

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

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2012 MAY 24 AM 11:54

Mark R. Moran, Presiding Judge  
Division 3  
Date: May 24, 2012

Carla D. Baber, Judicial Assistant

FILED

ROBERT R. HAWK and CECELIA J.  
HAWK, husband and wife,  
  
Plaintiffs/Counter Defendants,  
vs.  
  
PC VILLAGE ASSOCIATION INC.,  
an Arizona Corporation,  
  
Defendant/Counter Plaintiff.

Case No. CV2011-00775

**UNDER-ADVISEMENT RULING**

Re: Defendant's Request to Stay Injunction Pending Appeal

In its opinion of March 26, 2012 the Court enjoined the Defendant from removing any "for sale" sign posted by the Plaintiffs.

Defendant filed a notice of appeal of the Court's decision on April 23, 2012.

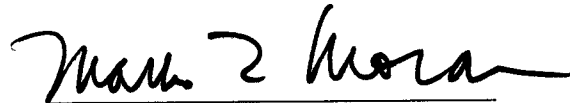
The Court set a hearing on Plaintiffs' application for the award of attorney's fees. The Court set the hearing on May 24, 2012.

On May 23, 2012, the Defendant faxed to the Court a motion to stay its injunction pending appeal pursuant to Rule 62(c). The Court heard oral argument on this motion on May 24, 2012. [Plaintiff's counsel waived the time to file a written response].

Once an appeal is filed, the trial court loses jurisdiction to consider issues or rule on motions. Rule 62(c) however, provides an exception. The rule allows the trial court to retain jurisdiction over the parties to consider a request to stay an injunction pending appeal, so long as the status quo remains the same. *State v. Tolleson*, 152 Ariz.376, 732 P.2d 1114 (App. 1986). The intent of the rule in granting the trial court discretion to stay an order pending an appeal was stated by the court as follows: "The trial court may make the orders necessary to preserve the status quo during the appeal and to protect the unsuccessful party from any irreparable harm that would occur from enforcing the ruling on the injunction." *Id.* at p.378.

In the present case, the Court finds that there would be no irreparable harm suffered by the unsuccessful party should the order be enforced pending an appeal. Any stay of the Court's order would require the Plaintiffs to suffer irreparable harm by preventing them from advertising and selling their property.

The motion is denied.



Hon. Mark R. Moran

cc: Tevis Reich, c/o courthouse box  
Jonathan Confer/J. Gary Linder, 2901 N. Central Ave., Suite 800, Phoenix, AZ 85012

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Category

CV



Case Number

S0300CV201100775



Filing Date

5/24/2012



Event Code

1256300



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Party Type

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D-1



Document Id

828666



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