

2021 JUN 23 PM 2: 00

1 R. L. Whitmer  
2 6333 N. Scottsdale Rd.  
3 Casita 21  
4 Scottsdale, Arizona 85250  
5 602.531.2615  
6 Pro Per

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

10 R. L. WHITMER,  
11 Plaintiff.

12 v.

13 HILTON CASITAS HOMEOWNERS  
14 ASSOCIATION, also known as  
15 HILTON CASITAS COUNCIL OF  
16 HOMEOWNERS, also known as  
17 COUNCIL OF CO-OWNERS, also  
18 known as HILTON CASITAS  
19 COUNCIL OF CO-OWNERS  
20 Defendant.

CV2021-050888

21 **PLAINTIFF'S REPLY IN SUPPORT**  
22 **OF ITS MOTION FOR**  
23 **LEAVE TO FILE**  
24 **FIRST AMENDED COMPLAINT**

(Assigned to the  
Honorable Sara Agne)

Accelerated Consideration  
Requested

25 In the Defendant's Response to the Plaintiff's Motion for Leave to File First  
26 Amended Complaint, the Defendant claims that the "Plaintiff's [Amended]  
27 Complaint does not cure the deficiencies in the Complaint." (p.1:23-24)

28 However, the Defendant's May 26, 2021 Motion to Dismiss defines the  
deficiency in the Complaint as: "Plaintiff does not allege that the Association failed  
to adopt a 2020 budget, so he has failed to plead facts necessary to establish that  
the Association has failed to adopt its budget annually." (MTD, p.8:8-10). But, the  
Plaintiff's May 27, 2021 Proposed First Amended Complaint does allege that the  
Association failed to adopt a 2020 budget. (see ¶ 14 and 18).

The Defendant concedes in their objection that "Injunctive relief is designed  
to be preventive in nature." (p.2:3), and readily admits that the HOA is obligated to  
follow the law.

1 A.R.S. Title 33 Chapter 9 (1985 Condominium Act, herein referred to as the  
2 "Act") was designed specifically for the purpose of protecting homeowners. As a  
3 homeowner, the Plaintiff clearly is entitled to challenge the HOA Board's alleged  
4 failure to comply with the HOA board's obligations under the Act and seek judicial  
5 relief from future violations.

6 Given the HOA's repeated behavior of ignoring its statutory duties, the  
7 Plaintiff is entitled to the judicial relief that an injunction will insure against future  
8 statutory violations. As the HOA acknowledges that it is obligated to follow  
9 Arizona law, which includes the Act, the HOA is not inconvenienced, harmed, or  
10 prejudiced from this Court granting an injunction that in the future the HOA shall  
11 comply with the Act.

12 Pursuant to Rule 15(a) Ariz. R. Civ. P., "Leave to amend shall be freely  
13 given when justice requires." *MacCollum v. Perkinson*, 185 Ariz. 179, 185, 913  
14 P.2d 1097, 1103 (App. 1996). Unless there is specific cause, such as futility,  
15 delay or prejudice, motions to amend should be granted. *Id.* No such cause  
16 exists here.

17 Accordingly, the Court should grant the Plaintiff's request for a leave to  
18 amend their complaint.

19 Dated this 23<sup>rd</sup> day of June, 2021.

20 

21 R. L. Whitmer

22 ORIGINAL filed this  
23 23<sup>rd</sup> day of June, 2021,  
24 with the Clerk of the Court;

25 and a COPY mailed this same date to:  
26 Tim Butterfield  
27 Carpenter Hazelwood  
28 1400 E. Southern Ave., Ste. 400  
Tempe, AZ 85282