



# Dissecting R.L. Whitmer v. Hilton Casitas HOA

Maricopa County Superior Court  
Case No. CV2021-050888

Assigned to: Honorable Sara Agne

A visual analysis of procedural skirmishes, statutory interpretation, and the limits of attorney fee awards in Arizona real estate litigation.

# The Architecture of the Dispute


**The Parties**



**The Parties**

Plaintiff **R.L. Whitmer** (Pro Per) versus Defendant **Hilton Casitas Homeowners Association** (represented by Carpenter, Hazlewood, Delgado & Bolen, LLP).


**The Core Conflict**



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A dispute over **administrative orders** that rapidly escalated into highly technical, dueling motion practice characterized by strict adherence to the Arizona Rules of Civil Procedure.

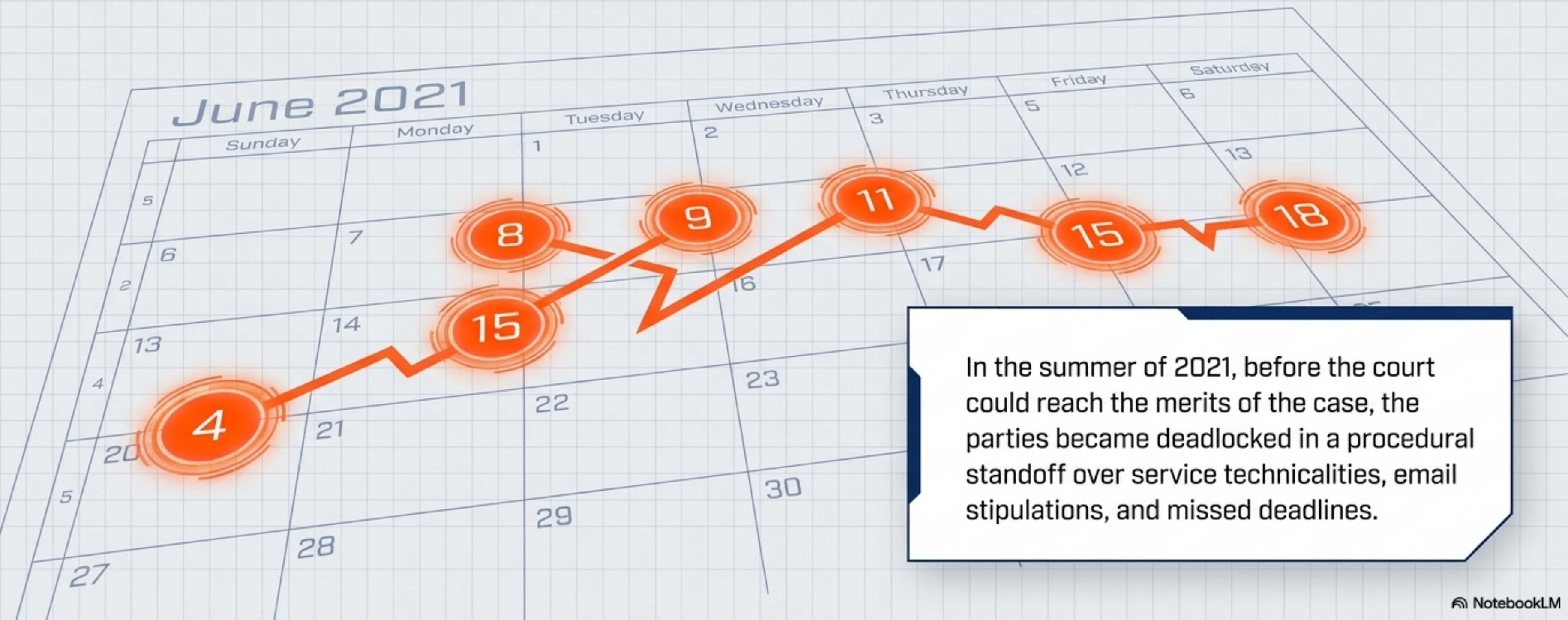
**The Ultimate Legal Question**



**The Ultimate Legal Question**

Can **purely statutory claims** trigger **contractual attorney fee awards** (A.R.S. § 12-341.01) simply because an HOA Declaration exists in the background?

# Phase One Focuses on a Battle over Deadlines and Service



# Valid Service Hinges on the Definition of Delivery

**The Event:** On June 4, 2021, Plaintiff **delivered a Motion to Strike Defendant's Motion to Dismiss** to the law offices of Carpenter Hazlewood.



## Defendant's Claim:

Plaintiff did not hand-deliver the Motion... to me.



## Plaintiff's Defense:

Hand-delivered... to the receptionist.

## Arizona Rule of Civil Procedure 5(B)(i)

*Valid service includes leaving it: (i) at the person's office with a clerk or other person in charge...*

# The Standoff Over Stipulated Extensions

Plaintiff Whitmer (June 8):

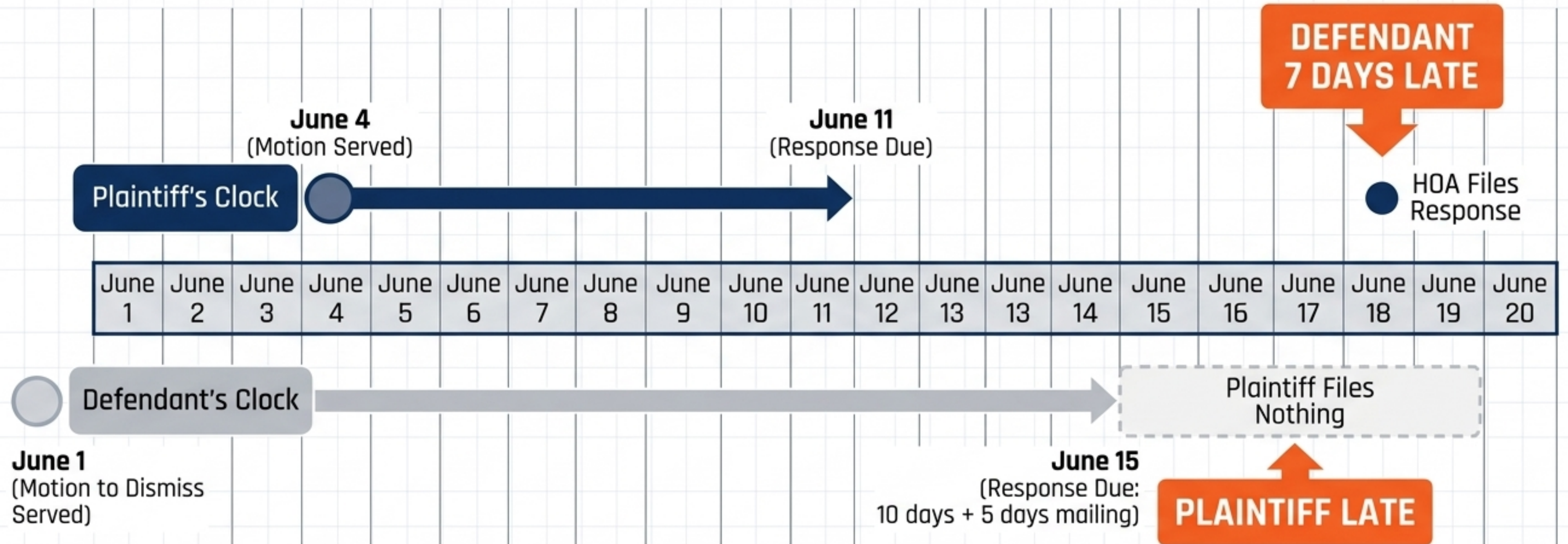
*“Are you willing to stipulate to an extension to file my response to your motion to dismiss until 10 days after the court rules on my motion to strike...?”*

Defense Counsel Butterfield (June 9):

*“I disagree with your Motion to Strike and do not think it is proper. I will not stipulate to the requested extension, but if you need a short extension I am willing to consider such a request.”*

Analytical Takeaway: The refusal to stipulate created a hard deadline environment, leading both parties to accuse the other of untimely filings within the same 14-day window.

# Conflicting Clocks Lead to Mutual Default Accusations

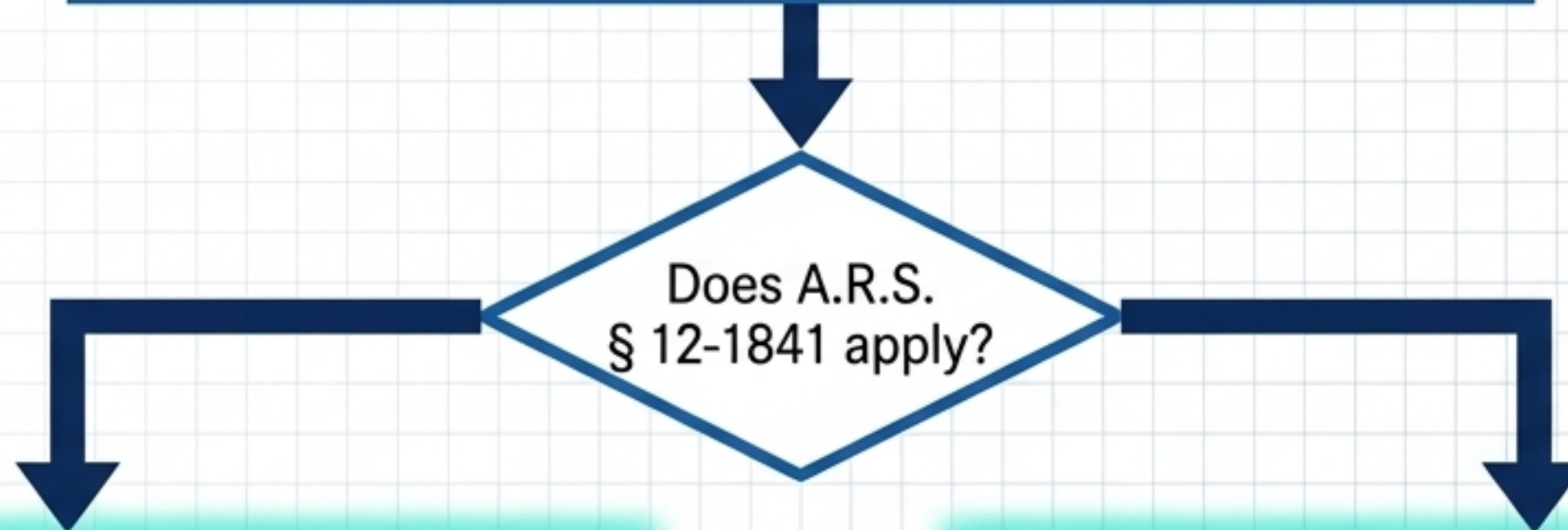


**Result:** Plaintiff demands the Motion to Dismiss be stricken for failure to timely file a response.

**Result:** Defendant demands the Motion to Dismiss be summarily granted for Plaintiff's failure to respond.

# Challenging Constitutionality Requires Strict Adherence to Process

**The Issue:**  
Plaintiff claimed the HOA failed to serve the Attorney General, Speaker, and Senate President when challenging the constitutionality of an Administrative Order.



**Path 1 (Inapplicable)**  
A 2016 Legislative Amendment (S.B. 1530) moved the administrative process to the Department of Real Estate. Because the challenged process is defunct, § 12-1841 does not apply.

**Path 2 (Improper Remedy)**  
Even if § 12-1841 applies, Supreme Court precedent (*Merrill v. Merrill*) states the remedy is to require compliance before ruling, not to strike the argument entirely.

# The Final Judgment Triggers a New Financial Battleground

## The Ruling:

On October 5, 2021, the Court issues an Order for Dismissal and enters Final Judgment against the Plaintiff.

## The Consequence:

The fee award fundamentally shifts the case from a procedural dispute into a deep appellate-level debate over the nature of HOA Declarations.

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

R. L. WHITMER,  
Plaintiff,

v.

HILTON CASITAS HOMEOWNERS  
ASSOCIATION, also known as HILTON  
CASITAS COUNCIL OF  
HOMEOWNERS, also known as  
COUNCIL OF CO-OWNERS, also known  
as HILTON CASITAS COUNCIL OF  
CO-OWNERS;  
Defendant.

CV2021-050888

**PLAINTIFF'S A.R.C.P. RULE 59  
MOTION TO ALTER THE OCTOBER  
5, 2021 FINAL JUDGMENT**

(Assigned to the Honorable Sara Agne)

IT IS FURTHER ORDERED granting the Association's Application for Attorneys' Fees and Costs pursuant to Ariz. Rev. Stat. §§ 12-341, 12-341.01 only. Plaintiff brought this action under the May 22, 1972, recordation of the Declaration of Horizontal Property Regime for Hilton Casitas ("Declaration"), and the Declaration is a contract. *Swain v. Bixby Village Golf Course, Inc.*, 247 Ariz. 405,410 (App. 2019). (Judgment, p.2:1-5).

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# Phase Two Centers on Altering the Judgment via Rule 59

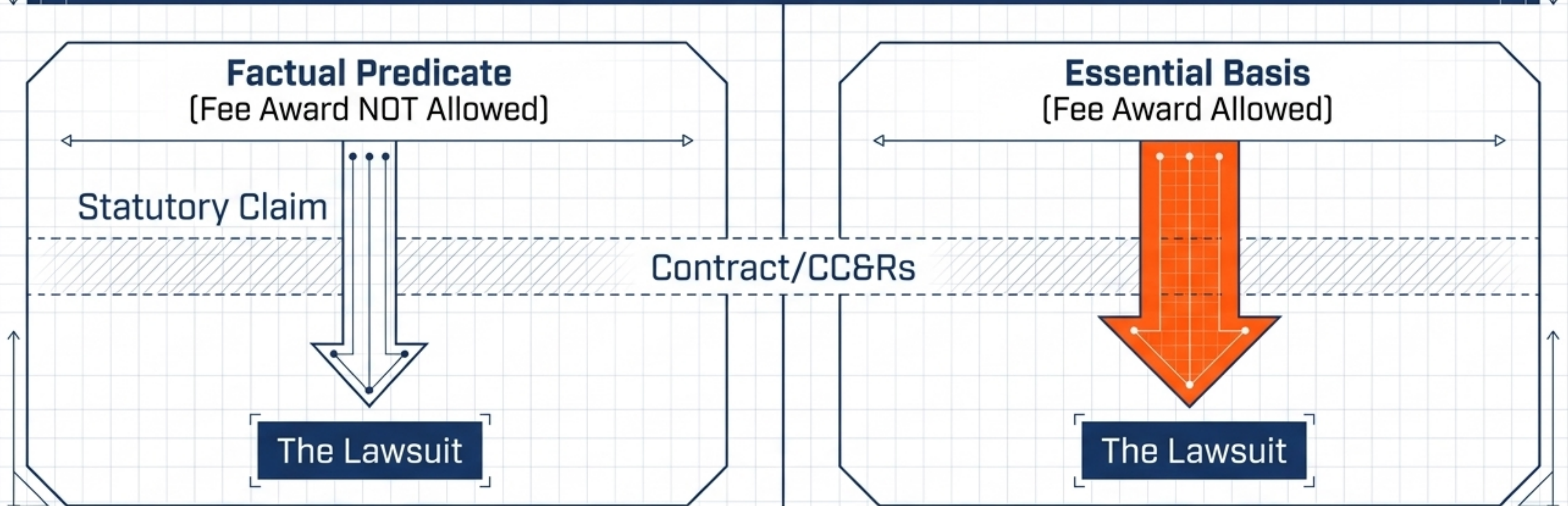


## Arising Out of Contract

On October 20, 2021, Plaintiff files an A.R.C.P. Rule 59 Motion. The objective is not to reverse the dismissal, but to strike the attorney fee award by arguing the lawsuit was a purely statutory action, immune to contract-based fee shifting.

# Distinguishing the Factual Predicate from the Essential Basis

**The Doctrine:** Under Arizona law (*Hanley v. Pearson*), A.R.S. § 12-341.01 does not apply to purely statutory causes of action.



If a contract is merely peripherally involved—proving an entity exists to be regulated—it is a factual predicate.

If the lawsuit seeks to enforce the terms of the contract itself, it is the essential basis.

# Dueling Jurisprudence on HOA Contracts and Fee Statutes

|                           | Case Precedent                           | Cause of Action & Classification  | Fee Applicability                                   |
|---------------------------|--|---|---|
| The Court's Standard      | Swain v. Bixby (2019)                    | Closing a golf course violated Covenant 2 of the CC&Rs. Classified as a Breach of Contract.                       | Fees awarded. Supported by explicit CC&R provision. |
| The Plaintiff's Precedent | Cashway Concrete (1988) / Kennedy (1993) | Statutory remedy of a materialman's lien. Classified as Purely Statutory (Contract was merely factual predicate). | Fees NOT awarded. Denied under A.R.S. § 12-341.01.  |

# The Exclusivity of the Statutory Complaint

Statutory Foundation  
& Remedy

A.R.S. §  
32-2199.02(B)

MISMATCH

HOA  
Declaration  
/ CC&Rs

A.R.S. §  
33-1243.D

A.R.S. §  
33-1243.J

No Contractual Basis  
for Fees or Action

## The Statutory Foundation

*The complaint explicitly sought enforcement of administrative law orders under A.R.S. § 32-2199.02(B), demanding compliance with A.R.S. § 33-1243.D and § 33-1243.J.*

## The Missing Link

The complaint alleged zero breaches of the HOA Declaration. Furthermore, the Declaration itself contained no internal provision authorizing attorney's fees for the enforcement of external statutes.

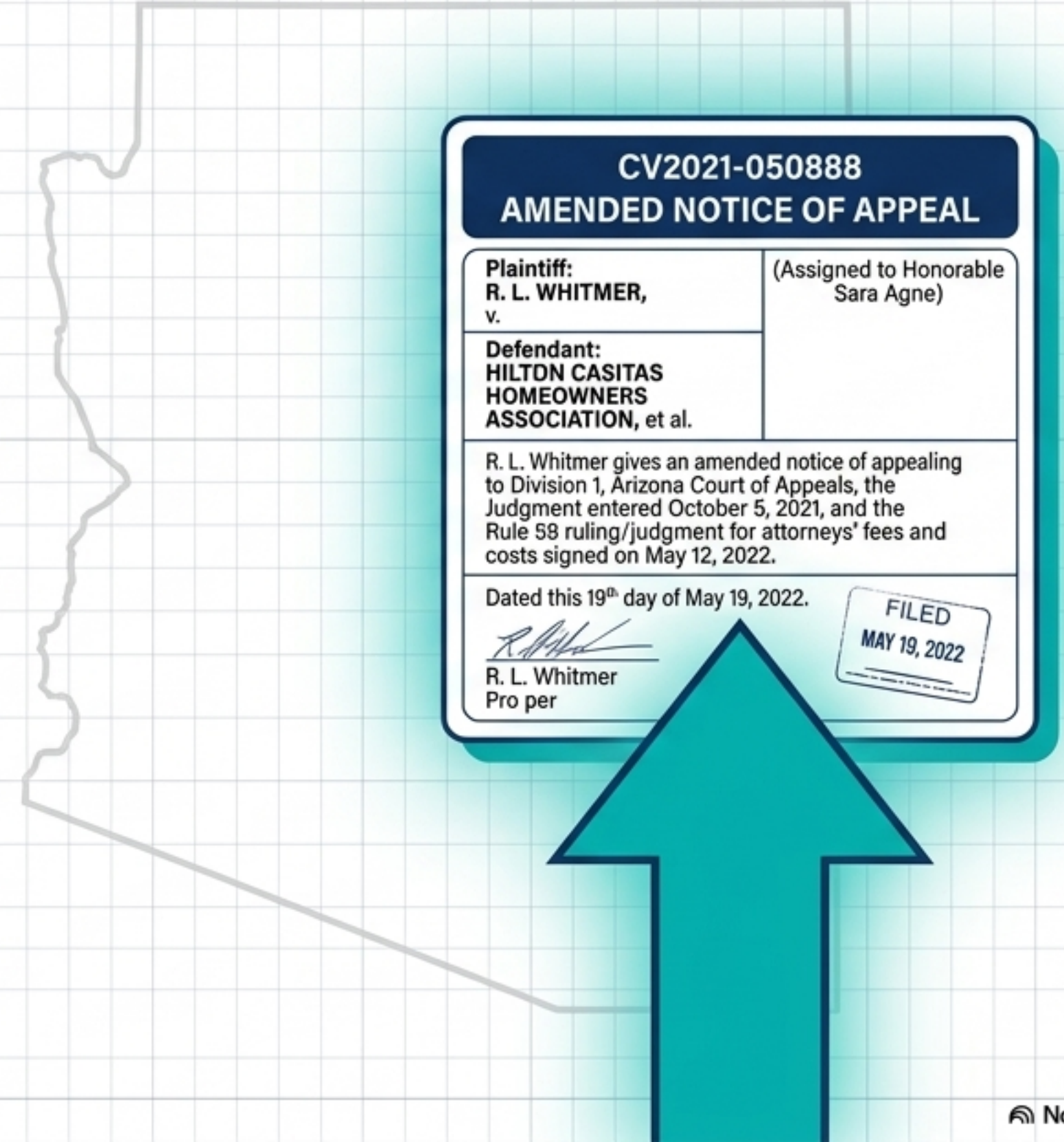
# The Superior Court Finalizes the Ruling, Triggering an Appeal


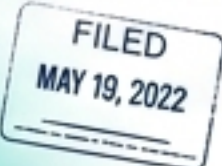
May 12, 2022

The Superior Court issues a Rule 59 ruling, officially upholding the award for attorneys' fees and costs against the Plaintiff.

May 19, 2022

Refusing to concede the statutory interpretation, Plaintiff files an Amended Notice of Appeal, elevating the dispute to Division 1 of the Arizona Court of Appeals.



| CV2021-050888<br>AMENDED NOTICE OF APPEAL   |   |
|---|---|
| Plaintiff:<br>R. L. WHITMER,<br>v.  | (Assigned to Honorable<br>Sara Agne)  |
| Defendant:<br>HILTON CASITAS<br>HOMEOWNERS<br>ASSOCIATION, et al.   |   |
| R. L. Whitmer gives an amended notice of appealing to Division 1, Arizona Court of Appeals, the Judgment entered October 5, 2021, and the Rule 58 ruling/judgment for attorneys' fees and costs signed on May 12, 2022. |   |
| Dated this 19 <sup>th</sup> day of May 19, 2022.  |   |
| <br>R. L. Whitmer<br>Pro per   |  |

# Critical Takeaways for Civil Litigation Strategy

## 1. Procedural Precision is Paramount

Minor breakdowns in professional courtesy (like email stipulations) combined with ambiguous service technicalities (Rule 5(B)(i)) can rapidly consume a docket and derail the timeline before merits are even discussed.

## 2. Map the Essential Basis Early

In actions involving HOAs or construction, litigators must carefully delineate whether a contract is the actionable breach or merely the factual background. This single distinction dictates exposure to A.R.S. § 12-341.01 fee shifting.

## 3. The Pro Per Dynamic

Strict adherence to the Rules of Civil Procedure is required on both sides. Courts will heavily scrutinize the statutory foundations of complaints when determining post-judgment financial penalties.