



FILED - 01 JUNE 2023
Navajo County Superior Court
Deanne M. Romo, Clerk
CB



Court of Appeals

STATE OF ARIZONA
DIVISION ONE
STATE COURTS BUILDING
1501 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007

AMY M. WOOD
CLERK OF THE COURT

Phone: (602) 452-6700

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June 1, 2023

Deanne Romo, Clerk
Navajo County Superior Court
100 East Code Talkers Drive PO Box 668
Holbrook, Arizona 86025



DIVISION ONE
FILED: 6/1/23
AMY M. WOOD,
CLERK
BY: AA

Dear Ms. Romo:

RE: 1 CA-CV 23-0053

GROSS, et al. v. SHORES
Navajo County Superior Court
S0900CV202200042

Certified copy of ORDER dismissing appeal is included herewith in the above entitled and numbered cause.

There are no physical record items to be returned to your Court.

If digital exhibits were submitted through the Arizona digital exhibit portal in this case, access to those exhibits by the Court of Appeals will be removed by the Superior Court pursuant to ARCAP Rule 24(c).

Any electronically filed materials will be retained by the Court of Appeals.

AMY M. WOOD, CLERK

By ama
Deputy Clerk

Enclosures (as noted)

c:

Stockton D Banfield

Rick K Carter

Matthew Klopp

Joseph R Rainey

John R Cunningham

James L Csontos

Hon Michala M Ruechel

Hon Deanne Romo

title and breach of the implied covenant of good faith and fair dealing, alleging an amendment to a declaration of covenants, conditions, and restrictions was invalid. Homeowners requested damages and asserted the voting procedures used in passing the amendment were invalid. Homeowners filed a motion for partial summary judgment, and the Association filed a cross-motion for partial summary judgment, concerning the validity of the amendment and liability.

The superior court granted partial summary judgment in favor of the Association and partial summary judgment in favor of Homeowners. The Association requested the judgment include additional language regarding Homeowners' remaining claims, which Homeowners indicated they were abandoning and/or voluntarily dismissing.

The superior court entered a judgment with Arizona Rule of Civil Procedure 54(c) language that declares the amendment invalid and omits any language regarding Homeowners' other claims. Within 15 days, the Association filed a motion for new trial. The Association appealed and Homeowners cross-appealed while the motion for new trial was pending. The court subsequently denied the motion for new trial in a signed order and the Association filed an amended notice of appeal.

The Association requests a determination about whether the judgment is final and resolves the claims not included in the summary judgment ruling and, correspondingly, whether the court has jurisdiction over this appeal. The Association also requests a determination about whether the superior court had jurisdiction to enter the ruling on the motion for new trial due to the notice of appeal having been filed before that ruling.

Although Homeowners indicated an intent to abandon and voluntarily dismiss the claims not raised in the summary judgment motions, those claims remain pending as there is no ruling on them. Thus, despite the inclusion of Rule 54(c) language in the judgment, the judgment is not final because unresolved claims remain in the action. See *Madrid v. Avalon Care Center-Chandler, L.L.C.*, 236 Ariz. 221, 224-25, ¶¶ 6, 11 (App. 2014) (the inclusion of Rule 54(c) language when claims remain pending is inaccurate). Therefore, the notice of appeal is premature and a nullity. *Fields v. Oates*, 230 Ariz. 411, 414-15, ¶¶ 10-14 (App. 2012); *Camasura v. Camasura*, 238 Ariz. 179, 182-83, ¶¶ 9-16 (App. 2015).

Because the judgment is not final and the notice of appeal and notice of cross-appeal are premature, the jurisdiction issue concerning the motion for new trial is moot.

IT IS ORDERED granting the motion to determine jurisdiction.

IT IS FURTHER ORDERED dismissing this appeal and cross-appeal for lack of jurisdiction. Nothing precludes the parties from filing timely notices of appeal after a final judgment is entered.

_____/s/_____
Maria Elena Cruz, Presiding Judge

A copy of the foregoing
was sent to:

Stockton D Banfield
Rick K Carter
Matthew Klopp
Joseph R Rainey
John R Cunningham
James L Csontos
Hon Michala M Ruechel (mailed)

The foregoing instrument is a full, true and correct
copy of the original on file in this office.
ATTEST 6-1-2023
AMY M. WOOD, CLERK OF THE COURT
of Division One Court of Appeals,
State of Arizona
BY AA

