

**COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

GALLERY COMMUNITY
ASSOCIATION, an Arizona non-profit
corporation,

Plaintiff/Appellant,

v.

K. HOVNANIAN AT GALLERY, LLC, et
al.

Defendants/Appellees.

Case No. 1 CA-CV 23-0375
Maricopa County Superior Court No. CV2020-008714
Judge Katherine Cooper

CASE MANAGEMENT STATEMENT

Craig S. Nuss
Penny J. Manship
Grace M. Osberg
Burg | Simpson | Eldredge | Hersh | Jardine PC
8310 South Valley Highway, Suite 270
Englewood, CO 80112
(303) 792-5595
(303) 708-0527 (fax)
cnuss@burgsimpson.com
pmanship@burgsimpson.com
gosberg@burgsimpson.com

Robert G. Schaffer
HOLDEN WILLITS PLC
2 North Central Avenue, Suite 2000
Phoenix, AZ 85004
(602) 508-6210
rschaffer@holdenwillits.com

DATED July 13, 2023.

A. APPELLATE JURISDICTION

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

This is an appeal from a final Judgment entered by the Maricopa County Superior Court on April 27, 2023. The Court of Appeals has jurisdiction over this appeal pursuant to A.R.S. § 12-2101(A)(1).

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

A Judgment was signed by the superior court on April 26, 2023, and filed by the Clerk of the Superior Court on April 27, 2023.

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

Notice of Appeal filed May 26, 2023, by Appellant.

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.

Not applicable.

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)?

The Judgment entered by the superior court was expressly certified as final pursuant to Arizona Rule of Civil Procedure 54(c).

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)?

Not applicable.

B. CASE INFORMATION

1. List all parties to the superior court action and, if represented, provide the names of their counsel.

Craig S. Nuss
Penny J. Manship
Grace M. Osberg
Burg Simpson Eldredge Hersh & Jardine P.C.
8310 South Valley Highway, Suite 270
Englewood, CO 80112
(303) 792-5595
(303) 708-0527 (fax)
cnuss@burgsimpson.com
pmanship@burgsimpson.com
gosberg@burgsimpson.com
Attorneys for the Plaintiff Gallery Community Association

Dennis I. Wilenchik
Barbara Stansil
Wilenchik & Bartness, P.C.
2810 North Third Street
Phoenix, AZ 85004
admin@wb-law.com
diw@wb-law.com
barbaras@wb-law.com
Attorneys for Defendants/Third Party Plaintiffs K. Hovnanian at Gallery, LLC; K. Hovnanian Arizona Operations, LLC; K. Hovnanian Developments of Arizona, Inc.; K. Hovnanian Companies of Arizona, LLC

Louis W. Horowitz
Lorber, Greenfield & Polito, LLP
3930 E. Ray Road, Suite 260

Phoenix, AZ 85044
lhorowitz@lorberlaw.com
Attorneys for Defendants/Third-Party Plaintiffs K. Hovnanian at Gallery, LLC; K. Hovnanian Arizona Operations, LLC; K. Hovnanian Developments of Arizona, Inc.; K. Hovnanian Companies of Arizona, LLC

Michael A. Ludwig
JONES, SKELTON & HOCHULI, P.L.C.
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004
minuteentries@jshfirm.com
mludwig@jshfirm.com
sbest@jshfirm.com
Attorneys for Third-Party Defendant LeBlanc Building Co., Inc.

Tom Shorall Jr.
Jason J. Boblick
Shorall McGoldrick Brinkmann
1232 East Missouri Avenue
Phoenix, AZ 85014-2912
tomshorall@smbattorneys.com
jasonboblick@smbattorneys.com
smb@smbattorneys.com
Attorneys for Third Party Defendant Liberty Constructors

Rina Rai
Mohamad H. Tokko
Rai Duer, P.C.
3033 North Central Avenue, Suite 500
Phoenix, AZ 85012
RRai@raiduer.com
Mtokko@raiduer.com
Attorneys for Third Party Defendants Renco Roofing and Desert Vista, Inc.

Leonard T. Fink
David S. Schopick

SPRINGEL & FINK LLP
3033 North Central Ave., Suite 500
Phoenix, AZ 85012
lfink@springelfink.com
dschopick@springelfink.com
*Attorneys for Third-Party Defendant, Sargon Masonry
Construction, LLC*

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.

Defendant K. Hovnanian Companies of Arizona, LLC was dismissed by stipulation of the parties in an Order entered by the superior court on January 26, 2022.

Defendant K. Hovnanian Developments of Arizona, Inc. was dismissed by stipulated motion to dismiss in an Order entered by the superior court on March 22, 2022.

Third-Party Defendant Chas Roberts Air Conditioning, Inc., was dismissed by stipulation of the parties in an Order entered by the superior court on April 13, 2022.

Third-Party Defendant Gothic Landscaping, Inc. was dismissed by stipulation of the parties in an Order entered by the superior court on June 28, 2022.

Third-Party Defendant Home Builders Site Services was dismissed by stipulation of the parties in an Order entered by the superior court on September 20, 2022.

The claims against Third-Party Defendants Desert Vista, Inc. and Renco, LLC, were rendered moot by the Superior Court's Order granting summary judgment to Defendants on all remaining claims. See February 13, 2023 Minute Entry at 6.

The claims against Third-Party Defendants LeBlanc Building Co., Inc., Liberty Constructors, LLC, and Custom Leasing, Inc. were

resolved by settlement as indicated in Notices of Settlement filed on January 11, 2023 and March 15, 2023. These claims were also rendered moot by the Superior Court's Order granting summary judgment to Defendants on all remaining claims, though these claims were not explicitly mentioned in the Order. See February 13, 2023 Minute Entry at 6.

The claims against Third-Party Defendants Sargon Masonry Construction, LLC, and R/S Service & Supply, Inc. were also rendered moot by the Superior Court's Order granting summary judgment to Defendants on all remaining claims, though these claims were not explicitly mentioned in the Order. See February 13, 2023 Minute Entry at 6.

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.

Appellant's Claims:

1. Negligence
2. Breach of Implied Covenant of Good Faith and Fair Dealing
3. Breach of Implied Warranty of Workmanship and Habitability
4. Breach of Contract

The negligence claim was voluntarily dismissed on August 26, 2022.

The Superior Court granted summary judgment in favor of Appellees K. Hovnanian at Gallery, LLC and K. Hovnanian Arizona Operations, LLC on all remaining claims asserted by Appellants in a Minute Entry ruling entered on February 13, 2023.

Appellee's Claims:

1. Third-party claims for indemnity against Chas Roberts Air Conditioning, Inc., Gothic Landscaping, Inc., Home Builders Site Services, Renco, LLC dba Renco Roofing, Desert Vista, Inc., LeBlanc Building Co., Inc., Liberty Constructors, LLC,

Custom Leasing, Inc., Sargon Masonry Construction, LLC, and
R/S Service & Supply, Inc.

As noted above, some of the claims against Third-Party Defendants were resolved by stipulated dismissal. The remaining third-party claims were rendered moot by the Superior Court's Order granting summary judgment to Defendants on all remaining claims.

4. Identify the issues to be raised on appeal.

1. Did the Superior Court err in granting summary judgment to Defendants, a homebuilder and vendor, on Count 3, on the basis that Plaintiff Gallery Community Association, a homeowners' association, cannot assert a claim for breach of the implied covenant of good workmanship and habitability to recover the cost of repairing construction defects in (1) the exterior walls and roofs of residences owned by the Association's members that the Association is obligated by the applicable Declaration of Covenants, Conditions, and Restrictions to maintain and repair on the homeowners' behalf, and (2) the common areas that the Association owns and is obligated to maintain and repair for the benefit of community residents and guests?

2. Did the Superior Court err in granting summary judgment to Defendants, a homebuilder and vendor, on Counts 2 and 4, on the basis that Plaintiff Gallery Community Association, a homeowners' association, has no basis in contract to recover the cost of repairing defects in (1) the exterior walls and roofs of residences owned by the Association's members that the Association is obligated by the applicable Declaration of Covenants, Codes, and Restrictions to maintain and repair and (2) the common areas that the Association owns and is obligated to maintain for the benefit of community residents and guests?

3. Did the Superior Court err in granting attorneys' fees and costs to Defendants and Third-Party defendants?

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?

Not applicable.

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.

Not applicable. On June 28, 2023, Appellant filed a Certificate of Compliance Re: Service of Transcripts in the Court of Appeals indicating that transcripts of the oral arguments held on April 27, 2021, and January 13, 2023, had been served on all counsel and were being filed that date with the Court of Appeals.

Identify the certified court reporter or authorized transcriber responsible for preparing the transcript(s): _____

Not applicable.

Provide the court reporter's estimated date of completion of the transcript(s):

Not applicable.

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.

Not applicable

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.

Not applicable.

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.

Not applicable.

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.

Not applicable.

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

Not applicable.

E. CONTACT INFORMATION

1. Filing Party.

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

Name of Party: Appellant Gallery Community Association

Counsel:

Craig S. Nuss
Penny J. Manship
Grace M. Osberg
8310 South Valley Highway, Suite 270
Burg | Simpson | Eldredge | Hersh | Jardine PC
Englewood, CO 80112
(303) 792-5595
(303) 708-0527 (fax)
cnuss@burgsimpson.com
pmanship@burgsimpson.com
gosberg@burgsimpson.com

Robert G. Schaffer
HOLDEN WILLITS PLC
2 North Central Avenue, Suite 2000
Phoenix, AZ 85004
(602) 508-6210
rschaffer@holdenwillits.com

2. Opposing Party.

Name of Party: Appellees K. Hovnanian at Gallery, LLC; K. Hovnanian Arizona Operations, LLC

Counsel for Opposing Party:

Dennis I. Wilenchik, Esq.
Barbara Stansil
Wilenchik & Bartness, P.C.
2810 North Third Street
Phoenix, AZ 85004
admin@wb-law.com
diw@wb-law.com
barbaras@wb-law.com

Louis W. Horowitz, Esq.
Lorber, Greenfield & Polito, LLP
3930 E. Ray Road, Suite 260
Phoenix, AZ 85044
lorowitz@lorberlaw.com

DATED this 13th day of July, 2023.

BURG | SIMPSON | ELDREDGE | HERSH |
JARDINE PC

By: /s/ Penny J. Manship
Craig S. Nuss
Penny J. Manship
Grace M. Osberg
8310 South Valley Highway, Suite 270
Englewood, CO 80112

HOLDEN WILLITS PLC

By: /s/ Robert G. Schaffer

Robert G. Schaffer

2 North Central Avenue, Suite 2000

Phoenix, AZ 85004

Attorneys for the Plaintiff Gallery Community Association

CERTIFICATE OF SERVICE

I certify that on the 13th day of July, 2023, I served copies of the Case Management Statement on all counsel/parties of record by serving electronic copies via TurboCourt on:

<p>Craig S. Nuss Penny J. Manship Grace M. Osberg Burg Simpson Eldredge Hersh & Jardine P.C. 8310 S. Valley Highway, Suite 270 Englewood, CO 80112 cnuss@burgsimpson.com pmanship@burgsimpson.com gosberg@burgsimpson.com <i>Attorneys for the Plaintiff Gallery Community Association</i></p>	<p>Dennis I. Wilenchik Barbara Stansil Wilenchik & Bartness, P.C. 2810 North Third Street Phoenix, AZ 85004 admin@wb-law.com diw@wb-law.com barbaras@wb-law.com <i>Attorneys for Defendants/ThirdParty Plaintiffs K. Hovnanian at Gallery, LLC; K. Hovnanian Arizona Operations, LLC; K. Hovnanian Developments of Arizona, Inc.; K. Hovnanian Companies of Arizona, LLC</i></p>
<p>Louis W. Horowitz Lorber, Greenfield & Polito, LLP 3930 E. Ray Road, Suite 260 Phoenix, AZ 85044 lorowitz@lorberlaw.com <i>Attorneys for Defendants/Third-Party Plaintiffs K. Hovnanian at Gallery, LLC; K. Hovnanian Arizona Operations, LLC; K. Hovnanian Developments of Arizona, Inc.; K. Hovnanian Companies of Arizona, LLC</i></p>	<p>Michael A. Ludwig Jones, Skelton & Hochuli, P.L.C. 40 North Central Avenue, Suite 2700 Phoenix, Arizona 85004 minuteentries@jshfirm.com mludwig@jshfirm.com sbest@jshfirm.com <i>Attorneys for Third-Party Defendant LeBlanc Building Co., Inc.</i></p>

<p>Tom Shorall Jr. Jason J. Boblick Shorall McGoldrick Brinkmann 1232 East Missouri Avenue Phoenix, AZ 85014-2912 tomshorall@smbattorneys.com jasonboblick@smbattorneys.com smb@smbattorneys.com <i>Attorneys for Third-Party Defendant Liberty Constructors</i></p>	<p>Rina Rai Mohamad H. Tokko Rai Duer, P.C. 3033 North Central Avenue, Suite 500 Phoenix, AZ 85012 RRai@raiduer.com Mtokko@raiduer.com <i>Attorneys for Third Party Defendants Renco Roofing and Desert Vista, Inc.</i></p>
<p>Leonard T. Fink David S. Schopick Springel & Fink Llp 3033 North Central Ave., Suite 500 Phoenix, AZ 85012 lfink@springelfink.com dschopick@springelfink.com <i>Attorneys for Third-Party Defendant, Sargon Masonry Construction, LLC</i></p>	

/s/ Valerie Corral _____