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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

PATRICIA BOCCHINO,

Plaintiff,

v.

FOUNTAIN SHADOWS
HOMEOWNERS ASSOCIATION,

Defendant.

Case No.: CV2015-012434
Court of Appeals Case: 1 CA-CV 16-0710

**DEFENDANT’S RESPONSE TO
PLAINTIFF’S MOTION TO
SUPPLEMENT RECORD**

*(Assigned to the Honorable
Douglas Gerlach)*

Defendant Fountain Shadows Homeowners Association (the “**Association**”), responds and objects to Plaintiff’s Motion to Supplement Record filed March 2, 2017 (the “**Motion**”) on the basis that the documents Plaintiff seeks to have included in the record on appeal are not material or appropriate for the appellate court to consider the limited issue raised on appeal.

Procedural Background

The Association timely filed its notice of appeal on November 4, 2016. The Superior Court Clerk subsequently transmitted to the Court of Appeals, Division One, the

1 index of record on or about December 6, 2016, which was served on the parties. Included
2 in the record on appeal are the parties' respective statements of fact in support of their
3 separate motions for summary judgment, which include redacted versions of the
4 Association's invoices from its legal counsel. (See Pl.'s State. Facts Supp. Pl.'s Mot.
5 Summ. J. at Ex. 3.)

6 On January 3, 2017, the Association filed its Case Management Statement, which
7 identified the issue on appeal. On February 10, 2017, the Association filed its Opening
8 Brief with the Court of Appeals, Division One. The Association identified in its Opening
9 Brief that the issue on appeal is whether "[t]he trial court erred in holding that the
10 Association was not the prevailing party in the Injunction Action and, as a result, granting
11 Bocchino's motion for summary judgment." (See Appellant's Opening Br. at p.ii.)

12 At no time prior to the filing and service of the Association's Opening Brief was a
13 request filed by Plaintiff Bocchino to supplement the record or to have the unredacted
14 invoices filed with the clerk for inclusion in the record.

15 **Not Part of Record on Appeal**

16 Pursuant to the Arizona Rules of Civil Appellate Procedure, the record on appeal
17 consists of:

- 18 (1) The official record, which consists of documents (including minute entries,
19 exhibit lists, transcripts, and other items) *filed* in the superior court before and
20 including the effective date of the filing of a notice of appeal, a notice of cross-
21 appeal, or an amended notice of appeal; the index prepared under Rule 11.1(a);
22 exhibits; and

1 (2) Transcripts of oral proceedings in the superior court that the parties ordered, or
2 other narratives prepared under this Rule, and that are not otherwise contained
3 within the official record.

4 (*See* Ariz. R. Civ. App. P. 11(a).)

5 Based upon this definition, the unredacted version of the invoices requested by
6 Plaintiff in the Motion do not fit within this definition as they were not filed with the
7 Superior Court. Had Plaintiff desired to have them as part of the record, Plaintiff should
8 have filed them. It is inappropriate to have those documents included in the official record
9 now that the Notice of Appeal was filed as well as the Appellant's Opening Brief.

10 **Not Material to Issue on Appeal**

11 The rule regarding correcting the record on appeal—Rule 11, Ariz. R. Civ. App. P.—
12 provides that only *material* documents or information that were omitted or misstated in the
13 record *by error or accident* may be corrected and a supplemental record may be forwarded
14 to the Court of Appeals:

15 If anything material to either party is omitted from or misstated in the record
16 by error or accident, the omission or misstatement may be corrected and a
supplemental record may be certified and forwarded:

17 (A) On stipulation of the parties; or

(B) By the superior court before or after the record has been transmitted.

18 Ariz. R. Civ. App. P. 11(g)(1).

19 In this case, the issue regarding the amount or description of attorneys' fees charged
20 to the Association by its legal counsel—or charged to Plaintiff at the time of the closing of
21 her home sale—were not issues raised on appeal. Furthermore, Plaintiff has not filed a
22 cross-appeal on any issue. Therefore, as evident from the statement of the issue on appeal,

1 the unredacted invoices and fees charged to the Association by its legal counsel are
2 irrelevant to the issue on appeal, and because of that, they cannot be considered material to
3 any party.

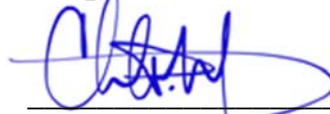
4 Furthermore, the omission of the unredacted invoices is not due to any error or
5 accident by the clerk. Those documents were never part of the official record. As a result,
6 there is no error or accident to correct by a supplemental record.

7 Plaintiff has unnecessarily complicated the issues before the Superior Court
8 resulting in unnecessary expense to both parties. The Motion appears to be more of the
9 same. Plaintiff had an opportunity to have the unredacted invoices included in the record
10 by ensuring that they were filed with the clerk of the Superior Court during the proceedings
11 before the Court. More importantly, however, is that the unredacted version of the invoices
12 is immaterial to the issue on appeal.

13 Based on the foregoing, the Association respectfully requests that the Court deny
14 Plaintiff's Motion.

15 RESPECTFULLY SUBMITTED this 21st day of March, 2017.

16 **Carpenter, Hazlewood, Delgado & Bolen, PLC**

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1 Copy of the foregoing emailed and mailed
this 21st day of March, 2017, to:

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