

*Court of Appeals*  
STATE OF ARIZONA  
DIVISION ONE

**CASE MANAGEMENT STATEMENT**

Patricia Bocchino

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v.

Fountain Shadows Homeowners Association

1 CA-CV 16-0710

Maricopa County Superior Court

Superior Court case number: CV2015-012434

Judge Douglas Gerlach

Fountain Shadows Homeowners Assoc.  
Name of Filing Party

  
\_\_\_\_\_  
Signature of Counsel or Party

January 3, 2017  
Date

## A. APPELLATE JURISDICTION

1. State the basis for appellate jurisdiction (*See* A.R.S. § 12-2101):

**Appellant states the basis for appellate jurisdiction falls under A.R.S. 12-2101.1 which states:**

**From a final judgment entered in an action or special proceeding commenced in a superior court, or brought into a superior court from any other court, except in actions of forcible entry and detainer when the annual rental value of the property is less than three hundred dollars.**

**Appellant appeals to the Arizona Court of Appeals Division One (1) from the Judgment signed by Hon. Douglas Gerlach on October 6, 2016, in favor of Plaintiff Patricia Bocchino.**

2. State the date the superior court filed the judgment/order you are appealing and state whether the court signed the ruling.

**The Court entered the Judgment dated October 6, 2016, signed by the Honorable Douglas Gerlach.**

3. Provide the date each notice of appeal or cross-appeal was filed and identify the filing party.

**The Notice of Appeal was filed on November 4, 2016 by Defendant Fountain Shadows Homeowners Association.**

4. If the time for appeal was extended by one of the motions identified in Arizona Rule of Civil Appellate Procedure 9(e)(1), identify the motion, the date it was filed, the date the superior court filed its ruling on the motion, and state whether the ruling was signed.

**No motions were filed.**

5. If any motions are currently pending in superior court, identify the name of each motion and the date it was filed.

**No motions are currently pending in superior court.**

6. Is the judgment/order appealed from certified as final pursuant to Arizona Rule of Civil Procedure 54(c)?

**Yes.**

7. If any claims remain pending in the superior court, including claims for attorneys' fees, was the judgment/order made appealable pursuant to Arizona Rule of Civil Procedure 54(b) or Arizona Rule of Family Law Procedure 78(B)?

N/A.

## B. CASE INFORMATION

1. List all parties to the superior court action.

**Patricia Bocchino; Plaintiff/Appellee.**

**Fountain Shadows Homeowners Association; Defendant/Appellant.**

2. List any party in superior court that is not a party to this appeal and explain in detail why the party is not included in this appeal, e.g., the party was dismissed, not served, or other. Include specific relevant references to the record.

N/A.

3. Describe briefly all claims (including counterclaims, cross-claims and third-party claims) asserted in the superior court and the manner each such claim was resolved in the superior court (i.e., bench trial, jury verdict, dismissal, summary judgment, or default judgment). Include specific relevant references to the record.

**The Complaint filed by Bocchino is based on her belief that the Association wrongfully charged her with the legal fees that the Association incurred in a separate action to obtain an Injunction against Workplace Harassment against her.**

**By engaging in a series of acts that have caused serious harm and annoyance, Bocchino breached the Declaration by harassing the Association's board members and employees the Association's then-managing agent, Planned Development Services, Inc.**

**The Association is authorized to charge legal fees and costs incurred to enforce compliance with the Declaration in the event the Association is a prevailing party in such action.**

**Appellee filed a Motion for Summary Judgment arguing that Appellants were**

not authorized to charge her legal fees it incurred to obtain an Injunction against Workplace Harassment against her. Appellant filed a Cross Motion for Summary Judgment claiming that the contract entitles the Association to legal fees incurred to enforce compliance with the Declaration. Oral arguments were held on June 7, 2016.

While Plaintiff did not dispute the validity or enforceability of the 2015 Injunction, the Court's July 27, 2016 minute entry found that the Association's 2015 Injunction Against Workplace Harassment issued by the justice court on a form adopted by the courts for that purpose was unenforceable because it was unconstitutional and that "by no recognized standard does the Association's failure to obtain an injunction that complies with constitutional requirements transform the Association into a successful, and thus, prevailing party."

4. Identify the issues to be raised on appeal.

Whether the superior court erred in holding that the Appellant was not entitled to charge Appellee for legal fees the Appellant incurred in obtaining an injunction against workplace harassment against Appellee, and in so holding, entering judgment against Appellant for the following:

- (a) compensatory damages in the amount of Three Thousand Eight Hundred Eighty Seven Dollars and 28/100 (\$3,887.28), against Fountain Shadows Homeowners Association;
  - (b) taxable costs \$450.10 against the Defendant, Fountain Shadows Homeowners Association.
  - (c) interest on taxable-costs awards at the rate of 4.5% from the date of the Final Judgment until paid;
  - (d) attorney's fees in the amount of Thirteen Thousand Six Hundred Twenty Five Dollars and 00/100 (\$13,625.00); and
  - (e) interest on the attorney fee award provided above at the rate of 4.5% from the date of the Final Judgment until paid.
5. If this case involves an assertion or allegation that a state statute, ordinance, franchise, or rule is unconstitutional on its face, or that a municipal ordinance or franchise is facially invalid, have you complied with A.R.S. § 12-1841?

N/A.

### C. TRANSCRIPTS

1. State the date you complied with Arizona Rule of Civil Appellate Procedure 11(c)(1) and (2) by ordering the transcript(s) necessary for proper consideration of the issues on appeal.

**November 8, 2016.**

Identify the certified court reporter or authorized transcriber responsible for preparing the transcript(s): **Verbatim Reporting & Transcription LLC**

Provide the court reporter's estimated date of completion of the transcript(s): **November 29, 2016 (Actually filed with court on December 8, 2016).**

2. State the date you complied with Arizona Rule of Civil Appellate Procedure 11(c)(3) by filing a notice of transcript order and, if applicable, a statement of the issues.

**November 14, 2016.**

#### **D. OTHER PENDING AND PRIOR PROCEEDINGS**

1. If any party to this appeal is the subject of a pending petition in bankruptcy court, identify the court and provide the case name and number.

**None known.**

2. Provide the case name and number of any other appeal, special action, or petition for review filed from the same, or a consolidated, superior court action.

**None known.**

3. Provide the case name and number of any other appeal(s) pending in the Court of Appeals that involve the same parties, events, or transactions giving rise to this appeal.

**None known.**

4. Provide the case name and number of any known pending appeals in the Court of Appeals that raise the same or closely related issues.

**None known.**

#### **E. CONTACT INFORMATION**

1. Filing Party

This Case Management Statement is filed by or on behalf of:

Name of Party: **Fountain Shadows Homeowners Association**

Counsel: **Chad P. Miesen**

Address: **Carpenter, Hazlewood, Delgado & Bolen, PLC**

**1400 E. Southern Avenue, Suite 400, Tempe, Arizona 85282**

Email address: [chad@carpenterhazlewood.com](mailto:chad@carpenterhazlewood.com)

Telephone: **480-427-2860**

Check one:  Appellant  Cross-Appellant  Appellee

For a joint statement by multiple appellants, provide contact information for additional appellants on a separate sheet accompanied by certification that they concur in the contents of this statement.

2. Opposing Party

Name of Party: **Patricia Bocchino**

Counsel for Opposing Party: **Jonathan Dessales**

Address: **Dessaules Law Group**

**5353 N. 16<sup>th</sup> Street, Suite 110, Phoenix, Arizona 85016**

Email address: [jdessales@dessauleslaw.com](mailto:jdessales@dessauleslaw.com)

Telephone: **602-274-2360**

(List additional counsel/parties on separate sheet if necessary)

**CERTIFICATION OF SERVICE**

I certify that on the 3<sup>rd</sup> day of January, 2017, I served copies of the above Case Management Statement on all counsel/parties of record by email or by depositing a true copy thereof in the United States mail addressed as follows:

Name: **Jonathan Dessaules** \_\_\_\_\_

Address: **5353 N. 16<sup>th</sup> Street, Suite 110**

**Phoenix, Arizona 85016**

**jdessaules@dessauleslaw.com** \_\_\_\_\_

Signature  \_\_\_\_\_