

MICHAEL K. JEANES
Clerk of the Superior Court
By vanessa martinez, Deputy
Date 11/04/2015 Time 16:20:47

Description	Amount
CASE# CV2015-095897	
CIVIL NEW COMPLAINT	319.00
TOTAL AMOUNT	319.00

Receipt# 24876351



4140 E. Baseline Road, Suite 101
Mesa, Arizona 85206
844-346-6352

Attorneys for Plaintiff

By: Clint G. Goodman, Bar No. 024188
Scott L. Potter, Bar No. 025157

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

TURTLE ROCK III HOMEOWNERS
ASSOCIATION, an Arizona non-profit
corporation;

Plaintiff,

Vs.

LYNNE A. FISHER, record owner;

Defendant.

Case No.: CV2015-095897

COMPLAINT

(Breach of Contract; Injunction)

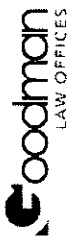
Plaintiff TURTLE ROCK III HOMEOWNERS ASSOCIATION ("Plaintiff" or "Association"), by and through counsel undersigned, for its Complaint against Defendant LYNNE A. FISHER ("Defendant"), alleges as follows:

GENERAL ALLEGATIONS

1. The parties are governed by that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions, recorded with the Maricopa County Recorder Office at Instrument No. 2006-1162796 ("Declaration"); Articles of Incorporation; Bylaws; Rules and Regulations; (collectively referred to herein as "Governing Documents").

2. Plaintiff is a non-profit corporation operating as an Arizona Planned Community per A.R.S. §33-1801, et. seq.

3. Defendant is an owner of certain real property at 901 E. Michigan Avenue,



1 Phoenix, Arizona 85022, with legal description:

2 Lot 56, Turtle Rock III, according to book 247 of maps, page 43, records of
3 Maricopa County, Arizona.

4 4. All acts alleged herein occurred in Maricopa County, Arizona. Venue and
5 jurisdiction are proper.

6 5. The Declaration Recitals provide that the Plaintiff was organized, and Declaration
7 recorded, for the purpose of protecting the desirability and attractiveness of the community and to
8 promote the quiet enjoyment of the individual members therein.

9 6. Article VI, Section 1 of the Declaration provides:

10 The Owner of each Lot shall maintain all improvements on said Lot in a clean and
11 attractive condition...the Owner of each Lot shall keep said lot free from all
12 rubbish, litter, and noxious weeds; install, maintain, cultivate and keep in good
13 condition and repair: shrubs, trees, grass, lawns, plantings, and other
14 landscaping...maintain in good condition and repair and adequately paint or
15 otherwise finish all improvements and structures located, or from time to time
16 placed, upon such Lot.

17 7. Article VI, Section 3 of the Declaration provides:

18 In the event any Owner of any Lot shall fail to maintain any portion of their Lot,
19 or the improvements thereon, including landscape that is visible from
20 neighboring property, in a manner satisfactory to the Board...the Association or
21 its authorized agents shall have the right to fine the Owner for the violation...and
22 to collect all costs incurred in such maintenance or repair from the Owner.

23 8. Article XIII, Section 1 of the Declaration provides:

24 The Association, or any Owner, shall have the right to enforce, by any proceeding
25 at law or in equity...the provisions of this Declaration.

26 9. Article XIII, Section 2 of the Declaration awards the Association reasonable
27 attorneys' fees and costs incurred and all other expenses incurred by the Association.

28 10. Defendant's actions set forth in this Complaint breach the Declaration.

11. Defendant allows her lot to remain unmaintained. Specifically, the Property (1)

1 does not have a side yard gate on the wall to the South of the residence, (2) has a side yard gate in
2 disrepair on the wall to the North side of the residence, (3) contains unreasonable amounts of
3 weeds that are visible from the neighboring property, (4) has an old wood-rotted garage that must
4 be replaced, (5) has a dilapidated patio with splintering and unsightly wood and other materials, (6)
5 has blinds in the front window that are old and unsightly and visible to neighboring property, (7)
6 and has excessive items within the home that can be viewed from neighboring property and / or
7 constitute a health and safety hazard to the rest of the members in the community.

8 12. Upon information and belief, the Defendant does not use the Lot as a residential
9 dwelling but now uses the Lot as a storage facility as the home itself is uninhabitable due to all of
10 the storage items in violation of Article XII, Section 1 of the Declaration.

11 13. Plaintiff has repeatedly requested that Defendant cure the violations set forth above.

12 14. The Declaration requires that reasonable attorney fees and costs incurred by the
13 Association to cure violations be awarded to the Association, meaning the Association is entitled
14 to its attorney fees and costs for bringing this action.

15 15. Plaintiff's attorney fees to obtain a default judgment on all counts alleged herein
16 may be at least \$4,500.

17 **COUNT I**
BREACH OF CONTRACT

18 16. Plaintiff re-alleges all allegations hereinabove as if fully set forth herein.

19 17. Defendant is in breach of the Declaration for all reasons set forth in this Complaint.

20 18. Defendant's breaches cause damages to be proven at trial.

21 19. Defendant was given notice and opportunity to be heard.

22 20. Defendant refused to cure breaches.

23 21. Upon information and belief, Defendant is incurring fines at \$25 per day.

24 22. Plaintiff is entitled to reasonable attorney fees and costs pursuant to the Declaration
25 and/or A.R.S. 12-341.01.

26 **COUNT II**
INJUNCTION

27
28 23. Plaintiff re-alleges all allegations in this Complaint as if fully set forth herein.

1 24. Plaintiff has requested, on numerous occasions, that Defendant cure the violations.
2 Plaintiff's last and final communication was on September 16, 2015, attached hereto as Exhibit A.

3 25. The letter was sent via regular, certified mail and was posted on the door of her
4 current dwelling place.

5 26. While Defendant painted the dwelling on the Property and therefore cured only the
6 paint violations, she did not address any of the other violations set forth in the Letter.

7 27. The remaining violations are depicted in the photographs, taken on the morning of
8 October 30, 2015, by a Director of the Association. Exhibit B.

9 28. Defendant's breaches are so egregious in nature that Plaintiff needs immediate
10 redress.

11 29. Defendant violates the provisions of the Declaration for reasons set forth in this
12 Complaint.

13 30. Despite the clear restrictions in the Governing Documents, and despite notices of
14 the violations of the restrictions, the Defendant continues to violate the Governing Documents.

15 31. Plaintiff has attempted to resolve this matter with Defendant but Defendant ignores
16 Plaintiff's requests.

17 32. Enforcement of the restrictions is reasonable and necessary to protect the interest of
18 the homeowners of the Association and preserve the Governing Documents and the enjoyment of
19 those within the Association.

20 33. Defendant's continued refusal to comply with the Declaration is a continuing
21 violation, causing irreparable injury to the Association and its member and occupants.

22 34. The Plaintiff has no adequate remedy at law for the violations of the Declaration by
23 Defendant, and will suffer irreparable injury and damage by virtue of the breaches by Defendant.

24 35. Because Defendant failed and refuses to abide by the express provisions of the
25 Declaration and other Governing Documents, it is likely that the Association will be successful on
26 the merits of this matter and, therefore, a permanent injunction should be issued.

27 WHEREFORE, Plaintiff prays that the court enter judgment in its favor as follows:

28 (A) That Plaintiff be awarded a monetary judgment against Defendant for the sums

1 alleged to be owing Plaintiff as and for monetary penalties and related charges, pre-judgment and
2 post-judgment interest, and costs and expenses;

3 (B) That a preliminary and permanent injunction be issued ordering Defendant to (1)
4 immediately (1) install a new side yard gate on the wall to the South side of the residence as that
5 gate is missing, (2) repair the side yard gate on the wall to the North side of the residence, (3)
6 remove all weeds that are visible from neighboring property, (4) replace the garage as it is full of
7 wood rot, (5) replace the blinds in the front window with new blinds, (6) remove all excessive
8 items within the home as they can be viewed from neighboring property and / or constitute a health
9 and safety hazard to the rest of the members in the community, (7) cease using the home as
10 storage;

11 (C) That a preliminary and permanent injunction be issued ordering Defendant comply
12 with all other aspects of the Declaration and governing documents to which the Property is subject;

13 (D) That Plaintiff be awarded its reasonable attorney fees and costs;

14 (E) That Plaintiff have such other and further relief as this Court may deem proper.

15 DATED this 3 day of November, 2015.

16 **GOODMAN LAW OFFICES, P.C.**

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18 _____
19 Clint G. Goodman
20 *Attorneys for Plaintiff*

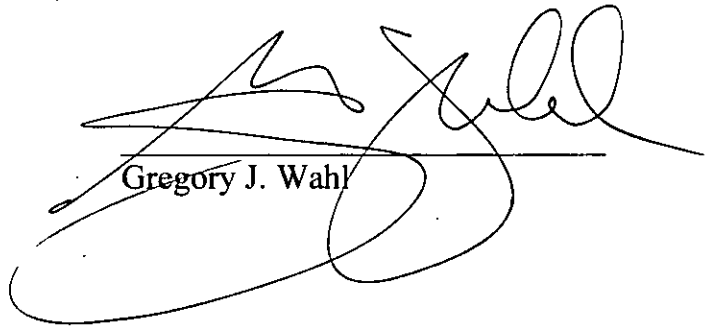
VERIFICATION

Gregory J. Wahl declares and states as follows:

I am a Member of the Board of Directors for Plaintiff; I have read the foregoing Complaint and know the contents thereof; the matters and things stated therein are true and of my own knowledge, except those matters therein stated upon information and belief, and, as to those matters, I believe them to be true.

I declare and verify under penalty of perjury that the foregoing is true and correct.

DATED this 30th day of October, 2015.



Gregory J. Wahl

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EXHIBIT A



September 16, 2015

Via U.S. Regular, Certified Mail

Ms. Lynne A. Fisher
901 E. Michigan Avenue
Phoenix, Arizona 85022

Via Posting

1117 E. Wagoner Rd.
Phoenix, Arizona 85022

Re: Turtle Rock III Homeowners Association / Ongoing Violation

Dear Ms. Fisher:

This law firm represents Turtle Rock III Homeowners Association (the "Association"). This letter is to advise you of ongoing violations with your property located at 901 E. Michigan Avenue (the "Property"). Namely, the condition of your property constitutes a nuisance and must be maintained so as to preserve the aesthetic integrity this community strives for. You've received numerous notices of violation but still refuse to address the problems.

VIOLATIONS

Your Property is governed by the Declaration of Covenants, Conditions, and Restrictions (the "Declaration"). The Declaration is a contract, meaning you cannot abandon or waive the requirements therein. Article VI, Section 1 of the Declaration provides:

The Owner of each Lot shall maintain all improvements on said Lot in a clean and attractive condition...the Owner of each Lot shall keep said lot free from all rubbish, litter, and noxious weeds; install, maintain, cultivate and keep in good condition and repair: shrubs, trees, grass, lawns, plantings, and other landscaping...maintain in good condition and repair and adequately paint or otherwise finish all improvements and structures located, or from time to time placed, upon such Lot.

Article VI, Section 3 of the Declaration provides:

In the event any Owner of any Lot shall fail to maintain any portion of their Lot, or the improvements thereon, including landscape that is visible from

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neighboring property, in a manner satisfactory to the Board...the Association or its authorized agents shall have the right to fine the Owner for the violation...and to collect all costs incurred in such maintenance or repair from the Owner.

As stated above, your Property is in violation of the above provisions and you must cure those violations. Specifically, you must (1) install a new side yard gate as that gate is missing, (2) remove all weeds that are visible from neighboring property, (3) replace the garage as it is full of wood rot, (4) replace the entire patio structure, including all support beams, in the backyard as it has wood rot and on the verge of collapse, (5) repaint the home the approved white color (prior to repainting you must submit the exact color you are painting for approval unless said color is already an approved color), (6) replace the blinds in the front window with new blinds, (7) replace the fascia board on the front of the home with new fascia board and paint said fascia board with approved colors, and (8) remove all excessive items within your home as they can be viewed from neighboring property and / or constitute a health and safety hazard to the rest of the members in the community. If you fail to comply, the Association will sue you for injunctive relief, among other things. Additional fines will be assessed to your account at a rate of \$25.00 per day from the date of this letter until the violations are remedied.

The Association recognizes your right to appeal the violations above. If you wish to appeal the additional fines and violations set forth above, you must provide timely **written** request of a hearing within 10 calendar days of this letter. If the hearing is scheduled you would be bound by the decision of the Board.

All appeals will be heard during Executive Session and you will be given written notice of a date the appeal is scheduled.

ASSESSMENT DELINQUENCIES

Your account is seriously delinquent in the amount of \$6,997.75, not including this letter (\$275) and the \$25 per day fine. This amount is composed of assessments, monetary penalties, late fees and collection costs. Per the Declaration, your obligation to pay these amounts is contractual and cannot be abandoned or waived. It is hereby demanded that you pay this amount to avoid further collection fees and costs.

As of this date, the Association claims you owe \$1,491.40. This amount includes \$1,141.50 in assessments and other association charges and \$350 that, unless an agreement with you is reached, it will ask a court to award it in accordance with the CC&Rs which authorize the Association to recover its reasonable attorney fees and costs from you as part of its collection efforts.

IF YOU DO NOT DISPUTE THIS \$1,491.40 DEBT WITHIN 30 DAYS, THE ASSOCIATION MAY CONTINUE ITS COLLECTION EFFORTS AND THIS COULD INCLUDE YOU BEING SUED. IF YOU ARE SUED

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AND THE ASSOCIATION PREVAILS, THE ASSOCIATION WILL ASK THE COURT TO AWARD ALL AMOUNTS, INCLUDING ALL REASONABLE ATTORNEY FEES AND COSTS INCURRED TO GET A JUDGMENT AGAINST YOU (INCLUDING BUT NOT LIMITED TO THE \$275.00 FOR THIS LETTER). IF THE ASSOCIATION GETS A JUDGMENT AGAINST YOU, IT MAY ATTEMPT TO GARNISH YOUR BANK ACCOUNT OR WAGES OR SEIZE QUALIFIED ASSETS INCLUDING VEHICLES, WATERCRAFT, REAL PROPERTY, RENTAL INCOME AND ANY OTHER QUALIFIED ASSETS. MOREOVER, THE ASSOCIATION RESERVES THE RIGHT TO FORECLOSE ITS ASSESSMENT LIEN AGAINST YOU IN A LAWSUIT.

If paying by check make it payable to Goodman Law Offices and send to the attention of:

Goodman Law Offices, P.C.
ATTN: Payment Processing Center
4140 East Baseline Road, Suite 101
Mesa, Arizona 85206

Call (844) 3-GOODLAW, if you need to make payments.

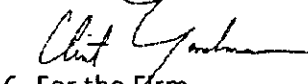
THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. WE WILL ASSUME THIS DEBT IS VALID UNLESS YOU DISPUTE THE VALIDITY OF THE DEBT WITHIN 30 DAYS OF RECEIPT OF THIS NOTICE. IF YOU MAKE A WRITTEN REQUEST WITHIN 30 DAYS OF RECEIPT, WE WILL OBTAIN VERIFICATION OF THE DEBT AND MAIL IT TO YOU IF NOT INCLUDED WITH THIS LETTER. THIS NOTICE PROVIDES YOU AN OPPORTUNITY TO SETTLE THE DELINQUENCY. YOU CAN DISPUTE THE VALIDITY OF THIS DEBT BY CONTACTING GOODMAN LAW OFFICES AT THE ADDRESS OR PHONE NUMBER ABOVE.

CONCLUSION

For reasons set forth above, this is your final notice of the violations and constitutes the association's final demand that you must cure all violations noted above and pay the amounts demanded (assuming you do not dispute the amount within 30 days of your receipt of this letter). If these issues cannot be resolved to the Board's satisfaction, we will proceed with legal action. All costs of legal action may be awarded against you by a court of law, which fees and costs may be in the thousands of dollars.

Very truly yours,

GOODMAN LAW OFFICES, P.C.


For the Firm

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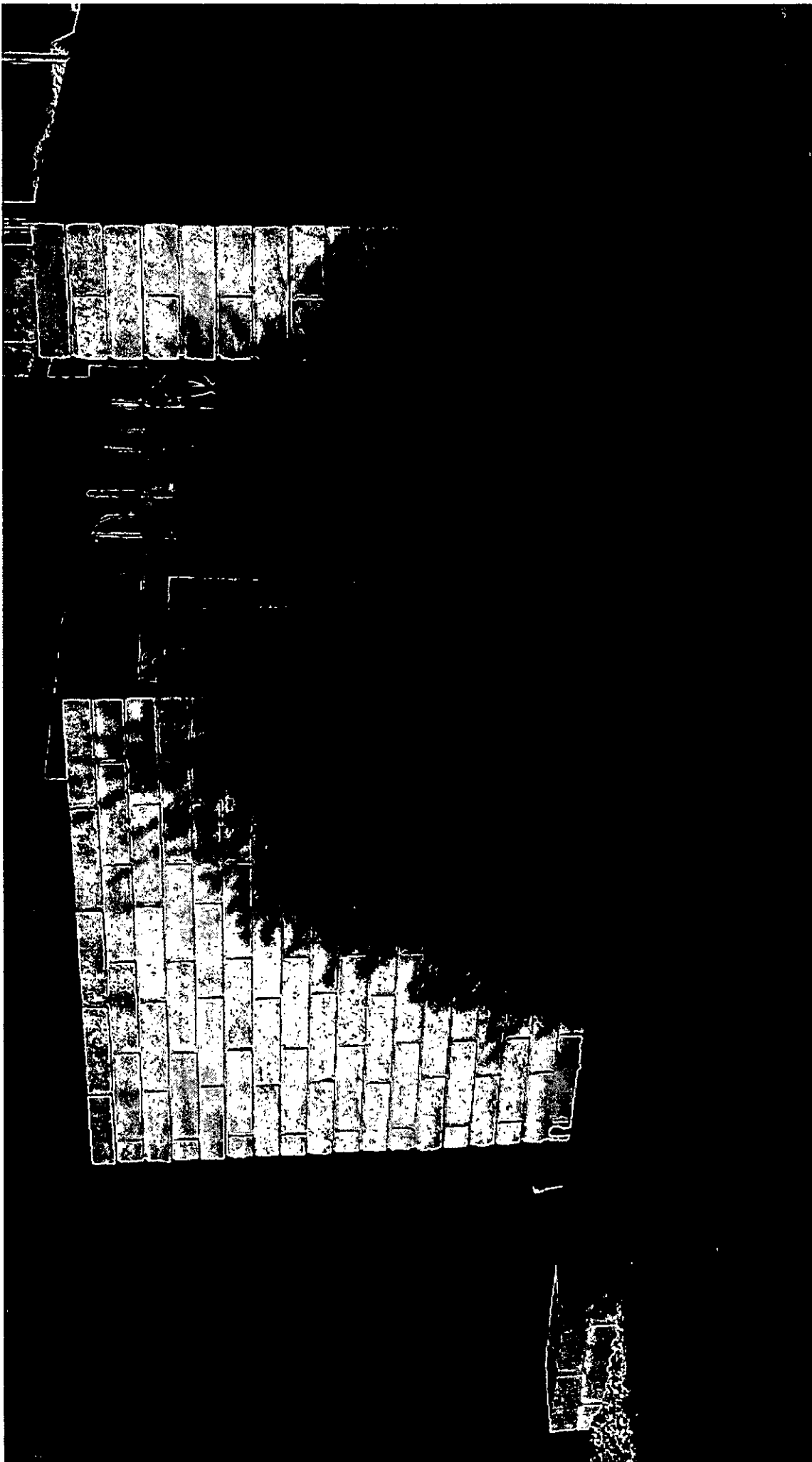
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EXHIBIT B

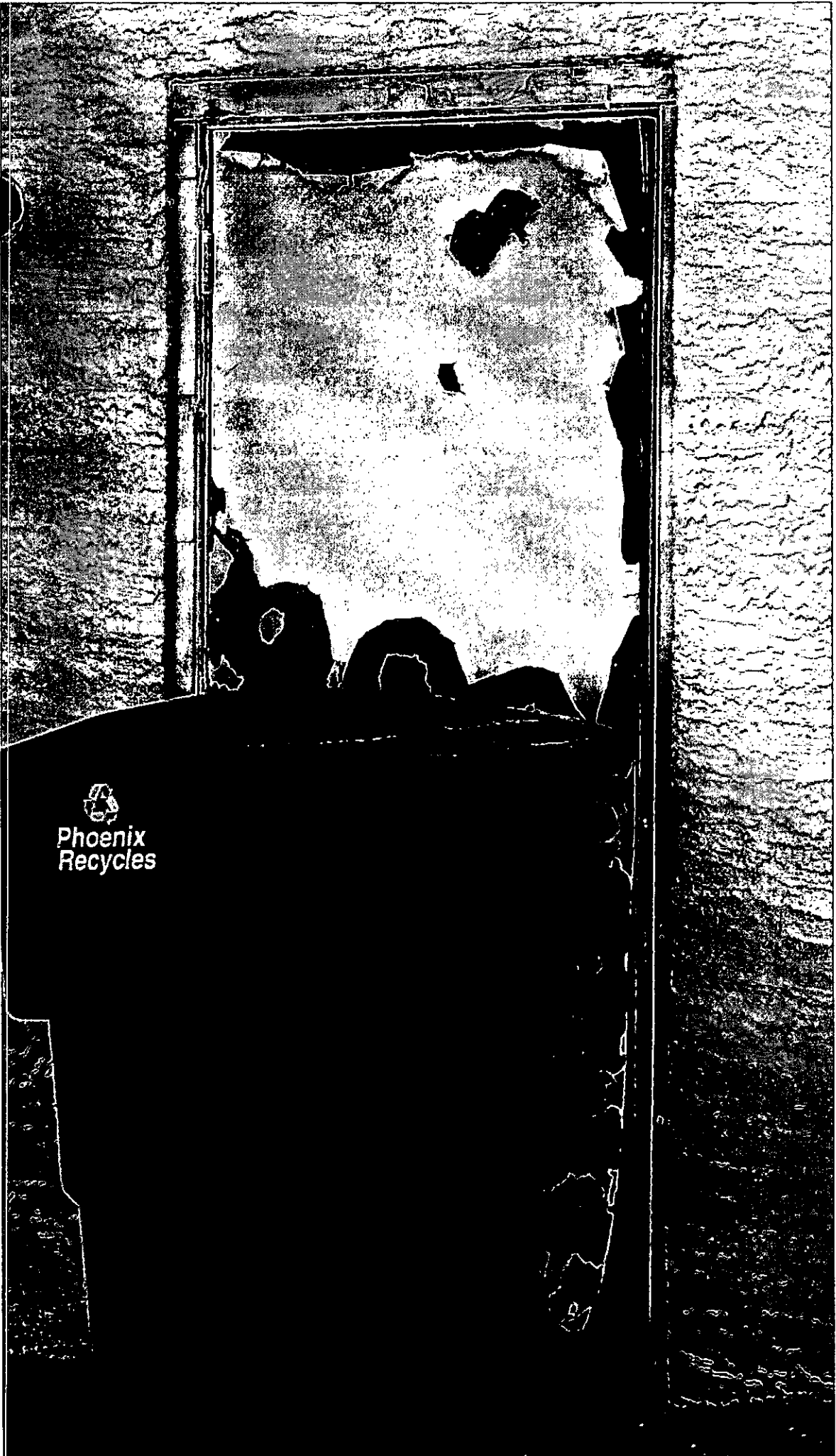


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