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ATTORNEYS FOR APPELLANT:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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CEDAR MILL HOMEOWNERS	)	
ASSOCIATION, INC.,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 32A05-1001-SC-85
	)	
PATRICK J. BOCIAN,	)	
	)	
Appellee-Defendant.	)	

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APPEAL FROM THE HENDRICKS SUPERIOR COURT  
The Honorable Karen M. Love, Judge  
Cause No. 32D03-0911-SC-527

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**June 11, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## Case Summary

Appellant-Plaintiff Cedar Mill Homeowners Association, Inc. (“Cedar Mill”) appeals the small claims court’s denial of its request for attorney’s fees. We affirm.

### Facts and Procedural History

Patrick J. Bocian failed to make his Homeowner’s Association dues payment, and Cedar Mill turned the matter over to the Tanner Law Group to collect the delinquent amount. On November 9, 2009, Cedar Mill filed a Notice of Claim against Bocian for the \$375 in outstanding dues plus court costs and attorney fees. After a hearing, the small claims court entered judgment in favor of Cedar Mill for \$375 plus court costs. This appeal ensued regarding attorney’s fees.

### Discussion and Decision

As an initial matter, we note that Bocian did not file an appellee’s brief. Where the appellee fails to file a brief on appeal, we may in our discretion reverse the trial court’s decision if the appellant makes a *prima facie* showing of reversible error. McGill v. McGill, 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004). This standard relieves this Court of the burden of developing arguments for the appellee. Id.

Judgments in small claims action are “subject to review as prescribed by relevant Indiana rules and statutes.” Ind. Small Claims Rule 11(A). When reviewing claims tried by the court without a jury, the reviewing court shall not set aside the judgment “unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Ind. Trial Rule 52(A). In determining whether a judgment is

clearly erroneous, we do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and reasonable inferences to be drawn therefrom. Counciller v. Ecenbarger, Inc., 834 N.E.2d 1018, 1021 (Ind. Ct. App. 2005). This deferential standard of review is particularly important in small claims actions, where trials are “informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law.” Ind. Small Claims Rule 8(A).

The Articles of Incorporation and Bylaws of a non-profit corporation constitute a contract between the corporation and its members and among the members themselves. Lynn v. Windridge Co-Owners Ass’n, Inc., 743 N.E.2d 305, 313 (Ind. Ct. App. 2001), trans. denied. Failure to make the payments as required by such a contract is a breach thereof. Gaddis v. Stardust Hills Owners Ass’n, Inc., 804 N.E.2d 231, 235 (Ind. Ct. App. 2004). Here, there is no dispute that Bocian breached the Bylaws of the Cedar Mill subdivision by failing to pay his dues timely. Rather, the issue is whether the small claims court erred in refusing to award attorney’s fees to Cedar Mill. Indiana generally follows the American Rule that requires each party to pay his or her respective attorney fees. Stewart v. TT Commercial One, LLC, 911 N.E.2d 51, 58 (Ind. Ct. App. 2009), trans. denied. However, such obligation may be shifted by contract or agreement, and a court will enforce the agreements as long as they are not contrary to law or public policy. Id.

The Bylaws provide in pertinent part: “In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors of the Association, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot or

Lot[s], costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such assessments were due until paid." Defendant's Exhibit A at 10. However, the trial court noted that the only evidence presented was Bocian's testimony that he acknowledged he owed the dues but repeatedly asserted that he never received any notice of the assessment of the dues as required by the Bylaws. Exh. A at 9. Cedar Mill did not present any evidence to contradict this testimony. While the notices were entered into evidence as exhibits, there was no evidence that they were actually mailed to satisfy Cedar Mill's notice requirement under the Bylaws. Thus, there is no proof that legal action was necessary because Bocian was never notified of the dues he owed.

Moreover, the amount of the trial court's award of attorney's fees must be supported by the evidence. Dempsey v. Carter, 797 N.E.2d 268, 275 (Ind. Ct. App. 2003), trans. denied. The trial court awarded \$0 in attorney's fees, which is supported by the evidence: Cedar Mill failed to present any evidence supporting the amount of attorney's fees it was seeking. Therefore, the trial court did not abuse its discretion in awarding no attorney's fees to Cedar Mill.

Affirmed.

MAY, J., and BARNES, J., concur.