

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2015-053091

10/11/2023

HONORABLE MELISSA IYER JULIAN

CLERK OF THE COURT  
A. Delgado  
Deputy

R L WHITMER, et al.

ROSS P MEYER

v.

HILTON CASITAS COUNCIL OF CO-  
OWNERS, et al.

JPMORGAN CHASE BANK N A  
700 KANSAS LN LA4-7200  
MONROE LA 71203-4774  
ZADOK ELI  
6333 N SCOTTSDALE RD  
CASITA # 18  
SCOTTSDALE AZ 85250  
ANDREW M FEDERHAR  
R COREY HILL  
ROBERT S PORTER  
JUDGE JULIAN

**Order Denying Plaintiffs' Rule 60(d)(3) Motion to Vacate and Set Aside the Judgments  
Against Plaintiffs, filed August 2, 2023**

The Court of Appeals issued its order staying the appeal in this matter until October 16, 2023, for the purpose of this Court's consideration of the Plaintiffs' Rule 60(d)(3) Motion to Vacate and Set Aside the Judgments Against Plaintiffs, filed August 2, 2023. The motion is fully briefed, and the Court does not find that oral argument would assist in a resolution.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2015-053091

10/11/2023

Plaintiff's motion seeks relief from the June 9, 2016, judgment entered in this matter based upon alleged fraud upon the Court. In so doing, Plaintiffs rely on alleged "admissions" made in connection with a settlement of two different and more recently filed cases involving the same parties. (Motion. Ex. B & C.) In short, the motion urges that the association "admitted" in these other settlement agreements that "it is not named as a successor association" in the Declaration from 1972 and "admitted" that it was not a party to the 1999 subleases. Plaintiffs' motion does not identify any fraudulent misrepresentation nor any concealed fact that caused the Court to enter the 2016 judgment improperly. Indeed, the fact that the 1994 Non-Profit was not specifically named as a successor in the 1972 declaration is a matter that has been readily ascertainable from the face of the recorded Declaration. Nor has it been alleged that the association concealed the fact that it was not named as a party to the 1999 sublease. The 1999 sublease would have revealed on its face whether the 1994 Non-Profit was identified as a named party. There is no allegation that these facts were not readily apparent from the face of the documents in 2012 when this litigation commence or in 2016 when the judgment was entered.

Indeed, in reviewing the transcript from one of the prior Rule 60 motions attached from 2019, the parties' representations and respective positions appear to be identical to what they are today. The Plaintiffs appear to be making the identical arguments they previously asserted as a basis for Rule 60 relief and the defendants opposed those arguments on the same grounds. Those arguments were rejected by this Court's predecessor and affirmed on appeal. The latest references to the more recent settlements of other cases from 2023 offer no further evidence of a "fraud" on the Court that would merit vacating the judgment. The position set forth in the settlements are consistent with the positions asserted throughout this case, *i.e.*, that the 1994 Non-Profit is a successor, whether it was named as a successor in the Declaration or identified as a party to the 1999 subleases.

The Plaintiff's motion for Rule 60 relief will therefore be denied. As this Court will lose jurisdiction as of October 16, 2023, the Court declines to grant further sanctions as requested by the parties.

**IT IS THEREFORE ORDERED** denying Plaintiffs' Rule 60(d)(3) Motion to Vacate and Set Aside the Judgments Against Plaintiffs, filed August 2, 2023.



HONORABLE MELISSA IYER JULIAN  
JUDICIAL OFFICER OF THE SUPERIOR COURT