

Lee v. ING Inv. Mgmt., LLC, 240 Ariz. 158, 377 P.3d 355 (App. 2016), review denied (Jan. 10, 2017)

This case examined the issue of the determination of the “successful party” in litigation arising out of contract for the purpose of an award of attorney’s fees under A.R.S. section 12-341.01(A). The Arizona Court of Appeals reviewed the issues in light of the totality of the the entire litigation in arriving at its decision.

Plaintiff/Appellee (“Lee”) was terminated from his employment with Defendant/Appellant (“ING”) without cause. According to Lee, ING refused to pay Lee the amount owed under the Severance Agreement. Lee filed suit alleging breach of contract, implied covenant of good faith and fair dealing, and entitlement to treble damages under A.R.S. section 23-355. Parties filed cross-motions for summary judgment and the court granted partial summary judgment in favor of ING, dismissing Lee’s claim under A.R.S. section 23-355. Lee then accepted an offer of judgment under Rule 68 in the amount of \$900,000 (exclusive of any attorney fees that Lee would be entitled to recover). Lee then filed a motion requesting attorney fees and costs, which the trial court granted in part.

Both parties appealed. ING argued that the superior court improperly determined that Lee was the successful party under A.R.S. section 12-341.01(A), and Lee argued that the court erred in rejecting his claim for treble damages under A.R.S. section 23-355 and not awarding him entirety of his attorney fees and costs. IMG and Lee both presented argument regarding the determination of a “successful party” under A.R.S. section 12-341.01(A).

The Court of Appeals found that “in light of the totality of the litigation” there was a reasonable basis for the superior court’s conclusion that Lee was the successful party. The Court of Appeals also found that by accepting IMG’s offer of judgment, Lee agreed to end the litigation on *all* claims encompassed by his complaint once judgment was entered against ING—and was therefore precluded from appealing the superior court’s interlocutory summary judgment rulings because he agreed to entry of judgment resolving all claims.