

IN THE  
Court of Appeals  
STATE OF ARIZONA  
DIVISION ONE

**CASE MANAGEMENT STATEMENT**

Village of Oakcreek Association, Plaintiff / Appellant

v.

Lance Bonham, Defendant / Appellee

1 CA-CV 22-0780

Yavapai County Superior Court

Superior Court case number: V1300CV202280081

Judge Linda Wallace

Village of Oakcreek Association  
Name of Filing Party

  
Signature of Counsel or Party

January 23, 2023  
Date

## A. APPELLATE JURISDICTION

1. State the basis for appellate jurisdiction (*See* A.R.S. § 12-2101):

Appellant states that the basis for appellate jurisdiction is A.R.S. 12-2101(A)(1) which provides:

A. An appeal may be taken to the court of appeals from the superior court in the following instances:

1. From a final judgment entered in an action or special proceeding commenced in a superior court, or brought into a superior court from any other court, except in actions of forcible entry and detainer when the annual rental value of the property is less than three hundred dollars.

Specifically, Appellant appeals to the Arizona Court of Appeals Division One from the Judgment signed by the Honorable Linda Wallace on November 8, 2022, and filed on November 9, 2022.

2. State the date the superior court filed the judgment/order you are appealing and state whether the court signed the ruling.

Judgment was signed by the Honorable Linda Wallace on November 8, 2022, and filed with the Superior Court on November 9, 2022.

3. Provide the date each notice of appeal or cross-appeal was filed and identify the filing party.

The Notice of Appeal was filed on December 1, 2022.

4. If the time for appeal was extended by one of the motions identified in Arizona Rule of Civil Appellate Procedure 9(e)(1), identify the motion, the date it was filed, the date the superior court filed its ruling on the motion, and state whether the ruling was signed.

No motion was entered extending the appeal.

5. If any motions are currently pending in superior court, identify the name of each motion and the date it was filed.

There are no motions pending in superior court.

6. Is the judgment/order appealed from certified as final pursuant to Arizona Rule of Civil Procedure 54(c)?

The Judgment was final as to Defendant's claims in their entirety and was entered pursuant to Rule 54(c), Ariz.R.Civ.P.

7. If any claims remain pending in the superior court, including claims for attorneys' fees, was the judgment/order made appealable pursuant to Arizona Rule of Civil Procedure 54(b) or Arizona Rule of Family Law Procedure 78(B)?

No claims remain pending in the superior court.

## **B. CASE INFORMATION**

1. List all parties to the superior court action and, if represented, provide the names of their counsel.

Village of Oakcreek Association, Plaintiff / Appellant  
Alexis G. Firehawk, Esq.  
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Lance Bonham, Defendant / Appellee  
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2. List any party in superior court that is not a party to this appeal and explain in detail why the party is not included in this appeal, e.g., the party was dismissed, not served, or other. Include specific relevant references to the record.

None.

3. Describe briefly all claims (including counterclaims, cross-claims and third-party claims) asserted in the superior court and the manner each such claim was resolved in the superior court (i.e., bench trial, jury verdict, dismissal, summary judgment, or default judgment). Include specific relevant references to the record.

The Village of Oakcreek Association (the “Association”) is a planned community in Yavapai County, Arizona. It is governed by the Master Declaration of Restrictive Covenants for all Property in the Village of Oakcreek Restated & Amended, recorded at Document Number 2014-0021505 on May 13, 2014, as amended (“the Declaration”). Defendant, Lance Bonhman, is the record owner of the real property at 40 Rio Circle, Sedona, Arizona, 86351 (“the Property”), which is located within the Association and thus is subject to its Declaration. Defendant’s mother originally acquired title to the Property in 1989 and the Property was ultimately vested to Defendant by virtue of a Quit Claim Deed on January 23, 2017, by Defendant as the Trustee of his mother’s trust. Defendant does not live at the Property as his primary residence; he rents or leases the Property for terms of less than thirty days, and does so for monetary gain.

On November 17, 2016, the Association recorded an Amendment to its Declaration with the Yavapai County Recorder, at Document No. 2016-0058316, that amends Article 4, Section 4.23 to the Declaration regarding Leasing of Lots and Units; Restrictions and Limitations.

The 2016 Amendment states, in part:

2. Minimum Lease Term. No Owner shall lease a Lot or a Unit for a Lease term of less than thirty (30) days.

The Association then re-recorded the exact same Amendment on May 3, 2017. That new amendment was recorded for the sole purpose of correcting the 2016 recorded Amendment by removing the text that was not part of the original Leasing and Fines Amendment voted upon by the members.

The 2017 correction stated, in part:

This instrument is being re-recorded for the sole purpose of correcting Section 2 of the Amendment to the Restated and Amended Master Declaration of Restrictive Covenants For All Property in The Village of Oakcreek previously recorded on November 17, 2016 as document number 2016-0058316, by **removing** the following provisions from the new Section 4.23 added to the Restated and Amended Master Declaration of Restrictive Covenants For All Property in The Village of Oakcreek by such Section 2, because a clerical error resulted in such recorded instrument including such removed sections which were not approved by the members of the Village of Oakcreek Association:

6. Tenant Registration Form.

...

7. Grandfather Provision.

...

It is clear when reviewing the 2016 Amendment and the 2017 Correction, that the 2016 Amendment restricts rentals of less than 30 days, and the 2017 Correction does not change or refute that.

Defendant filed a Motion to Dismiss on May 24, 2022, stating the amendment is not valid because it allegedly did not get the requisite number of votes to pass, and also that it failed the *Kalway v. Calabria Ranch HOA, LLC*, 2022 506 P.3d 18 (Ariz. 2022) sufficient notice test.

On June 8, 2022, the Association responded to the Motion to Dismiss, articulating that (1) the Amendment survives Defendant's *Kalway* challenge because at the time the Defendant became record owner of the Property the Amendment had already passed and was recorded, and (2) the 2016 amendment passed by a vote of 564 "for" and 452 "against," wholly appropriate under the Declaration's voting requirements.

The Association argued that the Amendment survives the *Kalway* challenge for many reasons. In short, *Kalway* provides that "[t]he notice requirement relies on a homeowner's reasonable expectations based on the declaration in effect at the time of purchase..." *Kalway*, at ¶ 15, 506 P.3d 18, 24. Defendant did not become record owner of the Property until January 23, 2017, after the 2016 Amendment was passed and recorded. As such, pursuant to *Kalway*, the Declaration including the 2016 Amendment was in effect at the time Defendant became record owner. Therefore, Defendant had actual and record notice of the Declaration restricting rentals.

Additionally, the Association argued that Section 4.03 of the Declaration already prohibits business of any kind from being conducted from or located on properties subject to the Declaration. Defendant cannot argue that the Amendment prohibiting short term rentals was not foreseeable, because a short-term rental conducted for monetary gain is a business that was already prohibited under Section 4.03 of the Declaration. Thus, the Amendment is not “entirely new or different in character” or untethered to the original Declaration.

The Association also argued that the governing set of facts are solely the allegations in the Complaint, along with all reasonable inferences that may be drawn in the Association’s favor. Taking such allegations as true, the Complaint is more than sufficient to state claims against Defendant in order to survive the Defendant’s Rule 12(b)(6) Motion to Dismiss.

In his Motion to Dismiss and his Reply, Defendant improperly refers to the 2016 Amendment as “the 2017 Amendment.” In doing so, he misled the Superior Court to fit the facts of *Kalway* by labeling the Amendment with the incorrect year, making it appear that he purchased the property *prior* to the Amendment’s recordation.

The Superior Court ruled on the Motion to Dismiss without oral argument. On September 8, 2022, the Court granted Defendant’s Motion to Dismiss, ruling, in part, that the Defendant was not bound by the “2017” Amendment because he purchased the property before the recording of the “2017” Amendment. The Court declined to rule on the validity of the votes because it held that the Defendant was not bound by the “2017” Amendment anyway since he did not have sufficient notice under *Dreamland Villa Community Club, Inc. v. Raimey*, 224 Ariz. 42,226 P.3d 411 (App. 2010) and *Kalway*, 252 Ariz. 532, 506 P.3d 18 (2022).

On September 21, 2022, Plaintiff filed a Motion for Reconsideration. The Court denied the Motion on September 30<sup>th</sup>, before the deadline to file a Response had passed. After final judgment in favor of Defendant was filed by the Court on November 9, 2022, the Association properly filed its Notice of Appeal.

4. Identify the issues to be raised on appeal.

Did the trial court error in determining the property located at 40 Rio Verde Circle, Sedona, Arizona 86351, and otherwise known as Lot 75, Cathedral View, is not bound or restricted by the November 17, 2016 Amendment to the Restated and Amended Master Declaration of Restrictive Covenants for All Property in the Village of Oakcreek.

Did the trial court error in ruling the subject property is further not bound by the re-recording made on May 3, 2017 under Yavapai Recording No. 2017-

0021951.

Did the trial court error in ruling the alleged violation of the short-term rental provision as null and void.

5. If this case involves an assertion or allegation that a state statute, ordinance, franchise, or rule is unconstitutional on its face, or that a municipal ordinance or franchise is facially invalid, have you complied with A.R.S. § 12-1841?

N/A

### C. TRANSCRIPTS

1. State the date you complied with Arizona Rule of Civil Appellate Procedure 11(c)(1) and (2) by ordering the transcript(s) necessary for proper consideration of the issues on appeal.

This is a case involving no transcript. The Notice of No Transcript Order was filed with the Superior Court on December 15, 2022.

Identify the certified court reporter or authorized transcriber responsible for or preparing the transcript(s): N/A

Provide the court reporter's estimated date of completion of the transcript(s): N/A

2. State the date you complied with Arizona Rule of Civil Appellate Procedure 11(c)(3) by filing a notice of transcript order and, if applicable, a statement of the issues.

The Notice of No Transcript Order was filed with the Superior Court on December 15, 2022.

Plaintiff's Statement of Issues was filed with the Superior Court on December 30, 2022.

## **D. OTHER PENDING AND PRIOR PROCEEDINGS**

1. If any party to this appeal is the subject of a pending petition in bankruptcy court, identify the court and provide the case name and number.

None known.

2. Provide the case name and number of any other appeal, special action, or petition for review filed from the same, or a consolidated, superior court action.

None known.

3. Provide the case name and number of any other appeal(s) pending in the Court of Appeals that involve the same parties, events, or transactions giving rise to this appeal.

None known.

4. Provide the case name and number of any known pending appeals in the Court of Appeals that raise the same or closely related issues.

None known.

## **E. CONTACT INFORMATION**

1. Filing Party

This Case Management Statement is filed by or on behalf of:

Name of Party: Village of Oakcreek Association

Counsel: Alexis G. Firehawk, Esq.  
Tessa Knueppel, Esq.  
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Check one:          X   Appellant           Cross-Appellant           Appellee

For a joint statement by multiple appellants, provide contact information for additional appellants on a separate sheet accompanied by certification that they concur in the contents of this statement.

2.        Opposing Party

Name of Party: Lance Bonham

Counsel for Opposing Party:    Mark J. Bainbridge  
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Check one:               Appellant           Cross-Appellant      X   Appellee

(List additional counsel/parties on separate sheet if necessary)

## CERTIFICATION OF SERVICE

I certify that on the 23<sup>rd</sup> day of January, 2023, I served the above Case Management Statement on all counsel/parties of record by email, delivered via TurboCourt E-Service Notification and by depositing a true copy thereof in the United States mail, postage prepaid, addressed as follows:

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Signature