

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2015-053091

01/26/2026

HONORABLE QUINTIN CUSHNER

CLERK OF THE COURT  
A. Hayes  
Deputy

R L WHITMER, et al.

ROSS P MEYER

v.

HILTON CASITAS COUNCIL OF CO-  
OWNERS, et al.

DINA G AOUAD  
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  
R COREY HILL  
ROBERT S PORTER  
JUDGE Q CUSHNER

MINUTE ENTRY

The Court has received, reviewed, and considered Plaintiffs R.L. Whitmer and Colleen London's *Rule 60(b)(5)-(6), -(d)(3) Motion to Vacate and Set Aside Judgments Against Plaintiffs*, filed on December 15, 2025; Defendant, Hilton Casitas Council of Homeowners, and Intervenor, Procaccianti AZ II, LP's, *Joint Response to Rule 60(b)(5)-(6), -(d)(3) Motion to Vacate and Set Aside Judgments Against Plaintiffs*, filed on January 2, 2026; and Plaintiffs' *Reply in Support of the Rule 60(b)(5) and (b)(6) Motion to Vacate and Set Aside Judgments Against Plaintiffs*, filed on January 14, 2026.

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The motion is fully briefed, and the Court does not find that oral argument or an evidentiary hearing would assist in resolution.

Arizona Rule of Civil Procedure 60(b) states:

**(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.**

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)(1);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason justifying relief.

Ariz. R. Civ. P. 60(b).

Arizona Rule of Civil Procedure 60(d) states:

**(d) Other Powers to Grant Relief.** This rule does not limit the court's power to:

- (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
- (2) grant relief to a defendant served by publication as provided in Rule 59(g); or
- (3) set aside a judgment for fraud on the court.

Ariz. R. Civ. P. 60(d).

Upon review and consideration, the Court finds that Plaintiffs have not established entitlement to relief under Rule 60(b)(5), Rule 60(b)(6), or Rule 60(d)(3). Plaintiffs have not shown that the September 4, 2025, memorandum decision in *Hilton Casitas Homeowners Association v. Whitmer*, 1 CA-CV 23-0670 (Ariz. App. Sept. 4, 2025) (mem. decision), reverses or vacates the judgment filed June 7, 2016, or otherwise provides a basis to set aside a judgment in this matter. Plaintiffs have further not shown that grounds for relief exist here pursuant to Rule 60(b)(5), including that it is "based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable." Plaintiffs also have not demonstrated extraordinary circumstances warranting relief under Rule 60(b)(6) or fraud on the court under Rule 60(d)(3).

The Court notes that Defendant and Intervenor have requested attorney fees and taxable costs in this matter pursuant to A.R.S. §§ 12-341, 12-341.01, and 12-349. While the Court, in its

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discretion, denies the request for attorney fees and costs pursuant to A.R.S. § 12-349, the Court will allow Defendant and Intervenor to apply for fees and costs pursuant to A.R.S. §§ 12-341 and 12-341.01.

Accordingly,

**IT IS ORDERED** denying Plaintiffs' *Rule 60(b)(5)-(6), -(d)(3) Motion to Vacate and Set Aside Judgments Against Plaintiffs*.

**IT IS FURTHER ORDERED** that Defendant and Intervenor may file, no later than 20 calendar days after entry of this Order, an application for attorney fees and taxable costs pursuant to A.R.S. §§ 12-341 and/or 12-341.01. Any response must be filed no later than 20 calendar days after service of the application. No reply may be filed absent leave of Court.



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HONORABLE QUINTIN CUSHNER  
JUDGE OF THE SUPERIOR COURT