclaim, p. 9, ¶ 4.1. "The Governing Documents" would certainly include the Declaration, especially when Alpha, in its Complaint filed October 31, 2012, claimed Alpha is "…entitled to reasonable attorney fees pursuant to Article 6 of the Declaration of Covenants, Conditions, and Restricts of Black Bay Village Condominiums and/or Idaho Code §§ 5-1518, 12-120, and 12-121." Complaint, p. 8, ¶ 40. *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.,* 141 Idaho 716, 117 P.3d 130 (2005) makes it clear that in order to recover attorney fees you need not have included the statute or contract provision in your pleadings. In that case, the Idaho Supreme Court held:

> Thus, a party need not have listed a specific attorney fee provision in its pleading in order to obtain a fee award under that provision upon prevailing in the litigation. While it is obviously the better practice to specify the fee request in the pleading, both to preserve a claim for fees in the event of a default and to put the opposing party on notice of the fee claim, failure to do so is not fatal to a fee claim in a contested matter. And, of course, a party must specify, in its Idaho R. Civ. P. 54(e)(5) fee request, the code section or contract provision pursuant to which it makes the fee request. Here, the Nords and Nord Excavating did so in their initial memorandum of costs and attorney fees, citing the commercial transaction ground, which is set forth in subsection (3) of I.C. § 12–120. They are not prevented from seeking an award just because their answer or counterclaim did not specifically designate this provision.

141 Idaho 716, 721,117 P.3d 130. 135. Thus, Chaney did not need to set forth "the Governing Documents" as a basis for attorney fees in their Answer and Counterclaim, but they did. The fact that they did certainly provides some notice to Alpha. The fact that during opening argument counsel for Chaney stated again the contractual basis for attorney fees was under the declaration certainly provided counsel for Alpha with notice and an opportunity to be heard on their objection. This Court finds Chaney's failure to include the exact basis for attorney fees in their Memorandum in Support of Attorney Fees and Costs or in their Affidavit [of Melanie E. Baillie] in Support of Award of Attorney Fees and Costs is not fatal.

C. Prevailing Party Analysis.

As mentioned above, Alpha claims Chaney "…cannot establish that they are the prevailing party on all issues for which they seeks [sic] an award of attorney fees" (Motion to Disallow Defendants' Request for Attorneys' Fees and Costs, p. 2), even though this Court has previously held: "IT IS FURTHER ORDERED defendants are the prevailing parties in this case and, as such, defendants are entitled to costs and fees against plaintiff to be determined." Memorandum Decision and Order Denying Plaintiff's Motion for Summary Judgment, Granting Summary Judgment for Defendants, and Vacating Jury Trial, p. 24.

"In making this determination [as to prevailing party] the trial judge has an abundance of discretion and the ruling will not be reversed by an appellate court in the absence of an abuse of that discretion." A Primer for Idaho Trial Judges in Awarding Attorney Fees, Idaho Supreme Court, p. 55, citing *Shore v. Peterson,* 146 Idaho 903, 914, 204 P.3d 1114, 1125 (2009). (other citations omitted). "In determining which party prevailed where there are claims and counterclaims between opposing parties, the court determines who prevailed in the "action"; that is, the prevailing party question is examined and determined from an overall view, not a claim by claim analysis." *Id.,* citing *Shore,* 146 Idaho 903, 914, 204 P.3d 1114, 1125, citing *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.,* 141 Idaho 716, 718-19, 117 P.3d 130, 132-33. Examined from an "overall view", this Court can make no other finding than the Chaney defendants are the prevailing party. "In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties." *Shore,* 146 Idaho 903, 914, 204 P.3d 1114 1125. Examined from the standpoint of "the final judgment or result of the action", the Chaney defendants are the prevailing party.

The Idaho Supreme Court has agreed with the Idaho Court of Appeals that when a defendant has successfully defended against a plaintiff's complaint, it would be an abuse of a trial court's discretion not to find the defendant to be the prevailing party, even if the defendant recovered only a small portion on their counterclaim. *Shore,* 146 Idaho 903, 914, 204 P.3d 1114, 1125, citing *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.,* 141 Idaho 716, 719, 117 P.3d 130, 133. Accordingly, it would be error for this Court not to find the Chaney defendants to be the prevailing

party. The following from *Shore* certainly pertains to the relationship between Alpha and Chaney as a result of this litigation:

> In *Daisy Manufacturing Co. v. Paintball Sports, Inc.,* 134 Idaho 259, 999 P.2d 914 (Ct.App. 2000), the Court of Appeals observed: "The 'result obtained' in this case was a dismissal of [plaintiff's] action with prejudice, the most favorable outcome that could possibly be achieved by [a defendant]. [The plaintiff] gained no benefit as a consequence of the litigation." *Id.,* at 262, 999 P.2d at 917.

Shore, 146 Idaho 903, 914, 204 P.3d 1114, 1125. In that case, Shore sued Peterson to collect on a promissory note; the district court found Peterson prevailed on his affirmative defense that an accord and satisfaction had discharged Peterson's liability on the note, but the district court declined to award Peterson's attorney fees because Peterson failed to prevail on his counterclaim for damages for Shore's alleged conversion of two tractors. 146 Idaho 903, 905-07, 204 P.3d 1114, 1116-18. Reversing the district court, the Idaho Supreme Court held:

> First, the primary issue in this case was the claim to collect on the promissory note. In the district court's decision, it made no findings on the substance or merits of the conversion claim because it determined that the claim was unnecessary as a result of Peterson's successful defense of the collection claim.

146 Idaho 903, 915, 204 P.3d 1114, 1126. As a result of Peterson's successful defense, the counterclaim was unnecessary, so that unnecessary counterclaim should not have entered into the prevailing party analysis according to the Idaho Supreme Court. The present case is even more factually on point as compared to the facts in *Shore*. Accordingly, it would be an abuse of this Court's discretion not to find the Dhaney defendants are the prevailing parties. Chaney, like Peterson in *Shore*, successfully defended against the plaintiff's claims. In the present case, the Chaney defendants have alleged three counterclaims: 1) "Unlawful Collection Activity" under the federal Fair Debt Collection Practices Act and Idaho law, 2) "Slander of Title" and 3)

"Attorneys' Fees and Costs". Defendants' Answer and Counterclaim, p. 7. The Court has not yet reached the damage issues under these theories. However, in prior rulings, this Court has essentially found the Chaney defendants have proven their prima facie case on their counterclaims for 2) slander of title (except for the amount of damages) and 3) attorneys' fees (in the August 30, 2013, Memorandum Decision), and has essentially found Chaney defendants cannot prevail on their counterclaim for damages under 1) federal Fair Debt Collection Practices Act and Idaho debt collection law. April 11, 2013, Memorandum Decision and Order Denying Defendants' Motion for Summary Judgment, and on Motions to Strike, pp. 31-41. Thus, in the present case, the Chaney defendants have prevailed by a larger margin than did Peterson in *Shore*. The Chaney defendants successfully defended against Alpha's claims, and Chaney has prevailed on two of their three counterclaims against Alpha, with only the amount of damages for attorney fees to be decided in this present decision, and the amount of damages under slander of title to be decided, if ever, in the future.

Under all these metrics give by the Idaho appellate courts, the Chaney defendants are the prevailing parties.

Apart from previously stating such in its August 30, 2013, Memorandum Decision, this Court specifically finds Chaney to be the prevailing party. Alpha claims Chaney "prevailed on only a small portion of this action." Motion to Disallow Defendants' Request for Attorneys' Fees and Costs, p. 5. In an attempt to add some depth to that argument, counsel for Alpha continues:

> Alpha Holdings does not dispute that in its *Memorandum Decision and Order Denying Plaintiff's Motion for Summary Judgment, Granting Summary Judgment for Defendants, and Vacating Jury Trial,* this Court denied its motion for summary judgment and granted summary judgment to Defendants. However, that order concerned only Alpha Holdings' claim for foreclosure of the HOA assessment liens.

Id. The second sentence is incredulous, as "Alpha Holdings' claim for foreclosure of the HOA assessment liens" **makes up the entirety of this lawsuit**! The only relief sought by Alpha is "The Court declare Plaintiff to have a valid and subsisting lien on [defendants] property", and "[t]hat the Court enter a decree of foreclosure that the [defendants] property… be sold in accordance with Idaho law…" Complaint, p. 9. For Alpha to argue that Chaney "only prevailed on a small portion of this action", Alpha must have forgotten what it claimed when it started this lawsuit. Alpha reiterates that failed memory when it writes: "Thus, the only claim or defense that Defendants have prevailed on is the defense against Alpha Holdings' claim for foreclosure." Motion to Disallow Defendants' Request for Attorneys' Fees and Costs, p. 5. Alpha's foreclosure is the *sine qua non* of this lawsuit! The foreclosure in turn was based upon a lien amount which Alpha had grossly overinflated, **the correct amount of which the Chaney defendants had already paid** (in May 2012, Affidavit of Betty Chaney in support of Defendants' Motion for Partial Summary Judgment, p. 2 ¶ 8) at the time Alpha filed this lawsuit (October 31, 2012) to enforce its lien and foreclose on the various defendants properties. The only reason Alpha failed to prevail on any of the claims in its Complaint is because Alpha so grossly overreached on the amount of the liens Alpha claimed in that Complaint. Alpha so grossly overreached because Alpha so incorrectly interpreted I.C. § 55-1518. This Court has already held that the Chaney defendants have already paid $23,941.13, which is $15,870.39 more than the legal amount of Alpha's $8,070.74 lien. Memorandum Decision and Order Denying Plaintiff's Motion for Summary Judgment, Granting Summary Judgment for Defendants, and Vacating Jury Trial, p. 24. Thus, from the day it filed this Complaint, Alpha never has had anything to foreclose upon in this case. In fact, because Alpha recorded its liens, this Court found that from May 21, 2012 (the day the Clerk of the Court issued the

check to Lukins and Annis, Alpha's attorneys), to the present, Alpha has slandered the Chaney defendants' title by not recording a satisfaction of lien. *Id.,* p. 22. Alpha included attorneys fees in its lien on defendants' properties and in this lawsuit Alpha claimed it was due ever increasing amounts of additional attorney fees, and was awarded nothing by way of attorney fees. *Id.,* p. 24. Looking at this lawsuit from Alpha's perspective, the party which started this lawsuit, Alpha has not prevailed on **any** claim it prosecuted. Alpha succeeded against the Chaney defendants' Affirmative Defenses, which were misguided, but that ignores the fact that **Alpha should not have brought this lawsuit in the first place**. Looking at this lawsuit from Chaney's standpoint, while the Chaney defendants did not prevail on their Affirmative Defenses or its Counterclaims, Chaney prevailed on their only significant "Prayer for Relief", that being "For dismissal of Plaintiff ALPHA HOLDINGS' complaint against Defendants/Counter-claimants with prejudice." *Id.*

Additionally, this Court also finds that under the attorney fees provision in the declaration in this case, in order to award attorney fees it is not even necessary for this Court to find Chaney to be the prevailing parties. The attorney fee provision makes no mention of prevailing party. For the reader's convenience, that provision is reiterated:

> 16.1 Enforcement. The Association (acting through the Board), any Owner, and any governmental or quasi-governmental agency or municipality having jurisdiction over the Project shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court.

Affidavit of Melanie Baillie in Support of Motion for Summary Judgment, Exhibit A, Exhibit B, p. 26, ¶ 16.1. "However, if a contract provides for attorney fees to any party who 'employ[s] legal counsel,' then attorney fees may be granted even though the party did not prevail." A Primer for Idaho Trial Judges in Awarding Attorney Fees, Idaho

Supreme Court, p. 56, citing *Post v. Murphy,* 125 Idaho 473, 476, 873 P.2d 118, 121 (1994). The attorney fee provision in the subdivision restrictions in *Post* read: "24. In the event that the Grantors shall employ legal counsel in connection with or to enforce these covenants and restrictions, then the persons with respect to which such employment occurs shall pay all costs incurred, including reasonable attorneys' fees." *Id.* As in the present case, there is no mention of prevailing parties.

In any event, the Chaney defendants are the prevailing parties in this case.

D. The Amount of Attorney Fees and Costs Requested and Awarded.

Chaney discussed I.R.C.P. 54(e)(3)(A-L) factors which Chaney feels support the request for $26,368.75 in legal fees, $4,175.00 in paralegal fees, and $1,277.32 in costs. Memorandum in Support of Award for Attorney Fees and Costs, pp. 2-13.

1. Costs.

Chaney requests costs for filing fee of $66.00; Westlaw research of $5.52; SCW for certified copies of $200.00, mediation services of $554.50, deposition transcript of Mike Rai of $451.30. Costs as a matter of right are allowed under I.R.C.P. 54(d)(1)(C)(1) for the filing fee of $66.00. Costs as a matter of right would normally be allowed under I.R.C.P. 54(d)(1)(C)(10) for the deposition transcript of Mike Rai in the amount of $451.30. However, Alpha points out that deposition was taken in a different case. Motion to Disallow Defendants' Request for Attorneys' Fees and Costs, p. 6. Chaney has not responded to that claim. Accordingly, that is disallowed. Costs as a matter of right would be allowed for certified copies in the amount of $200.00, if those documents were admitted as evidence in a hearing or trial. Counsel for Chaney has not specified if these certified documents were admitted as evidence for any hearing. Thus, those costs are disallowed as a matter of right. The Westlaw fees, certified documents and mediation services could be awarded as a discretionary cost under

I.R.C.P. 54(d)(1)(D), but Chaney has made no effort to explain why they were necessary, exceptional and reasonably incurred under that rule. Thus, no discretionary costs are allowed. Costs as a matter of right in the amount of $66.00 are granted.

2. Paralegal Fees.

As noted by Alpha (Motion to Disallow Defendants' Request for Attorneys' Fees and Costs, p. 7), paralegal fees are not allowed as attorney fees under I.R.C.P. 54(e)(3), according to *Hines v. Hines,* 129 Idaho 847, 855, 934 P.2d 20, 28 (1997). While Alpha quotes *Hines* correctly, Alpha's citation to *Hines* has no import, as Chaney correctly notes, I.R.C.P. 54(e)(1) specifically allows an award of attorney fees "which at the discretion of the court may include paralegal fees." Memorandum in Support of Award of Attorney Fees and Costs, p. 9. Counsel for Alpha should be aware that I.R.C.P. 54(e)(1) was amended in 1999 (A Primer for Idaho Trial Judges in Awarding Attorney Fees, Idaho Supreme Court, p. 69), which nullified the point which Alpha made when it cited *Hines*. Chaney requests $4,175.00 in paralegal fees. The Court finds those fees to be reasonable.

3. Attorney Fees.

The Chaney defendants request for $26,368.75, in legal fees. Idaho Rules of Civil Procedure Rule 54(e)(3) reads:

> **Amount of Attorney Fees.** In the event the court grants attorney fees to a party or parties in a civil action it shall consider the following factors in determining the amount of such fees:
>
> (A) The time and labor required.
> (B) The novelty and difficulty of the questions.
> (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.
> (D) The prevailing charges for like work.
> (E) Whether the fee is fixed or contingent.
> (F) The time limitations imposed by the client or the circumstances of the case.
> (G) The amount involved and the results obtained.

(H) The undesirability of the case.
(I) The nature and length of the professional relationship with the client.
(J) Awards in similar cases.
(K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.
(L) Any other factor which the court deems appropriate in the particular case.

I.R.C.P. 54(e)(3). Chaney has analyzed these factors. Memorandum in Support of Award of Attorney Fees and Costs, pp. 2-13. The Court will discuss each factor.

(A) The time and labor required. The time spent as set forth in the Affidavit [of Melanie E. Baillie] in Support of Award of Attorney Fees and Costs is reasonable for the tasks described. However, Alpha points out time spent on various tasks that were performed in related cases, *Conley v. Black Bay Village Owner's Association*, Kootenai County Case No. CV 2011 7723, and *Alpha v. Conley*, Kootenai County Case No. CV 2011 9436. Motion to Disallow Defendants' Request for Attorneys' Fees and Costs, pp. 5-6. Alpha has taken the Chaney defendants' Affidavit [of Melanie E. Baillie] in Support of Award of Attorney Fees and Costs and encircled those specific billings Alpha feels are for work done in these other cases. *Id.,* citing Exhibit A. This Court finds most of those items to which Alpha encircled *are* related to the instant litigation given the description in the billing for the work performed. The only itemized billing this Court finds is clearly related to a different companion case is the six hours and $1,350 attributed to *Alpha v. Conley* on May 17, 2013. Alpha objects to the attorney time spent regarding Alpha's Mike Rai's deposition. Motion to Disallow Defendants' Request for Attorneys' Fees and Costs, p. 6. While the deposition of Mike Rai was noticed up and transcribed under the heading in a companion case, and thus (as discussed above) the transcript cost was not appropriate as a cost as a matter of right in the present case

under I.R.C.P. 54(d)(1)(C)(10), that transcript was referred to in the present case and no doubt led to pertinent information in the present case. This Court finds no good reason not to allow attorney time regarding Mike Rai's deposition. Alpha objects to the attorney time spent in mediation, claiming: "The outcome of the mediation in *Conley v. Black Bay Village HOA* had no effect on the Court's ruling in this case." Motion to Disallow Defendants' Request for Attorneys' Fees and Costs, p. 7. However, there is no *proof*, no admissible *evidence* submitted by Alpha that the mediation, which apparently occurred on June 17, 2013, *solely* concerned *Conley v. Black Bay Village*. That objection by Alpha is without merit.

Of the $26,368.75, in legal fees requested by Chaney, the only reduction this Court makes on the basis of I.R.C.P. 53(e)(3)(A) "the time and labor required" is the six hours and $1,350.00 attributed to Alpha v. Conley on May 17, 2013. Thus, $25,018.75 in legal fees is awarded to the Chaney defendants against Alpha.

(B) The novelty and difficulty of the questions. Counsel for Chaney argues the questions presented were novel because: 1) discovery disclosed the $500 per defendant assessment was not really for drafting the foreclosure complaints; 2) "there is no Idaho case law directly on point regarding the use of the lien statute to collect additional condominium 'assessments' where no assessments are actually due"; 3) "there are no published court decisions addressing the blatant violation of the statutes as was done by Alpha Holdings in this case"; and 4) "the matter was difficult for the Defendants' attorneys due to the fragile nature of many of the Defendants (physical condition and age)." Memorandum in Support of Award of Attorney Fees and Costs, p. 3. Alpha did not respond to this issue. The Court finds these claims by the Chaney defendants' to be without merit. This case is neither novel nor difficult, and this Court

finds the lack of novelty and difficulty of the questions presented does not allow for an upward or a downward departure from the amount of fees requested.

(C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law. Chaney claims, "This matter required the skill and ability of reasonable and prudent attorneys with experience in condominium associations, lien law and civil litigation." Memorandum in Support of Award of Attorney Fees and Costs, p. 4. Chaney then details the experience of attorneys Steven C. Wetzel and Melanie Baillie, and paralegal Debra Hylton, all with associations and real estate, Wetzel specifically with liens. Alpha did not respond to this issue in briefing or at oral argument.

This factor is problematic for the Court. Counsel for Chaney raised several arguments on their summary judgment motion which this Court found were not well taken and upon which Chaney did not prevail. Then, in defending this case and in defending against Alpha's summary judgment, counsel for Chaney did not raise the dispositive argument, which is a simple reading of I.C. § 55-1518. Had counsel for Chaney raised this issue on their motion for summary judgment, Chaney would have prevailed in this litigation six months ago, and at less legal expense to both parties. This Court struggles with the fairness of awarding attorney fees to a party who failed to make the dispositive legal argument. The Chaney defendants clearly are the prevailing parties, but they prevailed in spite of themselves. On the other hand, counsel for Alpha at any time could have read and analyzed I.C. § 55-1518, and realized they were overreaching on the amount of their liens. Is not fair to deny the Chaney defendants their attorney fees when Alpha brought this lawsuit, when Alpha slandered the Chaney defendants title, and in doing so, Alpha either failed to review or chose to ignore I.C. § 55-1518. Because Alpha is the party which started this litigation and which

improperly placed a lien on the Chaney defendants' property, this Court finds that while neither side correctly analyzed this case, Alpha's failure to conform its collection and foreclosure action to I.C. § 55-1518 is the greater harm. Accordingly, this Court finds this criteria justifies neither an increase nor a decrease in the amounts of attorney fees requested by the Chaney defendants.

(D) The prevailing charges for like work. Chaney claims attorney Wetzel's billing rate at $225 per hour with 30 years of experience, attorney Baillie's rate of $200 per hour with eight years of experience, and paralegal Hilton at $100 per hour is reasonable, based on a prior determination in a related case by District Judge Benjamin Simpson. Memorandum in Support of Award of Attorney Fees and Costs, p. 4. Alpha did not respond to this issue in briefing or at oral argument. This Court finds Judge Simpson's ruling justifies neither an increase nor a decrease in the amount requested.

(E) Whether the fee is fixed or contingent. Chaney claims "[t]he matters were converted to a contingency in which James, Vernon & Weeks would be paid its hourly fees out of any recovery, with an additional bonus % payable based upon proceeds recovered in excess of the hourly fees." Memorandum in Support of Award of Attorney Fees and Costs, pp. 4-5. It is difficult to understand what is being said by counsel for Chaney. Alpha did not respond to this issue in briefing or at oral argument. In any event, this Court is not going to award additional amounts under this criteria for work done in other cases. Chaney then claims "[c]onsequently this case has been taken at great risk to James, Vernon and Weeks, P.A. in order to assist the Defendants in prevention of the possible loss of their homes, and to protect the integrity of association law in North Idaho." *Id.,* p. 5. This is a particularly unavailing argument given the fact that counsel for Chaney failed to correctly analyze I.C. § 55-1518. The "great risk to James, Vernon and Weeks" was actually caused by that failure of the attorneys at

James, Vernon and Weeks. That failure exposed their clients, the Chaney defendants, to even greater risk. This Court finds this criteria justifies neither an upward or downward departure from the amount of fees requested.

(F) The time limitations imposed by the client or the circumstances of the case. Chaney claims:

> …there are seven separate attorneys in four law firms who represented Mike Rai and his entities in this and the companion cases. It is believed these attorneys and firms have been funded by two insurance companies and association dues paid by all association members except Northwest Group and Alpha Equity (entities owned and controlled by Mike Rai). Defendants believe that there has been a concerted effort to financially break the defendants in order to maintain unfair and illicit control of the Association.

Memorandum in Support of Award of Attorney Fees and Costs, p. 6. No facts, no affidavit, no deposition testimony, no evidence of any kind has been submitted by Chaney to support this conspiracy theory. A re-examination of I.R.C.P. 11(a)(1) should be made by counsel for defendant Chaney. That rule mandates: "The signature of an attorney…constitutes a certificate that the attorney…has read the pleading, motion or other paper; that to the best of the signer's knowledge, information, and belief after reasonable inquiry it *is well grounded in fact*…" I.R.C.P. 11(a)(1). (italics added). The argument that, "Defendants believe that there has been a concerted effort to financially break the defendants in order to maintain unfair and illicit control of the Association", falls on deaf ears as defendants could have saved much time and attorney fee expense if at the beginning of the defense, counsel for defendant would have advanced the proper argument regarding I.C. § 55-1518. Idaho Rule of Civil Procedure 11(a)(1) allows the Court to impose a sanction. Specifically, it provides: "If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an

appropriate sanction…" This Court finds counsel for Chaney violated of I.R.C.P. 11(a)(1) by making accusatory and disparaging claims which were not "well grounded in fact", but rather were wholly unsupported by any facts via affidavit, deposition or other admissible evidence. As set forth in section "H" below, counsel for Chaney then blamed the death of a party upon this alleged but unsubstantiated bad conduct of Mike Rai, his attorneys and insurance companies. These transgressions were made by counsel for Chaney, not by the Chaney defendants themselves. Thus, these transgressions will not result in a reduction of fees owed by Alpha to the Chaney defendants. However, this Court imposes a $5,000.00 sanction under I.R.C.P. 11(a)(1) against counsel for the Chaney defendants, to be paid to Alpha, the target of the unsubstantiated accusations made by counsel for those Chaney defendants.

(G) The amount involved and the results obtained. Chaney claims that because the defendants are on a fixed income, the amounts involved were "huge". Memorandum in Support of Award of Attorney Fees and Costs, p. 6. Alpha did not respond to this issue in briefing or at oral argument. The Court finds this criteria should result in neither an increase nor a decrease in the amount of attorney fees claimed.

(H) The undesirability of the case. Chaney claims:

> This case would not have been taken by many attorneys, and the current Defendants' attorneys have often questioned the wisdom of involvement in this case. This case is complex and difficult because in representing six Defendants in an emotionally charged case that really began as what the Defendants saw as a reach of the Declarant's/ Association's duties in failing to provide basic maintenance. The protection of individuals being devastated by the actions of Alpha Holdings, and its owner Mike Rai, has cause great concern for Defendants' counsel. One client died during the pendency of these matters, which Defendants' counsel believes occurred as a result of the stress created by this litigation. Ray Vezina died from an overdose of his medication. Counsel, in visiting Mr. Vezina before his death, found him to be in emotional turmoil and literally shaking over whether he would lose his home in this litigation.

Memorandum in Support of Award of Attorney Fees and Costs, pp. 6-7. Alpha did not respond to this issue in briefing or in oral argument. Once again, what defendants' counsel provides is his "belief", but this time it is not just the belief of the evil conspiracy between Mike Rai, his attorneys and insurance companies; now it is counsel's "belief" as to the cause of death of a party. Counsel for the Chaney defendants should hope his own "belief" is wrong, given the fact that a proper argument regarding the effect of I.C. § 55-1518 upon the lien amount and foreclosure action would have resulted in this case concluding many months earlier.

(I) The nature and length of the professional relationship with the client. Chaney claims the first case of these related cases began in September 2011. Memorandum in Support of Award of Attorney Fees and Costs, p. 7. However, counsel for Chaney did not explain how that should result in an increase or decrease in the amount of attorney fees sought. Alpha did not respond to this issue. This Court finds this criteria justifies neither an upward or downward departure from the amount of fees sought.

(J) Awards in similar cases. Chaney claims under this criteria are muddled. Memorandum in Support of Award of Attorney Fees and Costs, pp. 7-8. Alpha did not respond to this issue. This Court finds this criteria justifies neither an upward or downward departure from the amount of fees sought.

(**K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.** Chaney makes no argument as to the claim $5.52 for Westlaw research under the attorney fees rule (instead, Chaney claimed it as a cost, which was not allowed, above). Accordingly, any claim under the attorney fee rule for Westlaw research will not be considered by this Court.

(L) Any other factor which the court deems appropriate in the particular case. Chaney first claims Alpha filed its Complaint in the wrong court, "Plaintiff attempted to assert a claim in magistrate division for more than the jurisdictional limit and Defendants had to seek to move it." Memorandum in Support of Award of Attorney Fees and Costs, p. 9. Alpha did not respond to this issue. The amount sought in the Complaint on all six liens totals $8,532.51. Complaint, p. 8, ¶ 38. This is over the statutory amount for a magistrate judge under I.C. § 1-2208(1)(a). It is also a proceeding to enforce a lien where the amount is over $5,000, and thus, over the statutory amount for a magistrate judge under I.C. § 1-2208(1)(b). The case should have been assigned to a district judge initially, but was instead assigned to a magistrate. However, Chaney has produced no evidence that it was assigned to a magistrate due to some act of Alpha. Assignments are made by a deputy clerk of court at the civil desk when the case is filed. Assignments are not made by parties or their counsel.

Second, Chaney discusses paralegal expenses. Memorandum in Support of Award of Attorney Fees and Costs, p. 10. This is discussed above.

Third, Chaney justifies the amount of time spent on this case. *Id.,* pp. 10-12. This is a redundant argument identical to criteria (A) under I.R.C.P. 54(e)(3). In discussing that criteria, this Court has already found, "The time spent as set forth in the Affidavit [of Melanie E. Baillie] in Support of Award of Attorney Fees and Costs, is reasonable for the tasks described."

Fourth, Chaney argues overlapping portions of both cases are properly allocated to both cases. *Id.,* p. 12.

All these additional factors warrant neither an increase or a decrease in the amount of attorney fees.

V. CONCLUSION AND ORDER.

For the reasons set forth above;

IT IS HEREBY ORDERED the Chaney defendants are the prevailing parties in this case and, as such, the Chaney defendants are entitled to costs and fees against plaintiff as set forth below.

IT IS FURTHER ORDERED defendants Chaney requests for costs as a matter of right in the amount of $66.00 are GRANTED, and all remaining requests for costs by defendants Chaney in the amount of $1,277.00 are DENIED.

IT IS FURTHER ORDERED that attorney fees in the amount of $25,018.75 ($26,368.75 less the $1,350.00 discussed above) and all paralegal fees ($4,175.00) sought by defendants Chaney are GRANTED as against plaintiff Alpha Holdings LLC, in the combined amount of $29,193.75.

IT IS FUTHER ORDERED counsel for defendants Chaney pay $5,000.00 as a sanction under I.R.C.P. 11(a)(1) to plaintiffs Alpha Holdings LLC.

IT IS FUTHER ORDERED counsel for defendants Chaney prepare and submit a Judgment consistent with this and prior memorandum decisions and orders.

Entered this 17th day of December, 2013.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of December, 2013, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	Fax #	Lawyer	Fax #
Peter J. Smith	664-4125	Steven C. Wetzel	664-1684

_____
Jeanne Clausen, Deputy Clerk