

DYER BREGMAN FERRIS WONG & CARTER, PLLC
3003 North Central Avenue
Suite 2600
Phoenix, AZ 85012
(602) 254-6008

Rick K. Carter #012660
rkcarter@dbfwclegal.com
Matthew A. Klopp #023313
mklopp@dbfwclegal.com
Stockton D. Banfield #027789
sdb@dbfwclegal.com
Joseph R. Rainey #037536
jrrainey@dbfwclegal.com

Attorneys for Appellees/Cross-Appellants

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

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

Plaintiffs/Appellees/Cross-
Appellants,

v.

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

Defendant/Appellant/Cross-
Appellee.

Case No. 1 CA-CV 23-0394

Navajo County Superior Court
Case No. S0900CV202200042

**CASE MANAGEMENT
STATEMENT**

A. APPELLATE JURISDICTION

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

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.

The Honorable Michala Ruechel signed the amended final judgment, and the Court docketed the same, on May 17, 2023.

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

**Appellant/Cross-Appellee filed its Notice of Appeal on June 15, 2023.
Appellees/Cross-Appellants filed their Notice of Cross-Appeal on July 5, 2023.**

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.

N/A.

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

N/A.

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

Yes.

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)?

There are no claims still pending in the Superior Court.

B. CASE INFORMATION

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

The Shores at Rainbow Lake Community Association

Jack R. Cunningham (No. 004961)

James L. Csontos (No. 010823)

JENNINGS HAUG KELEHE MCLEOD LLP

Attorneys for Appellant/Cross-Appellee

Gordon and Liliana Gross
854 Pine Creek, LLC
Bald Eagle Retreat, LLC
1501 Rainbow View, LLC
Lakeside Family Investments, LLC
Steven A. and Sandra K. Kernagis as Trustees of the Steven and Sandra Kernagis Trust Dated March 17, 2014
Thomas P. and Jeanette R. Zehring as Trustees of the Zehring Living Trust Dated March 1, 2001
Jeannette Zehring
Ronald D. and Desiree Kyer

Rick K. Carter (No. 012660)
Stockton D. Banfield (No. 027789)
Matthew A. Klopp (No. 023313)
Joseph R. Rainey (No. 037536)
DYER, BREGMAN, FERRIS, WONG & CARTER, PLLC
Attorneys for Appellees/Cross-Appellants

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.

All parties in the superior court proceedings are parties to this appeal.

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.

Quiet Title: Appellees/Cross-Appellants sought to Quiet Title with respect to an amended declaration recorded by Appellant/Cross-Appellee that, among other things, imposed a temporal restriction on leasing on the grounds that the amendment was improper under Arizona law. The trial court granted summary judgment in favor of Appellees/Cross-Appellants as to the temporal leasing restriction but allowed certain other portions to remain. The superior court

Breach of Implied Covenant of Good Faith and Fair Dealing: Appellees/Cross-Appellants alleged that, to the extent sought damages for rental income lost due

to the temporal leasing restriction. Appellees/Cross-Appellants voluntarily dismissed this claim because Appellant/Cross-Appellee stipulated to a preliminary injunction shortly after the filing of this action.

4. Identify the issues to be raised on cross-appeal.
 - (i) Whether the “blue-penciling” of an instrument that will be recorded, as contemplated by *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 532, 506 P.3d 18 (2022), requires the trial court to physically strike through a copy of the instrument (that is made an exhibit to the judgment) or may the trial court issue a declaratory judgment that clearly identifies which portions of the recorded instrument are stricken.
 - (ii) Whether the Superior Court erred in holding that the re-definition of “Single-Family,” for the purposes of only one provision in the Declaration, complied with the Arizona’s foreseeability standards for amendments to declarations.
 - (iii) Whether the Superior Court abused its discretion in failing to award Homeowners their reasonable attorneys’ fees and costs under A.R.S. §§ 12-341.01(A) and 12-1103(B).
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?

This case does not involve any 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.

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.

Appellees/Cross-Appellants previously ordered the transcript necessary for the issues on cross-appeal on March 23, 2023, which transcript was ultimately filed with this Court in a prior appeal docketed as CV23-0053 on March 29, 2023. However, because Appellees/Cross-Appellants have yet to receive the Index of Record from the trial court in the captioned appeal, it is unclear whether that transcript is in the record on appeal. To the extent such transcript is not in the record, Appellees/Cross-Appellants can refile the same with this Court.

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

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

As of the time of writing, the transcript is completed and, presumably, already in the record on appeal.

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.

March 23, 2023.

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.

None.

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.

None.

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.

None.

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

None.

E. CONTACT INFORMATION

1. Filing Party

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

Name of Party: GORDON GROSS and LILIANA GROSS, husband and wife; et al.

Counsel: Matthew A. Klopp, Rick K. Carter, Stockton D. Banfield, Joseph R. Rainey, DYER BREGMAN FERRIS WONG & CARTER, PLLC

Address: 3003 N Central Ave, Suite 2600, Phoenix, AZ 85012

Email address: mklopp@dbfwclegal.com, rkcarter@dbfwclegal.com, sdb@dbfwclegal.com, jrrainey@dbfwclegal.com

Telephone: (602) 254-6008

Check one: Appellant Cross-Appellant Appellee

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

2. **Opposing Party**

Name of Party: THE SHORES AT RAINBOW LAKE COMMUNITY ASSOCIATION, an Arizona nonprofit corporation.

Counsel for Opposing Party: Jack Cunningham, Jim Csontos, JENNINGS HAUG KELEHER McLEOD, LLP

Address: 2800 N Central Ave, Suite 1800, Phoenix, AZ 85004

Email address: jlc@jhkmlaw.com

Telephone: (602) 234-7800

DATED this 28th day of July, 2023.

DYER BREGMAN FERRIS WONG & CARTER, PLLC.

By /s/ Matthew A. Klopp

Rick K. Carter
Matthew A. Klopp
Stockton D. Banfield
Joseph R. Rainey
Attorneys for Appellees/Cross-Appellants

ORIGINAL electronically filed via TurboCourt
This 28th day of July, 2023.

COPIES emailed and mailed
This 28th day of July, 2023 to:

Jack Cunningham
Jim Csontos
JENNINGS HAUG KELEHER McLEOD LLP
2800 North Central Avenue, Suite 1800
Phoenix, Arizona 85004
Attorneys for Defendant

By: /s/ Mike Rea

DYER BREGMAN FERRIS WONG & CARTER, PLLC

3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012
(602) 254-6008 - www.dbfwclegal.com