

ARIZONA COURT OF APPEALS

DIVISION ONE

LAVEEN MEADOWS HOMEOWNERS'  
ASSOCIATION, INC., an Arizona  
nonprofit corporation,

Plaintiff/Appellee,

vs.

CARLOS MEJIA, a married man, as his  
sole and separate property; et al.,

Defendant/Appellant.

1 CA-CV 18-0276

Maricopa County Superior Court  
No. CV2016-094391

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**MOTION TO STRIKE OR, ALTERNATIVELY, TO ORDER THE FILING  
OF A SUPPLEMENTAL BRIEF**

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Appellant requests an order either striking the filed “Notice of Binding Authority” for violation of Arizona Rule of Civil Appellate Procedure 17 or treating it as the supplemental brief that it is, with an order authorizing Appellant to provide a supplemental brief addressing those arguments within twenty-one days of this Court’s Order. Given the erroneous claims made throughout that unauthorized filing based on newly enacted legislation, Appellant’s preference and request is for authorization to file a supplemental brief.

A party may provide this Court with a citation to a potentially “[p]ertinent and significant legal authority” that comes to its attention after the filing of a brief, but before decision. ARCAP 17(a). To prevent abuse of that rule in the filing of unauthorized supplemental briefs, the rule restricts the filing to (1) identifying the supplemental authority, (2) restricting the notice to identification of the page number of the brief to be supplemented, and (3) providing a concise statement of the legal proposition supported by the supplemental citation “without argument.” *Id.*(b). This Court takes seriously subversion of that rule. “We will not address arguments raised for the first time under the guise of supplemental authority.” *Rowe Int’l, Inc. v. Arizona Dept. of Revenue*, 165 Ariz. 122, 128 (App. 1990).

Against this, Appellee filed a document with the argumentative title “Notice of New Binding Authority,” (hereinafter “Notice”) two pages in length asserting the following arguments with citation to an amendment to A.R.S. § 33-1807:

- “The amendment has direct bearing on the matter before the Court.”
- “Because Mejia was more than one year delinquent in the payment of assessments at the time the Association filed its foreclosure lawsuit, the Association was entitled to a judgment foreclosing its lien . . . .”
- The Amendment allegedly confirms retroactively “that the Association’s ability to foreclose its lien for unpaid assessments and related charges is determined ‘on the date the action is filed.’”

and

- “This amendment now codifies what has been the common practice and understanding among practitioners in this area of the law as well as the judges handling such cases.”

Of course, buried within those arguments are many unexplained but implicit arguments raising the issues whether Appellee is arguing retroactivity or the canons of statutory interpretation, or both. And critically, Appellee argues the alleged meaning of the statute and the statutory amendment, which Appellant submits is incorrect as to both items.

At this point, Appellee has wrongly put at issue the alleged meaning and application of a statutory amendment. This Court is authorized to order supplemental briefing, and even does so on occasion without request. *E.g., Stith v. Ensign Group, Inc.*, 1 CA-CV 17-0363, 2018 WL 5729412, at \*5, ¶ 25 (Ariz. App. Nov. 1, 2018). Appellant requests that this Court issue an order granting Appellant the right to file a supplemental brief within twenty-one days of that Order addressing the explicit and implicit arguments lodged in the “Notice of New Binding Authority,” no longer than 7,000 words and in compliance with Rule 4. Absent that ability to brief, Appellee has in violation of Rule 17 put at issue significant unsupported arguments with no ability for Appellant to address them for this Court’s benefit.

DATED this 29th day of July 2019.

By: /s/ David E. Wood  
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