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11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 GALLERY COMMUNITY ASSOCIATION,
14 an Arizona non-profit corporation,

15 Plaintiff,

16 v.

17 K. HOVNANIAN AT GALLERY, LLC, an
18 Arizona limited liability company; et al.,

19 Defendants.

20 _____
21 K. HOVNANIAN AT GALLERY, LLC, an
22 Arizona limited liability company; et al.,

23 Third-Party Plaintiffs,

24 v.

25 DESERT VISTA, INC., an Arizona
26 corporation; et al.

27 Third-Party Defendants.

Case No. CV2020-008714

**PLAINTIFF’S MOTION *IN*
LIMINE NO. 2 TO EXCLUDE
EVIDENCE THAT THE
BUILDING DEPARTMENT
INSPECTED AND APPROVED
THE DESIGN OR
CONSTRUCTION OF THE
GALLERY**

Assigned to Hon. Katherine Cooper

28 Plaintiff, Gallery Community Association (the “Association” or “Plaintiff”), by and
through their attorneys Burg Simpson Eldredge Hersh & Jardine PC, hereby file this Motion
in Limine to Exclude Evidence that the Building Department Inspected and Approved the

1 Design or Construction of The Gallery and move this Court for an order precluding
2 Defendants and Third-Party Defendants from introducing at trial any evidence, testimony,
3 or argument regarding the building department of the City of Scottsdale inspecting and/or
4 approving the design and construction of The Gallery project. This evidence is irrelevant,
5 unfairly prejudicial, and confusing to the jury and should be excluded. This Motion is
6 supported by the following Memorandum of Points and Authorities and the entire record is
7 incorporated herein.

8 **RULE 7.2 CERTIFICATION**

9 Plaintiff complied with Ariz. R. Civ. P., Rule 7.2, prior to filing this Motion as set
10 forth in the concurrently filed Declaration.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 The builder-vendor of new construction gives an implied warranty of workmanship
13 and habitability that cannot be disclaimed. *Zambrano v. M & RC II LLC*, 517 P.3d 1168
14 (2022). The fact that the Defendants’ work or the work of their subcontractors may have
15 been inspected and approved by a building inspector does not relieve Defendants as the
16 builder-vendor and its subcontractors from these standards.

17 Neither the City of Scottsdale, HUD, nor any other governmental agency is a party
18 to this action. No building inspector is a party to this action. No individuals with the City
19 of Scottsdale have been deposed in this case. Plaintiff, however, anticipates that at the time
20 of trial Defendants and Third-Party Defendants may try to avoid liability by arguing to the
21 jury that various building departments and/or inspectors may have inspected their work
22 during the course of construction and ultimately “approved” their work. Building inspectors
23 are government employees whose responsibilities do not include inspecting a project for all
24 potential construction defects and deviations from plans and specifications. Moreover,
25 building inspectors are immune from liability and their inspections were not intended to
26 relieve contractors from the damages caused by their defective work. See A.R.S § 12-
27 820.02.

28 Relevant evidence is evidence “having any tendency to make the existence of any

1 fact that is of consequence to the determination of the action more probable or less probable
2 than it would be without the evidence.” Ariz. R. Evid., Rule 401. The test for relevance is
3 whether the offered evidence tends to make the existence of any fact in issue more or less
4 probable. *State v. Fulminante*, 193 Ariz. 485, 975 P.2d 75 (1999). “Evidence which is not
5 relevant is not admissible.” Ariz. R. Evid., Rule 402.

6 Evidence, testimony, or argument that a building inspector inspected the Project is
7 irrelevant to the existence of construction defects and Defendants’ liability. Therefore, such
8 evidence is inadmissible.

9 Arizona Rules of Evidence, Rule 403, states that even relevant evidence may be
10 excluded if its probative value is substantially outweighed by a danger of unfair prejudice,
11 confusion of the issues, misleading of the jury, undue delay, wasting time, or needless
12 presentation of cumulative evidence. Clearly, arguments that building inspectors inspected
13 and approved the work of various subcontractors and the Defendants are likely to mislead
14 the jury. Moreover, it would be sheer speculation as to the scope and extent of such
15 inspections and precisely what the inspectors would have looked at.

16 Therefore, Plaintiff respectfully requests that the Court issue an Order precluding
17 Defendants, Third-Party Defendants, and their witnesses from introducing at trial any
18 allegations, statements, references, suggestions, arguments testimony or evidence that the
19 project was inspected by any government agency and that such work was approved.

20 RESPECTFULLY SUBMITTED this 20th day of January, 2023.

21 BURG | SIMPSON | ELDREDGE | HERSH | JARDINE PC

22
23 By: /s/ Penny J. Manship
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1 Copy of the foregoing E-FILED and sent via the
2 TurboCourt eFiling system to:

3 Hon. Katherine Cooper
4 Maricopa County Superior Court
5 101 W. Jefferson, No. 413
6 Phoenix, AZ 85003

7 Copy of the foregoing E-FILED and E-
8 MAILED via TurboCourt electronic mailing
9 system this 20th day of January, 2023 to:

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