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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9
10 Lisa Marx
11 Plaintiff,

Case No. CV 2025-012980

12 vs.

13 Tara Condominiums Association, Inc.,
14 Mark Gottmann and Dennis Anderson
15 Defendant.

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANTS'
MOTION FOR
RECONSIDERATION OF ORDER
DENYING APPLICATION FOR
ATTORNEYS' FEES AND
ALTERNATIVELY, MOTION FOR
LEAVE TO SUPPLEMENT FEE
APPLICATION**

Honorable Randall H. Warner

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20 Plaintiff Lisa Marx, appearing pro per, respectfully submits this Response in opposition
21 to Defendants Mark Gottmann and Dennis Anderson's Motion for Reconsideration of
22 Order Denying Application for Attorneys' Fees and Alternatively, Motion for Leave to
23 Supplement Fee Application (A.R.S. § 12-341.01(A)), filed on November 12, 2025. This
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1 Response is filed pursuant to the Court's order granting leave under ARCP Rule
2 7.1(e)(2) and is supported by the following Memorandum of Points and Authorities.

3 I. INTRODUCTION

4 Defendants seek reconsideration under ARCP Rule 7.1(e) of the Court's October 15,
5 2025, Minute Entry and Order, which denied their September 4, 2025, Application for
6 Attorneys' Fees while granting costs of \$13.40 and entering a final judgment under
7 ARCP Rule 54(b). Defendants argue the Court misapprehended or overlooked A.R.S. §
8 12-341.01(A) as a basis for fees, despite not asserting it in their Application, which
9 relied solely on the Declaration of Restrictions (CC&Rs). In the alternative, they seek
10 leave to supplement the Application post-judgment.

11
12 Plaintiff opposes the Motion in full. It is untimely and improperly filed under Rule
13 7.1(e) instead of Rule 59(d), as the October 15 Order is a final, appealable judgment.
14 There was no misapprehension by the Court, as § 12-341.01(A) was waived by omission
15 from the Application. Supplementation would undermine finality and prejudice
16 Plaintiff. Even if considered, § 12-341.01(A) is discretionary, and factors favor denial.
17 The Motion should be denied.

18 II. MEMORANDUM OF POINTS AND AUTHORITIES

19 A. The Motion Is Untimely and Improperly Filed Under Rule 7.1(e)

20 1. The October 15 Order Is a Final Judgment, Requiring Relief Under Rule 59(d)
21 The October 15 Order granted costs, denied fees, incorporated the July 31, 2025,
22 dismissal of claims against Defendants, and was certified as final under Rule 54(b) with
23 "no just reason for delay." It is thus a final, appealable judgment. See *Brumett v. MGA*
24 *Home Healthcare, L.L.C.*, 240 Ariz. 420, ¶ 15 (App. 2016) (judgments with Rule 54(b)

1 language are final as to resolved claims). A "Notice of Appeal" was filed November 12,
2 2025 on the order and ruling filed October 15, 2025. Reconsideration of final judgments
3 falls under Rule 59(d) (Motion to Alter or Amend a Judgment), not Rule 7.1(e), which
4 applies to interlocutory orders. Rule 7.1(e)(3) explicitly states: "A motion for
5 reconsideration is not a substitute for a motion filed under Rule...59..."
6 Rule 59(d) requires filing "no later than 15 days after entry of the judgment," a strict
7 deadline that cannot be extended. ARCP 6(b)(2); see also Appellate Tip: Strict
8 Deadlines Govern Filing of Post-Trial Motions (Dec. 8, 2021) (confirming 15-day limit in
9 Arizona superior courts). The judgment was entered October 15, 2025. Excluding the
10 entry day, the 15-day period began October 16 and ended October 30, 2025 (a
11 Thursday, not a holiday, per ARCP 6(a)). The Motion, filed November 12, 2025, is 13
12 days late and must be denied as untimely. Courts may recharacterize motions but deny
13 if untimely under the proper rule. See *Tilley v. Delci*, 220 Ariz. 233, ¶ 16 (App. 2009)
14 (reviewing denials for abuse of discretion).

15 2. Even Under Rule 7.1(e), the Motion Is Untimely and Unreasonable

16 If treated as a Rule 7.1(e) motion, there is no strict deadline, but it must be filed within a
17 "reasonable time." See *Tilley*, 220 Ariz. at 238, ¶ 16 (motions for reconsideration for
18 overlooked points, not reargument). Filing 28 days after a final judgment, without
19 justification for delay, is unreasonable, especially where Defendants provide none. This
20 delays proceedings and undermines finality.

21 **B. There Was No Misapprehension or Overlooking of Material Facts or Law**

22 Rule 7.1(e) allows reconsideration for misapprehended or overlooked material points,
23 not new arguments or reargument. *Tilley*, 220 Ariz. at 238, ¶ 17. The Court correctly
24 denied fees based on the CC&Rs cited in the Application, finding they do not authorize

1 awards to individual directors. Defendants' attempt to revive § 12-341.01(A) –
2 mentioned in their July 15 Motion to Dismiss but omitted from the Application – is
3 improper.

4 1. Defendants Waived or Abandoned Their Claim Under § 12-341.01(A)
5 ARCP Rule 54(g)(1) requires fee claims to be asserted in pleadings or a Rule 12 motion,
6 which Defendants did in their Motion to Dismiss. However, Rule 54(g)(2) requires the
7 post-resolution application to specify and quantify bases. By omitting § 12-341.01(A)
8 from the Application (relying solely on CC&Rs), Defendants abandoned it. See *King v.*
9 *Titsworth*, 221 Ariz. 597, ¶ 7 (App. 2009) (fees may be waived if not timely pursued;
10 court affirmed award where basis was in motion and no prejudice, but emphasized
11 notice). Here, omission prejudiced Plaintiff by denying opportunity to brief
12 discretionary factors. See *In re Restated Trust of Crystal H. West*, 249 Ariz. 355, ¶ 6
13 (App. 2020) (failure to provide basis or notice precludes award).
14 Defendants cite *Western Sun Contractors Co. v. Superior Court*, 159 Ariz. 223 (App.
15 1988), for "substantial compliance," but that case involved mandamus fees with timely
16 notice; post-denial revival creates prejudice.

17 2. No Basis for Leave to Supplement Post-Judgment
18 Supplementation under Rule 54(g)(2) is allowed before ruling, not after a final denial.
19 Allowing it now undermines the Rule 54(b) judgment's finality. See *Talking Rock Land,*
20 *LLC v. Inscription Canyon Ranch, LP*, 257 Ariz. 267, ¶ 6 (App. 2024) (supplemental
21 application considered pre-ruling where preserved and no surprise). Here,
22 supplementation introduces a new basis, prejudicing Plaintiff and delaying the case.

23 **C. Even If Considered, § 12-341.01(A) Warrants Discretionary Denial**
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1 Section 12-341.01(A) allows discretionary fees in contract actions. The claims (breaches
2 of CC&Rs and duties) arise out of contract, but awards are not mandatory. Tucson
3 Estates Prop. Owners Ass'n v. McGovern, 239 Ariz. 52, ¶ 2 (App. 2016) (no prohibition
4 on dual awards under contract and statute, but discretion applies). Factors under
5 Schweiger v. China Doll Restaurant, Inc., 138 Ariz. 183, 187-89 (App. 1983), favor
6 denial: claims were not meritless (derivative as ruled, but viable against Association);
7 novelty absent; hardship to pro per Plaintiff; volunteer directors; disproportionate
8 \$5,957.70 fees for dismissal motion versus \$13.40 costs awarded.

9 III. CONCLUSION

10 For the foregoing reasons, Plaintiff respectfully requests that the Court deny
11 Defendants' Motion in full and deny an attorney's fees requested on this action now or
12 at some future date.

13 Dated this 13th day of November, 2025.

14 Respectfully submitted,

15 /s/ Lisa Marx

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21 CERTIFICATE OF SERVICE

22 I hereby certify that on this 13th day of November, 2025, a true and correct copy of the
23 foregoing was served via email on Defendants' counsel:

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6 /s/ Lisa Marx

7 Lisa Marx

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