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12 Homeowners Association

13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
14 **IN AND FOR THE COUNTY OF MARICOPA**

15 R.L. WHITMER,

16 Plaintiff,

17 vs.

18 HILTON CASITAS HOMEOWNERS
19 ASSOCIATION, also known as HILTON
20 CASITAS COUNCIL OF
21 HOMEOWNERS, also known as HILTON
22 CASITAS COUNCIL OF CO-OWNERS,

23 Defendant.

Case No. CV2021-050888

**ORDER FOR DISMISSAL, FOR
SUBMISSION OF FEES/COSTS
APPLICATION, AND FOR SUBMISSION
OF PROPOSED FORM OF JUDGMENT**

(Assigned to Honorable Sara J. Agne)

24 The Court has considered Defendant Hilton Casitas Homeowners Association’s
Motion to Dismiss, filed May 26, 2021; Plaintiff’s Motion for Leave to File First Amended
Complaint, filed May 27, 2021 (“Motion for Leave”); Plaintiff’s Motion to Strike
Defendant’s Motion to Dismiss, filed June 21, 2021 (“Motion to Strike”); Plaintiff’s Request
for an Extension of Time to Respond to Defendant’s Motion to Dismiss, filed June 9, 2021
 (“Request for an Extension”); Defendant’s Response in Opposition to Plaintiff’s Motion for
Leave to File First Amended Complaint, filed June 11, 2021; Defendant’s Response in
Opposition to Plaintiff’s Motion to Strike, filed June 18, 2021; Plaintiff’s Notice of Failure to

1 Timely File a Response to Plaintiff’s Motion to Strike, filed June 21, 2021; Defendant’s
2 Response in Opposition to Plaintiff’s Request for an Extension to Respond to Defendant’s
3 Motion to Dismiss, filed June 23, 2021; Plaintiff’s Reply in Support of Plaintiff’s Request for
4 An Extension to Respond to Defendant’s Motion to Dismiss, filed July 21, 2021;
5 Defendant’s Response to Plaintiff’s Notice of Failure to Timely File a Response to Plaintiff’s
6 Motion to Strike, filed July 7, 2021; the Parties’ Joint Report, filed July 9, 2021; and
7 Plaintiff’s Reply to Defendant’s Response to Notice of Failure to Timely File a Response to
8 Plaintiff’s Motion to Strike, filed July 14, 2021.

9 As an initial matter, Plaintiff’s Motion to Strike addresses and responds to the
10 constitutionality arguments in the Motion to Dismiss, and Plaintiff’s Request for an
11 Extension seeks additional time after the Court ruled on the Motion to Strike to further
12 respond to the Motion to Dismiss. The Court can determine the Motion to Dismiss without
13 addressing constitutionality issues, and the more prudent course, then, is for it to do so. *See*
14 *School Dist. No. 26 (Bouse Elem.) of Yuma Cty. V. Strohm*, 106 Ariz. 7, 9 (1970)
15 (“Constitutional issues will not be determined unless squarely presented in a justiciable
16 controversy . . . or unless a decision is absolutely necessary in order to determine the merits
17 of the suit.”). And Plaintiff has had more than sixty days and made more than three filings
18 during the time since he filed his Request for an Extension, but he has not elected to respond
19 further to the Motion to Dismiss.

20 **THE COURT FINDS** that allowing Plaintiff further response time would be futile.
21 Therefore,

22 **IT IS ORDERED denying as moot** Plaintiff’s Motion to Strike and Request for an
23 Extension.

24 Plaintiff’s Verified Complaint and proposed First Amended Verified Complaint allege
25 in their Counts One and Two that Defendant had failed to adopt the 2021 “annual” budget,

1 and possibly a 2020 annual budget as well—though it is unclear that Plaintiff makes that a
2 basis for his claims—and request a finding of contempt of court and prospective injunction
3 that Defendant comply with the law in the future. Plaintiff admits in the Parties’ Joint Report
4 that “the Association ratified a budget on May 19, 2021,” mooted Plaintiff’s claims in
5 Counts One and Two. And “obey the law” injunctions are presumptively invalid, as
6 Defendant is already required to follow the law. *See NLRB v. Express Pub. Co.*, 312 U.S.
7 426, 435-36 (1941). Therefore,

8 **IT IS ORDERED granting** Plaintiff’s Motion for Leave, in that the Court considered
9 Plaintiff’s proposed First Amended Verified Complaint in issuing this ruling, but finding
10 Plaintiff’s requests for a contempt finding and a prospective injunction subject to dismissal
11 under Ariz. R. Civ. P. 12(b)(6). Taking all of Plaintiff’s facts as true, Counts One and Two
12 still state no claim for relief. Further, Plaintiff filed his Motion for Leave to Amend after the
13 ratification date of that 2021 budget, but he did not seek to amend the portions of his claims
14 alleging that the Association failed to adopt a 2021 budget; this lacks candor to the Court.
15 The Parties’ subsequent public-record filings “regarding matters referenced in a complaint,
16 are not ‘outside the pleading[s],’ and” the Court may consider them without converting the
17 Motion to Dismiss into a summary judgment motion. *See Strategic Dev. & Constr., Inc. v.*
18 *7th & Roosevelt Partners, LLC*, 224 Ariz. 60, 63 ¶¶ 10, 14 (App. 2010).

19 As to Plaintiff’s Count Three, Plaintiff requests the Court to appoint a CPA to conduct
20 what is required by law to be carried out as an A.R.S. § 33-1243(J) audit; as Defendant
21 contends, this is in violation of the statute’s plain language and some of Plaintiff’s requested
22 relief is also time-barred. A.R.S. § 12-541. Essentially, Plaintiff seeks what amounts to Ariz.
23 R. Civ. P. 66 relief without complying with the same. Particularly, “[e]ven when the bill of
24 complaint states a cause of action in equity, the summary remedy of receivership, with the
25 attendant burdensome expense, should be resorted to only on a plain showing of some

1 threatened loss or injury to the property, which the receivership would avoid. Here no such
2 showing was made” *See Gordon v. Washington*, 295 U.S. 30, 39 (1935). Similar to
3 *Gordon*, even taking all Plaintiff’s claims as true, his Counts Three state no claims for relief.

4 Good cause appearing, given the foregoing discussion,

5 **IT IS FURTHER ORDERED granting** Defendant’s Motion to Dismiss with
6 prejudice (in so granting, the Court did not consider or rely upon any constitutionality
7 arguments and/or Section III.a. in the Motion to Dismiss) **and dismissing** the Parties’ Joint
8 Report and Proposed Scheduling Order as moot.

9 **IT IS FURTHER ORDERED granting** Defendant’s request to file an application for
10 reasonable attorney’s fees pursuant to A.R.S. §§ 12-341.01 and 12-349 and costs pursuant to
11 A.R.S. § 12-341; any requests for sanctions by Plaintiff in his filings are denied. Counsel for
12 Defendant shall file an Application for Reasonable Attorneys’ Fees and accompanying *China*
13 *Doll* affidavit within ten (10) days of this Order. If there is a failure to timely file the
14 application, then the application will be denied. If an application is filed that Plaintiff wishes
15 to contest, he must make a filing contesting the same within twenty (20) days of the
16 application’s service upon him. Defendant may not file a reply unless later so directed by the
17 Court.

18 **IT IS FURTHER ORDERED** that not later than twenty (20) calendar days after the
19 entry of this order, Defendant must also submit a proposed form of judgment, leaving blank
20 spaces for attorney’s fees and taxable costs. That form of judgment may incorporate by
21 reference from this minute entry ruling but otherwise should be confined to the amounts being
22 awarded, along with Rule 54(c), Ariz. R. Civ. P., language.

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1 If there are elements of the proposed form of judgment that Plaintiff wishes to contest, he must
2 make a filing contesting the same within twenty (20) days of its service upon him. Defendant
3 may not file a reply unless later so directed by the Court.

4 DATED this 17th day of August , 2021.

5
6 /s/ Sara J. Agne
7 Hon. Sara J. Agne
8 Arizona Superior Court, Maricopa County
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Granted with Modifications



/S/ Sara Agne Date: 8/17/2021
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2021-050888

SIGNATURE DATE: 8/17/2021

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