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

5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
6 **IN AND FOR THE COUNTY OF MARICOPA**

7 R. L. WHITMER,
8 Petitioner/Plaintiff.

CV2021-050888

9 v.

**PLAINTIFF'S OBJECTION TO
DEFENDANTS' SUPPLEMENTAL
APPLICATION FOR ATTORNEY
FEES AND COSTS**

10 HILTON CASITAS HOMEOWNERS
11 ASSOCIATION, also known as
12 HILTON CASITAS COUNCIL OF
13 HOMEOWNERS, also known as
14 COUNCIL OF CO-OWNERS, also
15 known as HILTON CASITAS
16 COUNCIL OF CO-OWNERS;
17 Defendant/Defendant.

(Assigned to the Honorable
Sara Agne)

16 The Court in denying the Plaintiffs' Rule 59 motion did not grant the
17 Defendant's ("HOA") request to supplement its award of attorneys' fees and
18 costs. Even if the Court would have granted the HOA's request, its Supplemental
19 Application for Attorney Fees and Costs ("Application") under Rule 54(g) would
20 have needed to have been filed within the Rule 54(g) 20-day deadline, which it
21 was not.

22 Rule 54(g) is only applicable for Rule 54 (b) and (c) judgments and is not
23 available for "supplemental awards." Accordingly, the HOA's Application is
24 without legal foundation, and the Court should deny the HOA's unfounded
25 Application.

26 **MEMORANDUM OF POINTS AND FACTS**

27 **BACKGROUND**

28 The Court entered a Rule 54(c) final judgement on October 5, 2021 which

1 included an award of attorneys' fees and costs.

2 On October 20, 2021 the Plaintiff filed a Rule 59 motion to modify the final
3 judgment.

4 On November 8, 2021 the HOA's attorneys filed their Objection to the
5 Plaintiff's Rule 59 motion. In their Objection the HOA requested "a supplemental
6 award for those additional fees and costs incurred in responding to the Rule 59
7 Motion and any other relief which the Court finds just and proper." (p.7: 3-5).

8 On January 21, 2022 the Court ruled on the "fully briefed motion", denying
9 the Plaintiff's Rule 59 motion and not granting the HOA's request for a
10 "supplemental award" for attorneys' fees and costs.

11 On February 16, 2022 (26 days after the ruling) the HOA's attorneys filed a
12 Supplemental Application for Attorneys' Fees and Costs pursuant to Rule 54(g)
13 and the Court's January 21, 2022 minute entry.

14 **THE DEFENDANT'S APPLICATION FAILS UNDER RULE 54(G) AND THE JANUARY 21,**
15 **2022 MINUTE ENTRY.**

16 Rule 54(g) only applies to Rule 54(b) and (c) Judgements, and any claim
17 for attorneys' fees and costs must comply with Rule 54(g)(2):

18 *(2) Time for Filing Motion--Rule 54(c) Judgments.* If a
19 decision adjudicates all claims and liabilities of all of the
20 parties, except a claim for attorney's fees, and judgment is to
21 be entered under Rule 54(c), any motion for attorney's fees
must be filed within 20 days after the decision is filed, or by
such other date as the court may order. (Emphasis added).

22 The Plaintiff's Rule 59 motion was decided by the Court's minute entry filed
23 on January 21, 2022. When the Court denied the Rule 59 motion, the Court
24 chose not to grant the HOA's request for a "supplemental award" for attorneys'
25 fees and costs and order that the Rule 54(c) final judgment be amended to
26 include an additional award of attorneys' fees and costs.

27 In spite of the Court not granting the requested "supplemental award", the
28 HOA on February 16, 2022 filed a Supplemental Application for Attorneys' Fees

1 and Costs, which was 26 days after the Court's minute entry deciding the Rule 59
2 motion and clearly beyond the 20-day filing requirement of Rule 54(g)(2).
3 Pursuant to Rule 6(a)(2), the 20 days are calendar days.

4 As the Court's January 21, 2022 minute entry denying the Rule 59 motion
5 might be considered a "decision" under Rule 54(g)(2) and then the Application
6 would still need to comply with the Rule 54(g) 20-day filing deadline requirement.

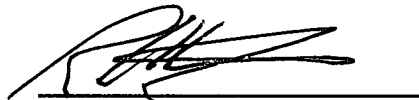
7 **CONCLUSION**

8 The HOA filed its Application pursuant to the Rule 54(g) and the Court's
9 January 21, 2022 minute entry order. However, the Court's minute entry did not
10 grant their request for "a supplemental award for those additional fees and costs
11 incurred in responding to the Rule 59 Motion .." and did not order the modification
12 of the Rule 54(c) final judgment.

13 The HOA's Application did not request an amendment to the judgment for a
14 "supplemental award" of fees and costs.¹ Rule 54(g) deals exclusively with Rule
15 54 (b) and (c) judgments and thus the HOA's Application is without legal
16 foundation.

17 The HOA's Application is without justification and therefore should be
18 denied.

19 Dated this 7th day of March, 2022.

20 

21 R. L. Whitmer

22 ORIGINAL filed this
23 7th day of March, 2022, with the Court;
24 and a COPY mailed this same date to:
25 Tim Butterfield,
26 Carpenter Hazelwood
1400 E. Southern Ave., Ste. 400
Tempe, AZ 85282

27 ¹ In a February 17, 2022 email the HOA's attorney admitted: "We are seeking a separate
28 award of these supplemental fees, not an amendment to the October 5th award, which
we consider final." (Ex. A).

Exhibit A

From: Eadie Rudder <eadie.rudder@carpenterhazlewood.com>
Sent: Thursday, February 17, 2022 10:25 AM
To: R. L. Whitmer <rlw@fulcrumgroup.biz>; Suzanne N. Hilborn <Suzanne.Hilborn@carpenterhazlewood.com>
Subject: RE: CV2021-050888 - R.L. Whitmer v. Hilton Casitas Homeowners Association

We are seeking a separate award of these supplemental fees, not an amendment to the October 5th award, which we consider final.

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If your HOA account is in collection, you can make a payment by credit card or ACH. Click the following link: www.hoacollection.com . Please note that a \$15.00 convenience fee applies to all credit card and ACH payments.

From: R. L. Whitmer <rlw@fulcrumgroup.biz>
Sent: Wednesday, February 16, 2022 7:38 PM
To: Eadie Rudder <eadie.rudder@carpenterhazlewood.com>; Suzanne N. Hilborn <Suzanne.Hilborn@carpenterhazlewood.com>
Subject: RE: CV2021-050888 - R.L. Whitmer v. Hilton Casitas Homeowners Association

Given that you asked for an award in your response to the Rule 59 motion and the Court did not grant it in its January [21st] minute entry denying the motion, you are in essence asking for a rule 59 modification of the October 5, 2020 judgment to include a supplemental award of attorneys' fees. In other words, the October 5th judgment is not yet final. Good to know.