

Case Briefing: R.L. Whitmer v. Hilton Casitas Homeowners Association

Executive Summary

This briefing summarizes the legal proceedings and core arguments in the matter of *R.L. Whitmer v. Hilton Casitas Homeowners Association* (Case No. CV2021-050888), adjudicated in the Superior Court of Arizona, Maricopa County. The litigation primarily concerns the Plaintiff's efforts to enforce administrative orders and statutes against the Association, culminating in a dismissal of the complaint and a subsequent dispute regarding the award of attorney fees. Critical takeaways include:

- **Procedural Conflict:** Much of the litigation centered on procedural motions, including a Motion to Strike the Defendant's Motion to Dismiss and disputes over the timeliness of filings and service requirements under A.R.S. § 12-1841.
- **Dismissal and Appeal:** The court ordered the dismissal of the case in August 2021, entering final judgment in October 2021. The Plaintiff has since appealed both the final judgment and the subsequent ruling awarding attorney fees to the Association.
- **Attorney Fees Controversy:** A central post-judgment theme is the applicability of A.R.S. § 12-341.01. The Plaintiff argues that because the action was purely statutory and did not arise out of a contract, the court erred in awarding fees based on the Association's Declaration of Horizontal Property Regime.

Procedural History and Key Filings

The case progressed through several critical procedural stages involving service of process, motions to strike, and final dismissal.

Initial Proceedings and Service

On April 23, 2021, the court held an Order to Show Cause hearing. Counsel for the Hilton Casitas Homeowners Association, Timothy D. Butterfield, accepted service on behalf of the Association. The court ordered the Association to reply to the complaint by May 28, 2021, and set an evidentiary hearing for June 11, 2021.

Motion to Strike and Timeliness Disputes

In June 2021, the Plaintiff moved to strike the Defendant's Motion to Dismiss.

- **Plaintiff's Argument:** The Plaintiff alleged the Association failed to comply with A.R.S. § 12-1841, which requires notifying the state attorney general and legislative leaders when challenging the constitutionality of a statute. The Plaintiff further asserted that the Association's response to the Motion to Strike was untimely, having been filed on June 18, 2021, after a purported deadline of June 11, 2021.
- **Defendant's Response:** The Association argued that the Motion to Strike violated Arizona Rule of Civil Procedure 7.1(f). Regarding A.R.S. § 12-1841, the Association contended the statute was inapplicable because the administrative process they challenged was already defunct, having been amended by the Arizona Legislature in 2016 (S.B. 1530).

Dismissal and Final Judgment

The court filed an Order for Dismissal on August 19, 2021. Following this, the Association lodged a Proposed Form of Judgment on September 8, 2021, which was signed as a Final Judgment on October 5, 2021.

Substantive Legal Themes

Applicability of A.R.S. § 12-1841

A significant point of contention involved the procedural requirements for challenging the constitutionality of state actions. The Association maintained that:

- The challenge was directed at a "defunct process" previously managed by the Department of Fire, Building, & Life Safety, which was transferred to the Arizona Department of Real Estate in 2016.
- Even if A.R.S. § 12-1841 applied, case law (*Merrill v. Merrill*) suggests that the remedy is to stay proceedings for compliance rather than striking arguments entirely.

Attorney Fees and the "Nature of Action" Dispute

Following the Final Judgment, the Plaintiff filed a Rule 59 Motion to Alter the Judgment to eliminate an award of attorney fees and costs granted to the Association. This motion highlights the distinction between statutory and contractual claims. | Claim Component | Plaintiff's Position | Legal Authority Cited || ----- | ----- | ----- || **Basis of Action** | The action sought enforcement of statutes (A.R.S. § 32-2199.02(B), § 33-1243.D, § 33-1255) and an administrative order. | *Whitmer v. Hilton Casitas Homeowners Ass'n* (2018) || **Contractual Link** | The "Declaration" was only a factual predicate to establish the HOA's existence; the action did not arise out of the Declaration as a contract. | *Keystone Floor & More v. Ariz. Registrar of Contractors* || **Fee Statute** | A.R.S. § 12-341.01 is inapplicable to purely statutory causes of action, even if a contract is peripherally involved. | *Hanley v. Pearson* ; *O'Keefe v. Grenke* | The Plaintiff argued that the case *Swain v. Bixby Village Golf Course, Inc.* , used by the court to justify the fee award, was inapplicable because *Swain* involved a breach of contract claim regarding specific covenants (CC&Rs), whereas the present action exclusively sought statutory enforcement.

Conclusions and Appellate Status

The litigation concluded at the trial court level with the following results:

1. **Dismissal:** The Association successfully obtained a dismissal of the Plaintiff's complaint.
2. **Fee Award:** The court awarded attorney fees to the Association, citing the Declaration of Horizontal Property Regime as a contract under A.R.S. § 12-341.01.
3. **Appeal:** On May 19, 2022, the Plaintiff filed an Amended Notice of Appeal to Division 1 of the Arizona Court of Appeals. The appeal challenges the October 5, 2021, Final Judgment and the May 12, 2022, ruling regarding attorney fees and costs. The core of the pending appellate review appears to be whether the enforcement of administrative

orders and HOA-related statutes constitutes an action "arising out of contract" sufficient to trigger fee-shifting under Arizona law.