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

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

**APPELLANT’S OBJECTION TO
ORDER RE: MOTION TO
CONSOLIDATE ORAL
ARGUMENTS**

Appellant Gallery Community Association (“Gallery”), by and through the undersigned counsel, hereby objects to the *Motion to Consolidate Oral Arguments* filed in Appeal 1 CA-CV 23-0747 by the Appellant in that case, Point 16 Community Association. In support thereof, Appellant states as follows:

In Appeal 1 CA-CV 23-0747, Appellant Pointe 16 Community Association

(“Pointe 16”) requested that oral argument in that case be heard at the same time as the oral argument here (the “*Motion to Consolidate Oral Arguments*” or “*Motion*”). Pointe 16 further requested that both oral arguments be heard on April 23, 2024. In response, this Court issued its *Order Re: Motion to Consolidate Oral Arguments* (the “*Order*”) stating that, should the court grant Pointe 16’s *Motion*, the scheduled oral argument currently slated for April 23, 2024 will be vacated and rescheduled for a later date, likely after June. The Court therefore asked for responses to the *Motion* to be filed before April 1, 2024. Accordingly, Gallery hereby objects to Pointe 16’s *Motion to Consolidate Oral Arguments* because the delay from April 23, 2024 to sometime after June would unnecessarily delay resolution of Gallery’s case.

Gallery received the Final Judgment Order subject to this appeal from the Superior Court of Arizona, Maricopa County on April 26, 2023. Since then, Gallery appealed the order and fully briefed the issues. Indeed, this appeal was fully briefed as of January 24, 2024, almost two full months before Appeal 1 CA-CV 23-0747 became at issue. *See Order*, 1 (“Appeal 1 CA-CV 23-0747 became at issue on March 21, 2024”). The Court should not allow a case that has been fully briefed and prepared for oral argument to be delayed by a minimum of two months so that another party can join and speak on the same issue. Such a delay would be unfair and unnecessary because, although the issues are the same, Gallery has an interest in timely resolution of its claim which renders consolidation impracticable.

There is no procedural rule requiring this court to allow Point 16 to consolidate these arguments, and granting their Motion would unnecessarily delay these proceedings to the detriment of both Gallery and the busy Court of Appeals system. The applicable appellate rule, Ariz. R. Civ. App. P. 8(g), states,

Two or more parties *may* join in an appeal or cross-appeal from a judgment if they have similar interests and a joinder is practicable...by filing a *joint notice* of appeal or cross-appeal, and they *may then* proceed as a single appellant or cross-appellant. On its own, on motion, or by stipulation, an appellate court also *may* consolidate multiple appeals and cross-appeals. (emphasis added)

The plain language of 8(g), particularly the repeated use of “may” instead of “shall,” clearly indicates that consolidation of cases is optional. The rule also contemplates the filing of a *joint* notice between the parties with similar interests who believe that joinder is practicable—i.e., parties who are, *together*, opting and agreeing to consolidate their cases.

To our knowledge, Arizona courts have not construed this rule. Other courts have deemed that consolidation is not mandatory within civil contexts, even when cases fit the criteria for doing so. *E.g.*, *Dennis v. EG&G Def. Materials, Inc.*, 2009 U.S. Dist. LEXIS 7015, *2–3 (D. Utah February 2, 2009) (explaining that “savings of time and effort gained through consolidation must be balanced against the *inconvenience, delay or expense* that might result from simultaneous disposition of the separate actions,” *Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.*, 149 F.R.D. 65, 81 (D. NJ. 1993)). As stated above, Gallery does not wish to consolidate for the

same reasons of inconvenience, delay, or expense, and therefore should not be forced.

In addition, the Court should deny the *Motion* because Point 16's interests will be sufficiently represented in this litigation without the need for consolidation. Gallery has already briefed and prepared the issues in this case on schedule for oral arguments on April 23, 2024. To add a second party to this appeal would not simplify the issues nor protect Point 16's interest. Instead, consolidation would cause Gallery to incur significant costs and added man hours to prepare for and hold oral arguments involving a second appellant from a separate, yet related, case. Indeed, the Pointe 16 case was only fully briefed on March 21, 2024, almost a full three months after this case had completed briefing. *See id.* (“Consolidation may be inappropriate where “the two actions are at such widely separate stages of preparation [that] consolidation of [the] cases would cause further delay and could prejudice the parties”) (citing *Long v. Dickson*, 2006 U.S. Dist. LEXIS 47377, 2006 WL 1896258, *1 (D. Kan 2006) and 9A Wright & Miller, Federal Practice and Procedure § 2382 (“the district court may deny consolidation when one of the actions has proceeded further in the discovery process than the other.”))).

Further, it is common practice in the Court of Appeals for a panel to decide a case that is dispositive of another pending case on the court's docket, making Point 16's inclusion in the arguments unnecessary when weighed against their delay and

expense. In fact, the Arizona Rules of Civil Appellate Procedure contemplate this very situation. Rule 18 states that, notwithstanding a party's request for oral argument, "the Court of Appeals may decide an appeal without oral argument if it determines that . . . [t]he Court of Appeals has recently decided another case that is dispositive of the issues presented[.]" Ariz. R. Civ. App. P. 18(b)(2).

In conclusion, while Point 16 may have "similar interests" to those of Gallery with regard to the issues, as illustrated above, Gallery clearly has an interest in keeping its case separate for time and cost purposes, such that it prefers to keep its own case separate. Point 16 would not be prejudiced by the Court's denial of its *Motion*. Because consolidation would cause significant delay, impracticably raising costs, especially for Gallery and the Court, the April 23, 2024 should be preserved and these cases should not be consolidated. Accordingly, Gallery respectfully requests that the Court **DENY** Point 16's *Motion to Consolidate Oral Arguments*.

DATED this 1st day of April, 2024.

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