

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

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Plaintiff/Appellee violated Arizona Rule of Civil Appellate Procedure 17 with an unauthorized supplemental brief arguing that a statutory amendment is binding on this Court and dispositive of the issue(s) presented. Rather than acknowledge that violation against Appellant's Motion to Strike, Plaintiff/Appellee ignores it entirely and requests that it too participate in supplemental briefing to this Court (again). [Resp. to Mt. to Strike, filed Aug. 7, 2019] Regardless of this Court's decision on Plaintiff/Appellee's request, Appellant is entitled to address these new, conclusory arguments about an allegedly "binding" statutory amendment prior to this Court's scheduled argument for September 3, 2019. In Section III below, Appellant outlines the requested supplemental briefing order from this Court should this Court not strike and disregard Plaintiff/Appellee's mislabeled "Notice of Binding Authority."

**I. PLAINTIFF/APPELLEE IGNORES ITS VIOLATION OF RULE 17 AND UNAUTHORIZED ARGUMENTS.**

This Court should take notice that Plaintiff/Appellee refused to address this Court's binding Rule 17 regarding the limited structure of a notice of supplemental authority and longstanding rule barring supplemental briefing masked as a notice of supplemental authority. *E.g., Rowe Int'l, Inc. v. ADOR*, 165 Ariz. 122, 128 (App. 1990). That was clearly outlined in the Motion to Strike at page 1, as well as the outline of the nature of Plaintiff/Appellee's unauthorized arguments within the alleged notice that:

- A statutory amendment to A.R.S. § 33-1807 not effective until August 27, 2019 is allegedly “binding” on this Court and the parties;
- The statutory amendment not yet effective “has direct bearing on the matter;” and
- The statutory amendment not yet effective confirms an alleged right to foreclose on another’s home for exclusively attorneys’ fees.

[Mt. to Strike, filed July 29, 2019, at 2] Plaintiff/Appellee ignores these statements and acts to instead miscast the Motion to Strike as merely a “criticism” that it was “too argumentative.” [Resp. to Mt. to Strike, at 1, 2] Plaintiff/Appellee doubles down on its argumentation against the rules by including in the response a claim that its filing was “required”, of course with no citation or explanation for that alleged compulsory duty or why it was compulsory.

**II. THESE UNAUTHORIZED ARGUMENTS LEAVE APPELLANT AND THIS PANEL AT A SIGNIFICANT DISADVANTAGE TO UNDERSTAND OR ADDRESS THE BELATED ARGUMENTS.**

Inherent within appellate briefing rules and structures is a concept of fairness that each side be allowed to address the arguments of the other. That begets court rules and standards refusing to consider new arguments raised in reply briefs or alternatively granting leave to file sur-replies. Another example of that rule is this Court’s rule cited above and ignored by Plaintiff/Appellee barring supplemental briefs mislabeled as supplemental authority. At this point, Plaintiff/Appellee has significantly confused this matter with belated, unexplained assertions that a not-yet effective statutory amendment is binding and dispositive of this appeal.

This matter is set for oral argument on September 3rd; three weeks from the date of this filing. This appeal involves a demand for Mr. Mejia's home solely to satisfy attorneys' fees that were (1) driven up by pursuing foreclosure against no money owed, and (2) hidden within a generically labeled "principal sum" against this Court's holdings and Arizona statute designed to protect homeowners against such practices by requiring a strict, hierarchical accounting.

Plaintiff has now injected, with no explanation or support an assertion that a statutory amendment passed after briefing and months after the trial court's final judgment is binding and dispositive of a right to take Mr. Mejia's home. Appellant rightly desires an opportunity to address the unexplained assertions in the Notice of Binding Authority and the implications of the amendment ignored by those unexplained assertions; and certainly, before any oral argument to this Court. Only supplemental briefing provides Appellant that opportunity.

### **III. THE REASONABLE PROPOSAL.**

Plaintiff/Appellee already filed a supplemental brief in the form of the Notice of Binding Authority and should not be authorized another attempt at briefing beyond that filing. In the Motion to Strike or to Order Supplemental Briefing at page 3, Appellant requested an order authorizing Appellant to file a supplemental brief within twenty-one days of this Court's Order. Given the September 3 date set for oral argument, Appellant recognizes the impracticality of that timeline, and revises the

request to file the supplemental brief addressing the explicit and implicit arguments in the Notice of Binding Authority within seven calendar days of this Court's order.

Should this Court grant Plaintiff/Appellee any right to participate in supplemental briefing, Appellant urges that it do so in staggered briefing with an order that Plaintiff/Appellee file that supplemental brief within three business days of this Court's order as Plaintiff/Appellee has asserted for weeks that this statutory amendment is allegedly "binding" and dispositive. Appellant should receive five business days from the date of service of that supplemental brief the right to file a supplemental brief responsive to that supplemental brief and all arguments explicit and implicit in the Notice of Binding Authority. For purposes of that timeline and proposal, Appellant consents to service by email of that supplemental brief.

DATED this 12th day of August 2019.

By: /s/ David E. Wood  
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