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9
10 **COURT OF APPEALS**
11 **STATE OF ARIZONA**
12 **DIVISION ONE**

13 GORDON GROSS and LILIANA
GROSS, husband and wife; et al.,

14 Plaintiffs/Appellees,

15 vs.

16 THE SHORES AT RAINBOW LAKE
COMMUNITY ASSOCIATION, an
17 Arizona nonprofit corporation,

18 Defendant/Appellant.

Case No.: 1 CA-CV 23-0394

Navajo County

Superior Court

No. S0900CV202200042

**CASE MANAGEMENT
STATEMENT**

19
20
21 **A. APPELLATE JURISDICTION**

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

23 A.R.S. § 12-2101(A)(1)

24
25 2. State the date the superior court filed the judgment/order you are appealing and
26 state whether the court signed the ruling.

1 The Amended Judgment is signed by the judge. The Amended Judgment was filed
2 and docketed on May 17, 2023.

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

5 June 15, 2023, Notice of Appeal filed by The Shores at Rainbow Lake Association.
6 July 5, 2023, Notice of Cross-Appeal filed by Plaintiffs.

7 4. If the time for appeal was extended by one of the motions identified in Arizona
8 Rule of Civil Appellate Procedure 9(e)(1), identify the motion, the date it was filed,
9 the date the superior court filed its ruling on the motion, and state whether the
10 ruling was signed.

11 N/A

12 5. If any motions are currently pending in superior court, identify the name of each
13 motion and the date it was filed.

14 N/A

15 6. Is the judgment/order appealed from certified as final pursuant to Arizona Rule of
16 Civil Procedure 54(c)?

17 Yes.

18
19 7. If any claims remain pending in the superior court, including claims for attorneys'
20 fees, was the judgment/order made appealable pursuant to Arizona Rule of Civil
21 Procedure 54(b) or Arizona Rule of Family Law Procedure 78(B)?

22 N/A
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B. CASE INFORMATION

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

Plaintiffs are:

GORDON GROSS and LILIANA GROSS, husband and wife;
854 PINE CREEK, LLC, an Arizona limited liability company;
BALD EAGLE RETREAT, LLC, an Arizona limited liability company;
1501 RAINBOW VIEW, LLC, an Arizona limited liability company;
LAKESIDE FAMILY INVESTMENTS, LLC, an Arizona limited liability company;
STEVEN A. KERNAGIS and SANDRA K. KERNAGIS, trustees of the STEVEN AND SANDRA KERNAGIS TRUST DATED MARCH 17, 2014;
THOMAS P. ZEHRING and JEANNETTE ROSE ZEHRING, trustees of the ZEHRING LIVING TRUST DATED MARCH 1, 2001;
JEANNETTE ZEHRING;
RONALD D. KEYER, JR. and DESIREE KYER, husband and wife,

Plaintiffs’ attorneys are:

Rick K. Carter
Matthew A. Klopp
Stockton D. Banfield
Joseph R. Rainey
DYER BREGMAN FERRIS
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sdb@dbfwclegal.com
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1 **Defendant is:**

2 The Shores at Rainbow Lake Association, an Arizona nonprofit corporation

3 **Defendant’s attorneys are:**

4 Jack R. Cunningham
5 James L. Csontos
6 Jennings Haug Keleher McLeod LLP
7 2800 N. Central Ave., Suite 1800
8 Phoenix, Arizona 85004-1049
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 jlc@jhkmlaw.com

- 10 2. List any party in superior court that is not a party to this appeal and explain in detail
11 why the party is not included in this appeal, e.g., the party was dismissed, not
12 served, or other. Include specific relevant references to the record.

13 N/A

- 14 3. Describe briefly all claims (including counterclaims, cross-claims and third-party
15 claims) asserted in the superior court and the manner each such claim was resolved
16 in the superior court (i.e., bench trial, jury verdict, dismissal, summary judgment,
17 or default judgment). Include specific relevant references to the record.

18 The issue of contract interpretation of the Covenants and foreseeability of the
19 Amendment under *Dreamland* and *Kalway* was resolved on cross-motions for partial
20 summary judgment. The trial court’s order dated September 14, 2022, granted partial
21 summary judgment in favor of Plaintiffs as to section one of the amended Covenants, and
22 partial summary judgment in favor of Defendant as to sections two, three and four of the
23 amended Covenants.

24 In separate documents, Plaintiffs proposed (*see* November 23, 2022, Notice) and
25 Defendant accepted (October 24, 2022 Objection to Form of Judgment, pp. 2-3) that
26 Plaintiffs would dismiss with prejudice all remaining claims. The Amended Judgment
 states “all other claims Plaintiffs alleged in this litigation are dismissed with prejudice.”

1 4. Identify the issues to be raised on appeal.

2
3 Whether the trial court's order on cross-motions for partial summary judgment
4 incorrectly found section one of an Amendment to a set of Covenants and Restrictions
not enforceable as not foreseeable under *Kalway*?

5 Whether the trial court's removal of language from the proposed form of Amended
6 Judgment complied with *Kalway* by preventing purchasers of homes after the
7 Amendment was passed and recorded to claim they reasonably relied on pre-Amendment
8 language?

9 5. If this case involves an assertion or allegation that a state statute, ordinance,
10 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?

11 N/A

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13 **C. TRANSCRIPTS**

14 1. State the date you complied with Arizona Rule of Civil Appellate Procedure
15 11(c)(1) and (2) by ordering the transcript(s) necessary for proper consideration of
16 the issues on appeal.

17 The transcript of the April 6, 2022 hearing on the Petition for Preliminary
18 Injunction was filed by Plaintiffs with the superior court on March 29, 2023.

19 The transcript of the July 18, 2022 hearing on cross-motions for partial summary
20 judgment was prepared on September 8, 2022. The certified court reporter Kelly Palmer
filed the transcript with the superior court on February 15, 2023.

21 On June 16, 2023, court reporter Kelly Palmer was asked to provide a transcript of
22 the April 24, 2023 status conference and the May 17, 2023 hearing on entry of final
23 amended judgment. She was also asked to provide a cost for the preparation of the
24 transcripts so a check can be provided.

25 Identify the certified court reporter or authorized transcriber responsible for
26 preparing the transcript(s): Kelly Palmer

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

2
3 On June 26, 2023 Court Reporter Kelly Palmer reported the transcripts were
4 complete.

- 5 2. State the date you complied with Arizona Rule of Civil Appellate Procedure
6 11(c)(3) by filing a notice of transcript order and, if applicable, a statement of the
7 issues.

8 July 6, 2023.

9 **D. OTHER PENDING AND PRIOR PROCEEDINGS**

- 10 1. If any party to this appeal is the subject of a pending petition in bankruptcy court,
11 identify the court and provide the case name and number.

12 N/A

- 13 2. Provide the case name and number of any other appeal, special action, or petition
14 for review filed from the same, or a consolidated, superior court action.

15 None.

- 16 3. Provide the case name and number of any other appeal(s) pending in the Court of
17 Appeals that involve the same parties, events, or transactions giving rise to this
18 appeal.

19 A prior appeal involving the same parties and events was filed with this Court at
20 1 CA-CV 23-0053. The appeal was dismissed for lack of jurisdiction by order dated
21 April 5, 2023.

- 22 4. Provide the case name and number of any known pending appeals in the Court of
23 Appeals that raise the same or closely related issues.

24 Appellant is not aware of any pending appeals with the same issues. Appellant is
25 aware the appeal pending in *Preston, et al. v. Las Sendas Community Association, Inc.*,
26 1 CA-CV 22-0761 may involve issues and arguments similar to the issues presented in
this pending appeal.

1
2 **E. CONTACT INFORMATION**

3 1. Filing Party

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

5
6 Name of Party: The Shores at Rainbow Lake Association

7 Counsel: James L. Csontos, Jennings Haug Keleher McLeod LLP

8 Address: 2800 N Central Ave., Suite 1800, Phoenix, Arizona 85004

9 Email address: jlc@jhkmlaw.com

10 Telephone: 602-234-7832

11 Check one: Appellant Cross-Appellant Appellee

12
13 For a joint statement by multiple appellants, provide contact information for
14 additional appellants on a separate sheet accompanied by certification that they
15 concur in the contents of this statement.

16 2. Opposing Party

17 Name of Party: See Section B(1), above for list of all Plaintiffs/Appellees

18 Counsel for Opposing Party: see below

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1 **Plaintiffs’/Appellees’ attorneys are:**

2 Rick K. Carter
3 Matthew A. Klopp
4 Stockton D. Banfield
5 Joseph R. Rainey
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13 jrrainey@dbfwclegal.com
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15 DATED this 13th day of July, 223.

16 JENNINGS HAUG KELEHER MCLEOD LLP

17 /s/ James L.Csontos

18 Jack R. Cunningham

19 James L. Csontos

20 Attorneys for Defendant The Shores at
21 Rainbow Lake Community Association
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1 E-FILED and a copy of the foregoing mailed
2 and e-mailed this 13th day of July, 2023, to:

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4 Matthew A. Klopp
5 Stockton D. Banfield
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15 Co-Counsel for Plaintiffs/Appellees

16 /s/ Angela Robison
17 _____
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