

17 MAR 10 PM 3: 25

1 R. L. Whitmer
2 6333 N. Scottsdale Rd.
3 Casita 21
4 Scottsdale, Arizona 85250
5 602.531.2615

6 Pro Per

7
8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 R. L. WHITMER,

11 Plaintiff.

12 CV2016-055080

13 v.

14 **RESPONSE TO DEFENDANTS'**
15 **MOTION TO DISMISS**

16 HILTON CASITAS HOMEOWNERS
17 ASSOCIATION, also known as
18 HILTON CASITAS COUNCIL OF
19 HOMEOWNERS, also known as
20 COUNCIL OF CO-OWNERS, also
21 known as HILTON CASITAS
22 COUNCIL OF CO-OWNERS; and
23 MICHAEL BENGSON, President of
24 the named Respondent;

25 Defendants.

26 (Assigned to the
27 Hon. Aimee L. Anderson)

28 The Defendants' motion to dismiss should be denied for being frivolous and having no merits. The motion's only purpose is for delay and all of the Defendants' allegations in their motion are baseless and without foundation. Therefore, their motion should be denied.

29 **I. THE SUPERIOR COURT HAS JURISDICTION**

30 Based on their bizarre interpretation of ARS §32-2199.02.B. in their motion to dismiss the Defendants allege that the Arizona Office of Administrative Hearings ("OAH") is the proper venue for filing a contempt action:

31 ARS §32-2199.02.B. ...The order issued by the
32 administrative law judge is enforceable through contempt
33 of court proceedings and is subject to judicial review as
34 prescribed by section 41-1092.08.

1 As a practicing attorney who touts himself as the "HOA guy", Mr. Shaw
2 surely knows that OAH, as an arm of the State's Executive Branch, has limited
3 judicial power which does not include the authority to enforce its own orders
4 through contempt proceedings. That power is reserved to the Judicial Branch
5 and is exercised through rules established by the Arizona Supreme Court.

6 The governing case law in Arizona on contempt is *Ong Hing* 101 Ariz. 92,
7 416 P.2d 416 (1966) where the court delineated four types of contempt; civil and
8 criminal, either of which can be direct or indirect. Because civil contempt can
9 become criminal, it would be extremely inappropriate to have an Executive
10 Branch department such as OAH preside over contempt of court proceedings.

11 When determining the intent of ARS §32-2199.02.B, it is "helpful and
12 proper to turn to the overall purposes and aims of the legislature in enacting the
13 statute in order to glean the legislative intent." *State v. Sweet*, 143 Ariz. 266, 270,
14 693 P.2d 921, 925 (1985); *Cohen v. State*, 121 Ariz. 6, 588 P.2d 299 (1978);
15 *State v. Berry*, 101 Ariz. 310, 312, 419 P.2d 337, 339 (1966) (statutes must be
16 construed in view of the purpose they are intended to accomplish and the evils
17 they are designed to remedy).

18 OAH's exact position on the enforcement of administrative orders is:

19 If the petition item has been decided by a court or
20 previously has been addressed in a hearing before the
21 OAH, it cannot be revisited. OAH has no authority for
22 contempt proceedings or enforcement of prior decisions.
23 However, failure by a party to comply with a decision
24 issued by the OAH may result in the other party seeking
25 enforcement of the Administrative Law Judge's decision
26 through a contempt of court proceeding in Superior Court¹
27 (Emphasis added) (Ex. 1, P2:Q2).

28 The legislature intended the Superior Court to have jurisdiction under ARS
§32-2199.02(B) and ARS §12-861 et seq. "If the statutes relate to the same
subject or have the same general purpose—that is, statutes which are in pari

¹ <http://www.azoah.com/Vol42.html>

1 materia—they should be read in connection with, or should be construed together
2 with other related statutes, as though they constituted one law." *State ex rel*
3 *Larson v. Farley*, 106 Ariz. 119, 122, 471 P.2d 731, 734 (1970).

4 Pursuant to ARS §12-861, the Superior Court jurisdiction applies to any
5 "lawful writ, process or order" which includes a "judgment of a Superior Court" but
6 is not limited to such judgments. Further, the legislature unquestionably intended
7 the Superior Court to have jurisdiction over OAH and other administrative orders
8 as provided for in ARS §12-864:

9 Contempts committed in the presence of the court or so
10 near thereto as to obstruct the administration of justice,
11 and contempts committed by failure to obey a lawful writ,
12 process, order, judgment of the court, and all other
13 contempts not specifically embraced within this article
may be punished in conformity to the practice and usage
of the common law. (Emphasis added).

14 ARS §32-2199.02 clearly and expressly identifies an order of an
15 administrative law judge as being enforceable through contempt of court
16 proceedings, which pursuant to ARS §12-861 et seq is conducted under ARCP
17 Rule 65(f), and Rule 65(j) which was in effect in December 2016 (when the
18 complaint was filed).

19 **II. A Judicial Order is the Remedy to a Violation of ARS §33-1243.D**

20 The Hilton Casitas is governed by its organic contract, the Declaration of
21 Horizontal Property Regime for Hilton Casitas ("Declaration"), and ARS §33-1201
22 et seq, the 1985 Uniformed Condominium Act as amended.

23 The Defendants' bogus argument that ARS §33-1243.D requires a specific
24 remedy apart from going through the Administrative Law process is ridiculous.
25 The remedy for violations of ARS §33-1243.D is a unit owner obtaining an order
26 of compliance under ARS §32-2199. And if the order is not obeyed, the Unit
27 owner can pursue a contempt of court proceeding in the Superior Court, where
28

1 the court has the authority and discretion to apply sanctions for the violation of the
2 order to ensure future compliance.

3 The order stands for itself and disobeying it is the grounds for contempt.
4 There is no need for the order to refer to any sanctions.

5 **III. The Limitations of the Arizona Volunteer Protection Statute**

6 Because Mr. Bengson's willful, wanton and grossly negligent actions and
7 inactions do not conform to A.R.S. §12-982, he is not immune from the civil
8 liability of this contempt proceedings.

9
10 ARS §12-982. Qualified immunity A. A volunteer is
11 immune from civil liability in any action based on an act or
omission of a volunteer resulting in damage or injury if:

12 1. The volunteer acted in good faith and within the scope
13 of the volunteer's official functions and duties for a
14 nonprofit corporation or nonprofit organization, hospital or
governmental entity.

15 2. The damage or injury was not caused by wilful, wanton
16 or grossly negligent misconduct by the volunteer.

17 It is clear that Mr. Bengson's actions and inactions, including his
18 misrepresentations to the Court, constitute willful negligent misconduct.

19 The Administrative Law Judge ruled: "It is further ORDERED Hilton Casitas
20 shall fully comply with the applicable provisions of A.R.S. § 33-1243(D) in the
21 future" (Ex. 2, P.4:26-27).

22 A.R.S. § 33-1243(D) Except as provided in the
23 declaration, within thirty days after adoption of any
24 proposed budget for the condominium, the board of
25 directors shall provide a summary of the budget to all the
26 unit owners. Unless the board of directors is expressly
27 authorized in the declaration to adopt and amend budgets
28 from time to time, any budget or amendment shall be
ratified by the unit owners in accordance with the
procedures set forth in this subsection. If ratification is
required, the board of directors shall set a date for a

1 meeting of the unit owners to consider ratification of the
2 budget not fewer than fourteen nor more than thirty days
3 after mailing of the summary. Unless at that meeting a
4 majority of all the unit owners or any larger vote specified
5 in the declaration rejects the budget, the budget is ratified,
6 whether or not a quorum is present. If the proposed
7 budget is rejected, the periodic budget last ratified by the
8 unit owners shall be continued until such time as the unit
9 owners ratify a subsequent budget proposed by the board
10 of directors (emphasis added) (Ex. 2, P.3:13-24).

11
12
13 **Failure to Adopt the 2017 Annual Budget Prior to the Start of the Fiscal Year**

14 1. Hilton Casitas is on a January-December fiscal year. ARS
15 §33-1255.A requires that the “assessments for common expenses” be based on a
16 budget “adopted at least annually.”

17 ARS §33-1255 Assessments for common expenses; applicability:

18 ARS §33-1255.A ... After any assessment has been
19 made by the association, assessments shall be made at
20 least annually, based on a budget adopted at least
21 annually by the association.

22 To be in compliance with ARS §33-1255.A, the board needed to
23 adopt a budget prior to December 31, 2016 in order to collect common expenses
24 assessments starting in January 2017. Although no budget adoption occurred,
25 the HOA president, Mr. Bengson, on behalf of Hilton Casitas has directed the
26 collection of the January, February and March 2017 assessments. Accordingly,
27 even if Hilton Casitas were to adopt an annual budget at this late date, it would
28 still be a violation of the Judicial Order regarding adoption and approval of the
2017 annual budget. Mr. Bengson willfully did not initiate the budget approval
process.

29 **The Failure to Amend the Purported 2016 Budget for Safeguard
30 Security Expense Reduction and Recalculation of the Assessments**

31 2. ARS §33-1255.A requires that the unit owners’ assessments

1 be based on a budget "adopted at least annually." ARS §33-1255.G requires that
2 the new reallocated Safeguard expense liabilities (which result in a very
3 substantial reduction of expenses) be recalculated and the budget amended as
4 outlined by ARS §33-1243.D and ordered by the Administrative Tribunal:

5 ARS §33-1255.G. If common expense liabilities are
6 reallocated, common expense assessments and any
7 installment on the assessments not yet due shall be
8 recalculated in accordance with the reallocated common
expense liabilities.

9 3. In ¶7 of their January 18, 2017 answer, the Defendants admit
10 that "the unit owners have been assessed \$125 [a month] for services provided
11 by Safeguard Security" ... "that the Board sent out a notice on August 22, 2016
12 [Ex. 3] announcing that the Safeguard Security agreement [Ex. 4] had been
13 amended, and that any savings would be put in a reserve account."

14 Mr. Bengson, the HOA president, inappropriately and in
15 violation of the Judicial Order acted unilaterally (without any board action or
16 resolutions) to renegotiate the Safeguard Security contract and then to designate
17 the savings go into Hilton Casitas' reserve account without amending the budget
18 in violation of the Judicial Order. There were no 2016 board meeting agendas
19 (Ex. 5) where the board authorized such actions or resolutions prior to the August
20 22, 2016 notice (Ex. 3). Mr. Bengson decided not to initiate the budget
21 amendment process while he was privy to the Judicial Order which required him
22 as president to call a board meeting and a unit owners meeting to amend the
23 budget.

24 4. On February 20, 2017 Hilton Casitas' agent emailed a 2016
25 financial worksheet to the Plaintiff (Ex. 6). It showed that the new annual
26 Safeguard Security expense was \$13,758.60, which will produce an estimated
27 \$30,000 saving. This information about the Safeguard savings was not shared
28 with all of the unit owners, nor did Hilton Casitas amend the budget for ratification

1 by the unit owners. Mr. Bengson willfully chose not to do so, in violation of the
2 Judicial Order.

3 5. Hilton Casitas' president, Mr. Bengson inappropriately
4 and wrongfully made a unilateral decision to place the Safeguard savings into a
5 reserve account, in clear violation of ARS §33-1255.G and Section 8.2 of the
6 Declaration (**Ex. 7**) which requires all 29 unit owners acting as the "Council" to set
7 the annual assessment which is to include an amount "as the Council shall
8 determine to be fair and prudent for the establishment and maintenance of a
9 reserve...". Section 1.4 of the Declaration defines the Council to be all the 29
10 casita owners (**Ex. 8**).

11 6. Hilton Casitas and its president once again did not
12 comply with their statutory obligation to amend the annual budget and seek
13 ratification from the homeowners as required by ARS §33-1243.D and ARS §33-
14 1255.G, and violated the Judicial Order, by Mr. Bengson's choice to place the
15 Safeguard savings illegally into the reserve account. The violation of the Judicial
16 Order is the result of Mr. Bengson's own wrongful action.

17 **Failure to Stay Within the 2016 Budget's Authorized Legal Expenses**

18 7. Since filing the complaint on December 19, 2016, the Plaintiff
19 requested and received attorney Anderson's billing records. Mr. Anderson's
20 billing records for 2016 (**Ex. 9**) show that by September 27, 2016 he had billed
21 \$16,327.20, then went on to bill a total of \$19,049.20 by the middle of December
22 2016 versus the \$15,000 authorized in the 2016 budget (**Ex. 10**) as approved by
23 Mr. Bengson without amending the budget.

24 8. It is undeniable that without amending the 2016 and 2015
25 budgets as required by the Judicial Order, Mr. Bengson wrongfully and illegally
26 overspent the 2016 budget (**Ex. 10**) and the 2015 budget for "Legal Expenses"
27 and he did so knowingly in violation of the Judicial Order.
28

1 **Failure to adopt the 2016 Annual Budget according to ARS §33-1243.D**

2 9. As detailed previously, Hilton Casitas is on a January-
3 December fiscal year. Adopting an annual budget before the fiscal year end and
4 fully complying with ARS §33-1243.D is hardly difficult or burdensome for the
5 Hilton Casitas' board to implement.

6 10. In ¶5 of their January 18, 2017 answer, the Defendants admit
7 that the only board meeting prior to the March 31, 2016 annual meeting was held
8 on February 16, 2016. The notice and agenda for that meeting was emailed by
9 the HOA's agent on February 15, 2016 (Ex. 11). The agenda did not list the
10 board's consideration or adoption of the annual budget as required by ARS §33-
11 1248.E:

12 ARS §33-1248.E. It is the policy of this state as reflected
13 in this section that all meetings of a condominium,
14 whether meetings of the unit owners' association or
15 meetings of the board of directors of the association, be
16 conducted openly and that notices and agendas be
17 provided for those meetings that contain the information
18 that is reasonably necessary to inform the unit owners of
19 the matters to be discussed or decided and to ensure that
20 unit owners have the ability to speak after discussion of
21 agenda items, but before a vote of the board of directors
22 is taken. Toward this end, any person or entity that is
 charged with the interpretation of these provisions shall
 take into account this declaration of policy and shall
 construe any provision of this section in favor of open
 meetings. (Emphasis added).

23 Without Mr. Bengson, as HOA president noticing the adoption
24 of the budget, none of the casita owners would have known to attend in order to
25 listen to the board's deliberations to know what the budget contained, and then be
26 able to comment on the budget prior to the board's vote to adopt the budget. In
27 fact, the board could not and did not adopt the 2016 budget at that meeting, nor
28 was it discussed as proven by the Hilton Casitas' own minutes, and Mr. Bengson

1 willfully chose to violate of the Judicial Order.

2 11. In ¶15 of their January 18, 2017 answer, the Defendants denied
3 the Plaintiff's allegation in the complaint that Hilton Casitas did not adopt a budget
4 at the February 16, 2016 board meeting. Mr. Bengson in his January 5, 2017
5 email to the Plaintiff (Ex. 12) also falsely contended that the board had adopted a
6 budget at the February 16, 2016 board meeting.

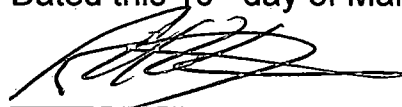
7 The Defendants' minutes/notes of the February 16, 2016 board
8 meeting (Ex. 13) (which was not disclosed until February 24, 2017) show that no
9 discussion or action was taken to adopt a 2016 budget. Thus Mr. Bengson's
10 statement to the contrary is false and intended to mislead the Court in order to
11 escape the results of his decision not to comply with the Judicial Order which
12 required him to initiate the budget approval process consistent with ARS §33-
13 1243.D.

14 **IV. CONCLUSION**

15 It is indisputable that this Court has jurisdiction over this matter. The fact
16 the Defendants' previous attorney did not raise a lack of jurisdiction claim at the
17 January 27, 2017 hearing to show cause, underscores the frivolousness of their
18 untimely baseless motion to dismiss. It is clear that Hilton Casitas violated the
19 Judicial Order of the Administrative Tribunal, and that violation is the result of the
20 willful, wanton or at least the negligent misconduct of Mr. Michael Bengson, Hilton
21 Casitas president, who knowingly and willfully chose not to comply with the
22 Judicial Order. Therefore Both Hilton Casitas and Mr. Bengson violated the
23 Administrative Tribunal's order to comply with ARS §33-1243.D.

24 Accordingly the Court should deny the Defendants' motion to dismiss and
25 re-order an evidentiary hearing.

26 Dated this 10th day of March, 2017.

27 

28 R. L. Whitmer

1 ORIGINAL filed this
2 10th day of March, 2017, with the Court;

3 and a COPY emailed this same date to:

4 Augustus Shaw, and Nicole Payne
5 Shaw & Lines Law Firm
6 4523 E. Broadway Rd.
7 Phoenix, AZ 85040

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| Exhibit No. | Description |
|-------------|---|
| 1 | Arizona Office of Administrative Hearing's Guide for Homeowners |
| 2 | Administrative Law Judge Decision No. 14F-H1415004-BFS |
| 3 | August 22, 2016 Hilton Casitas Board Email |
| 4 | 2006 Safeguard Security Agreement |
| 5 | 2016 Board Meeting Notices and Agendas |
| 6 | February 20, 2017 Potocki Email with 2016 Financial Worksheet |
| 7 | Section 8.2 of the Declaration of Horizontal Property Regime for Hilton Casitas |
| 8 | Section 1.4 of the Declaration of Horizontal Property Regime for Hilton Casitas |
| 9 | 2016 Billing Records for Legal Services from Robert Anderson |
| 10 | 2016 Annual Budget for Hilton Casitas with Plaintiff's handwritten analysis |
| 11 | Emailed February 16, 2016 Board Meeting Notice & Agenda |
| 12 | January 5, 2017 M. Bengson Email to R. L. Whitmer |
| 13 | Minutes/notes of the February 16, 2016 board meeting |

Exhibit 1



Homeowner Petitions Against An Association ¹

By Cliff J. Vanell

Note: OAH is committed to fairness and making hearings accessible to all. This article is part of a series of [informational articles](#) to educate the public and parties who appear before us about the hearing process and how to better present their cases. The following article may be found at OAH's website at www.azoah.com along with all previous articles published in the OAH Newsletter.

Overview

In Laws 2006, Chapter 324, the Arizona Legislature created a revolutionary system of adjudication of disputes between homeowners ² and their associations as an alternative to filing an action in court. Filing a petition with the Department of Fire, Building and Life Safety, the means by which such a matter is brought before the Office of Administrative Hearings (OAH), is a less costly and faster method of resolving disputes. Harnessing the advantages of streamlined procedures and a fast track which has proven itself since January 1996, disputes are resolved at OAH in generally less than 90 days. The OAH Administrative Law Judges have a great deal of leeway to consider evidence and to craft pre-hearing orders so as to maximize efficiency. However, there are costs to the process, some apparent, others less so.

There is an immediate cost to the homeowner in the nature of a filing fee.³ Defending even a non-meritorious petition can be costly for an association, and the expense is ultimately borne by the association members, including the homeowner, through assessments. A homeowner will be reimbursed the filing fee by the association only if the homeowner is determined by the Administrative Law Judge to be the prevailing party. The homeowner therefore has an immediate interest in filing a valid petition, and one that can be proven. An unsubstantiated or invalid petition will result in the loss of the filing fee. Likewise, the association has an economic interest in evaluating the homeowner's petition to determine to what extent the alleged facts are really in dispute and whether the allegations have merit. What follows is offered in the way of a checklist to guide both homeowner and association.

Homeowner

1. Do I have a valid petition?

- **Am I alleging a violation of a statute in Title 33 or the community documents?**

Only disputes that allege a violation of the provisions of A.R.S. Title 33 Chapter 9 (condominium associations) or Chapter 16 (planned community associations), or the provisions of the condominium or planned community documents can be heard by the OAH. For example, if the association is required to provide 24 hours notice of a Board meeting according to the association governing documents, and held a meeting without doing so, one would have a valid petition. Allegations of criminal acts, libel, slander, etc. which constitute violations of the criminal statutes of Title 13, or which constitute civil torts are not within the jurisdiction of the OAH.

- **Is the violation by the association?**

The petition must deal with a dispute between a homeowner and a condominium or planned community association. Disputes between two homeowners or with an individual board member of an association cannot be heard by the OAH.

- **Is it your dispute?**

A homeowner has no standing to pursue a dispute on behalf of another homeowner. For example, if another homeowner is aggrieved by the denial of an architectural modification in violation of the association guidelines, only the aggrieved homeowner may bring a petition against the association.

- **Is it a current dispute?**

There must be a current dispute. For example, if board meetings were held without notice but the practice has now been conformed to notice requirements and prior actions taken in violation of the notice requirements subsequently ratified, there may have been a technical violation of the

association's governing documents, but it is no longer in dispute. Another way to look at it is to ask yourself whether a remedy can be fashioned by the Administrative Law Judge? If there is no remedy, or the situation has already been remedied, it is probably not a current dispute.

• **Has the dispute been previously adjudicated?**

If the petition item has been decided by a court or previously has been addressed in a hearing before the OAH, it cannot be revisited. OAH has no authority for contempt proceedings or enforcement of prior decisions. However, failure by a party to comply with a decision issued by the OAH may result in the other party seeking enforcement of the Administrative Law Judge's decision through a contempt of court proceeding in Superior Court

2. Can I prove my petition?

The homeowner bears the burden of proving the allegations of the petition. Therefore, it is incumbent on the homeowner to have evidence to substantiate each allegation in the petition. Alleging counts that were not proven at hearing will be taken into account when determining whether the homeowner was the prevailing party and is entitled to reimbursement of the filing fee. Limiting the petition to strong allegations with good evidence maximizes the chances of having the filing fee reimbursed.

3. Are my expectations realistic about what I can accomplish?

The availability of the OAH hearing process ideally should result in compliance with statutes and association documents without the need to file a petition. The possibility of civil penalties together with the relative ease of bringing an action can provide motivation for an association to take the necessary action to comply with the applicable statutes and/or governing documents.

On the other hand, the Administrative Law Judge has no power to undo the passage of time or undo hurt feelings. The Administrative Law Judge cannot order damages or restitution. Civil penalties are reserved for situations where it can be demonstrated that an association has acted punitively or in bad faith.

Association

1. Could the association have done a better job of communicating with the homeowner? If not in time to avoid a petition now, can a better job be done in the future?

Conflict is unavoidable. Credible dispute resolution systems at the association level can go a long way toward relieving tensions and fostering mutual trust. The best way to avoid a petition is to become aware of what the statutes and the community documents require. Associations should then either conform to them or follow the necessary procedures to change them.

2. Can the association rectify any deficiencies before the hearing?

Mistakes can occur, but many errors or omissions can be rectified. Doing so can avoid petitions being filed to compel such action. Correcting errors or omissions before hearing goes a long way toward streamlining the process and avoids expense to the association in the long run. Voluntarily rectifying errors may also avoid civil penalties as it demonstrates good faith.

3. Does the association have any valid defenses?

When a petition is filed, a response is required within 20 days. This is the time to begin examining the association's procedures to determine if the homeowner's points are well taken. Proceeding to hearing when there is no valid defense may factor into whether a civil penalty is appropriate.

4. Are there facts that can be agreed to?

Often the disagreement is not about the facts of the case so much as the interpretation of a statutory requirement or a provision of the association documents. If the association is willing to stipulate to a fact, proof of the fact then becomes unnecessary. This saves time and costs and allows the Administrative Law Judge to concentrate on the parties' arguments.

Conclusion

The OAH process provides a speedy and cost-effective method for resolving disputes that in the past might have taken years and tens of thousands of dollars in fees and costs. The filing fee creates economic incentive for a homeowner to bring meritorious petitions and potential civil penalties discourage vindictive behavior by an association. Unlike most litigation, these parties must continue to live with each other, literally. Associations that are diligent in acting

appropriately under the community documents and law and who communicate well with homeowners can avoid unnecessary expense and acrimony. Because the expenses associated with hearings, be it reimbursement of the filing fee or incurring attorneys fees and costs, are ultimately passed on to the homeowners, both parties' interests are inextricably linked. The OAH process provides fair, impartial, and prompt hearings, and, in a sense, is like the ideal health care provider - approachable, affordable, user-friendly. But no matter how much you may like your doctors, the best course is not to need them.

Footnotes

- 1. Although an association can also file a petition against a member, this article is written from the point of view of a homeowner bringing a petition.**
- 2. The term "homeowner" is used as a general term to include both homeowners and condominium owners.**
- 3. The filing fee pays for the costs of sustaining the hearings program.**

Author

Exhibit 2

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 R.L. Whitmer,
4 Petitioner,

No. 14F-H1415004-BFS

5 vs

6 Hilton Casitas Council of Co-Owners,
7 Respondent.

**ADMINISTRATIVE LAW JUDGE
DECISION**

8
9 **HEARING:** December 23, 2014, at 8:00 a.m.

10 **APPEARANCES:** R. L. Whitmer (hereinafter "Mr. Whitmer" or "Petitioner")
11 appeared on his own behalf. Hilton Casitas Council of Co-Owners (hereinafter "Hilton
12 Casitas" or "Respondent") was represented by Robert Anderson, Esq.

13 **ADMINISTRATIVE LAW JUDGE:** M. Douglas

14
15 Evidence and testimony were presented and the following Findings of Fact,
16 Conclusions of Law, and Recommended Order are made:

17 **FINDINGS OF FACT**

18 **Background and Procedure**

- 19 1. The Department of Fire, Building and Life Safety (the "Department") is authorized by
20 statute to receive Petitions for Hearings from members of homeowners' associations
21 and from homeowners' associations in Arizona.
22 2. Hilton Casitas is a homeowners' association located in Scottsdale, Arizona.
23 3. Petitioner owns a percentage of a residence in and is a member of Hilton Casitas.
24 4. Petitioner filed a petition with the Department alleging that Hilton Casitas had
25 violated the provisions of A.R.S. § 33-1243(D). Petitioner specifically alleged as
26 follows:

27 Mrs. Karatz has ignored A.R.S. § 33-1243(D) in overspending
28 more than the budgeted legal expenses in 2013 and 2014. The
29 2013 budget for legal was \$2,500 and 2014 was \$1,000 for a total
30 of \$3,500.00. Mrs. Karatz has misused her position as President
to spend over \$9,250 for legal expenses without proper
ratification.

1 5. Respondent's Answer to the Petition provided, in relevant part, as follows:

2 **There has been no violation of A.R.S. § 33-1243.**

3 The [Hilton Casitas] consists of twenty-nine (29) homes located
4 behind the Scottsdale Hilton. In large part, the majority of the
5 maintenance and management of the Casitas is taken care of by
6 the hotel. The Association adopts its proposed budget at the
7 annual meetings and adopted a proposed budget for 2013 at the
8 annual meeting. The proposed budget was insufficient because
9 Mr. Whitmer has made multiple legal challenges requiring the
10 Association's counsel to respond.

9 **TESTIMONY**

10 **Testimony of Michael Bengson**

11 6. Michael Bengson (hereinafter "Mr. Bengson") testified that he was elected to be a
12 member of the Board for Hilton Casitas in October 2014. Mr. Bengson stated that there
13 has been no Board meeting since October 15, 2014. Mr. Bengson testified that he
14 retained Respondent's counsel, Robert Anderson, Esq., as a friend to help Hilton
15 Casitas out. Mr. Bengson stated that he wanted to resolve the chaos that Hilton
16 Casitas was currently involved in. Mr. Bengson testified that Hilton Casitas' prior
17 counsel had resigned and that he felt it was imperative for Hilton Casitas to have legal
18 representation at the hearing.

19 7. Mr. Bengson testified that he had been a member of the association since May
20 2011. Mr. Bengson stated that there had not been a meeting of the Board since his
21 election to the Board on October 15, 2014. Mr. Bengson testified that the Board was
22 aware of the budget problems and intended to meet soon to adopt an amended budget.

23 8. Mr. Bengson testified that the amended budget would ratify the increased legal
24 expenses incurred by Hilton Casitas. Mr. Bengson stated that he and the new Board
25 wanted to "get everything on the right track."

26 **Testimony of Esther Sue Karatz**

27 9. Esther Sue Karatz (hereinafter "Mrs. Karatz") testified that she had previously been
28 president of the Board for Hilton Casitas. Mrs. Karatz stated that Hilton Casitas' prior
29 legal counsel was hired on January 31, 2013. Mrs. Karatz acknowledged that there
30 was no record of the Board's decision to retain legal counsel.

1 10. Mrs. Karatz testified that Hilton Casitas had suffered a computer crash and that
2 there were no records for meetings or actions of the Board for Hilton Casitas after
3 January 10, 2013, and that there were no records regarding the retention of Hilton
4 Casitas' prior legal counsel. Mrs. Karatz said that the majority of the Board approved
5 the hiring of the prior legal counsel by "a telephone vote."

6 11. Mrs. Karatz acknowledged that Hilton Casitas' legal fees in 2014, substantially
7 exceeded the amount of money that had been budgeted for legal fees in 2014. Mrs.
8 Karatz testified that the increased legal expenses were incurred because Petitioner had
9 filed two or three law suits against Hilton Casitas and that the law suits necessitated
10 increased legal fees. Mrs. Karatz stated that the increased legal fees had not been
11 anticipated by Hilton Casitas.

12 PROVISIONS OF LAW REFERENCED AT HEARING

13 1. A.R.S. § 33-1243(D) provides as follows:

14 Except as provided in the declaration, within thirty days after
15 adoption of any proposed budget for the condominium, the board
16 of directors shall provide a summary of the budget to all the unit
17 owners. Unless the board of directors is expressly authorized in
18 the declaration to adopt and amend budgets from time to time,
19 any budget or amendment shall be ratified by the unit owners in
20 accordance with the procedures set forth in this subsection. If
21 ratification is required, the board of directors shall set a date for a
22 meeting of the unit owners to consider ratification of the budget
23 not fewer than fourteen nor more than thirty days after mailing of
24 the summary. Unless at that meeting a majority of all the unit
25 owners or any larger vote specified in the declaration rejects the
26 budget, the budget is ratified, whether or not a quorum is present.
27 If the proposed budget is rejected, the periodic budget last ratified
28 by the unit owners shall be continued until such time as the unit
29 owners ratify a subsequent budget proposed by the board of
30 directors.

26 CONCLUSIONS OF LAW

27 1. A.R.S. § 41-2198.01 permits an owner or a planned community organization to
28 file a petition with the Department for a hearing concerning violations of planned
29 community documents or violations of statutes that regulate planned communities. That
30

1 statute provides that such petitions will be heard before the Office of Administrative
2 Hearings.

3 2. The burden of proof at an administrative hearing falls to the party asserting a
4 claim, right, or entitlement and the standard of proof on all issue in this matter is by a
5 preponderance of the evidence. See A.A.C. R2-19-119.

6 3. Proof by "preponderance of the evidence" means that it is sufficient to persuade
7 the finder of fact that the proposition is "more likely true than not." *In re Arnold and*
8 *Baker Farms*, 177 B.R. 648, 654 (9th Cir. BAP (Ariz.) 1994).

9 4. A.R.S. § 33-1243(D) provides that within thirty days after adoption of any
10 proposed budget for the condominium, the Board shall provide a summary of the budget
11 to all the unit owners and that unless the Board is expressly authorized in the
12 declaration to adopt and amend budgets from time to time, any budget or amendment
13 shall be ratified by the unit owners in accordance with the procedures set forth in this
14 subsection. Mrs. Karatz acknowledged that Hilton Casitas' legal fees in 2014 exceeded
15 the amount of money that had been budgeted for legal fees in 2014. Mr. Bengson
16 stated that there had not been a meeting of the Board since his election to the Board on
17 October 15, 2014. Mr. Bengson testified that the Board was aware of the budget
18 problems and intended to meet soon to adopt an amended budget. Mr. Bengson stated
19 that the amended budget would ratify the increased legal expenses incurred by Hilton
20 Casitas. Hilton Casitas has not ratified the increased expenses and adopted an
21 amended budget as required by applicable statute. This Tribunal concludes that Hilton
22 Casitas failed to comply with the applicable provisions of A.R.S. § 33-1243(D).

23 **RECOMMENDED ORDER**

24 In view of the foregoing, it is ORDERED that Petitioner be deemed the prevailing
25 party in this matter.

26 It is further ORDERED that Hilton Casitas shall fully comply with the applicable
27 provisions of A.R.S. § 33-1243(D) in the future.

28 It is further ORDERED that Hilton Casitas shall pay Petitioner his filing fee of
29 \$550.00, to be paid directly to Petitioner within thirty (30) days of this Order.

30 It is further ORDERED that no civil penalty shall be imposed in this matter.

Exhibit 3

R L Whitmer

Subject: Hilton Casitas Council of Homeowners - Rules and Regulations
Attachments: ATT00014.doc

On Thursday, August 25, 2016 1:44 PM, Evon Potocki <Evon@cpihoa.com> wrote:

Casita Owners,

Attached are the new "Rules and Regulations" for our community. The old "Rules and Regulations" have been replaced in its entirety by these new Rules and Regulations. The Board has also made changes to our Safeguard Security agreement. They are as follows:

- Monitoring of individual Casitas will terminate 10/01/2016. You may contact Safeguard direct if you would like to continue service individually at your expense. The plans start at \$35/month.
- Safeguard Patrol/vacation service will terminate 10/01/2016 as well. Again if the vacation service is important. You may contact Safeguard direct and they can let you know the costs etc.

Your next question should be: Will our monthly dues be going down?? The answer is "yes" in the long run. Let me tell you the 12-18-month plan:

- Install security cameras at the gates and at least looking down 2 streets.
- Having one management company to oversee all of the violations, finances, financial reports, and provide a Community website for owners to access all information such as Minutes of meetings, HOA financial reports, meeting information and dates.
- Repave our streets at the same time the hotel repaves their parking lot. This will be 12-18 months from now.

The savings from the Safeguard changes and management company changes will be used to build a reserve to pay for the paving and install the new security cameras. We will have those exact costs in the next 90 days. When the reserves are adequate to pay for these capital expenditures we will then reduce the monthly HOA dues to less than \$200/month!!!

The reserves and timing are also subject to our legal expenses. If we are assured these fees will be minimized, we can accomplish our goal sooner.

Please bear with us as we make these changes which will be positive for all of us in the long run.

Please let me know if you have any questions.

Best Regards-

On behalf of the Board of Directors-

Evon Potocki

Community Manager



Cornerstone Properties, Inc.

P.O. Box 62073
Phoenix, AZ 85082

Office: (602) 433-0331 x103

Fax: (602) 244-9214

E-Mail: evon@cpihoa.com

<http://www.cpihoa.com>

Exhibit 4



RESIDENTIAL & COMMERCIAL TECHNOLOGY INTEGRATION

CORPORATE OFFICE
16117 North 76th Street
Scottsdale, Arizona 85260

480-609-6200
TOLLFREE 800-426-6060
FAX 480-609-6222
www.safeguard.us

AZ CONTRACTORS LICENSE
ROC 095864 ROC 095865

HM LICENSE
#87397

May 19, 2006

Ms. Sue Crozier
President
Hilton Casitas Homeowners Association
(480) 607-1313 (Residence)

SUBJECT: PROPOSED MONTHLY FEE FOR "FULL SERVICES" BEING PERFORMED AT THE HILTON CASITAS GATED COMMUNITY

Dear Ms. Crozier:

As per our most recent telephone conversation, following you will find Safeguard's proposed monthly fee for "Full Services" being performed at the Hilton Casitas gated community:

BASED IN 29 HOMES

DALTON
\$1,140.45 Mobile patrol response to individual home alarm systems, "RED TAG VACATION" services and three (3) random mobile patrol tours of the community nightly, seven (7) days per week.
INDENT PRICE FOR FULL SERVICE IS \$125.00/MONTH

VS,
\$ 696.55 Monitoring of individual home alarm systems for fire, burglary and panic alarms.
1,131.55

29 HOMES
\$ 450.00 Clearance services, programming, vehicle access control and Safeguard service contract to maintain gates including parts and labor.
39.02/HOME
CHRIS G.

2 MONTH
\$ 435.00 Radio backup for individual home alarm systems.

PLUMBING
\$ 122.00 Safeguard service contract to maintain individual home alarm systems, including parts and labor.
\$85.98/MONTH OR \$1,031.76/YEAR/HOME
MAINTENANCE SERVICE AGREEMENT \$4.21/HOME/MONTH

\$2,844.00 Proposed monthly fee to be effective June 1, 2006.

PLATINUM PLAN FOR MAINTENANCE IS \$24.95/MONTH PER HOME
SAVINGS OF \$20.74/MONTH OR \$248.88/YEAR

D.C. WILL EXPLAIN ALL-SERVICE ACCOUNTS

As always, we appreciate your confidence and the opportunity of servicing your security needs.

Please authorize below indicating the Hilton Casitas Homeowners Association's acceptance of Safeguard's proposed monthly fee.

If you have any questions and / or concerns, please contact me at your earliest convenience.

Respectfully submitted,



Daniel S. Mierzwa, CSS, CPO
Director of Security Operations
(480) 609-6292 (Direct Office Number)
(480) 367-6541 (Direct Fax Number)

cc: File


Safeguard Security & Communications, Inc.
Approved as presented

By: 
Daniel S. Mierzwa

Title: Director of Security Operations

Date: 05-22-06

Hilton Casitas Homeowners Association
Accepted as presented:

By: 

Title: President / HOA

Date: 5/24/06

Exhibit 5

R L Whitmer

Subject: Scottsdale Hilton Casitas - Board Meeting Notice- (Change of Location!)

On Monday, February 15, 2016 3:40 PM, Evon Potocki <Evon@cpihoa.com> wrote:

Note: Change of Location!

BOARD OF DIRECTORS MEETING NOTICE

The Board of Directors meeting scheduled for:

Date: Tuesday February 16th, 2016.

Located: Scottsdale Hilton Ballroom

Time: 4:30pm

Agenda:

- Approve the last Board minutes
- Parking signs
- Noncompliance Issues
- Discuss the amended Declarations.
- Date for annual meeting and vote on the amended Declarations.
- Questions
- Adjourned

Homeowners are welcome to attend!

Thank you-

The Hilton Casitas Council of Homeowners

Evon Potocki
Community Manager



Cornerstone Properties, Inc.
P.O. Box 62073
Phoenix, AZ 85082

Office: (602) 433-0331 x103
Fax: (602) 244-9214
E-Mail: <mailto:evon@cpihoa.com>
<http://www.cpihoa.com/>

R L Whitmer

Subject: Board of Directors Open Meeting Notice 7/7

On Thursday, June 30, 2016 8:45 AM, Evon Potocki <Evon@cpihoa.com> wrote:

BOARD OF DIRECTORS MEETING NOTICE

**The Board of Directors open meeting
scheduled for:**

Date: Thursday July 7th, 2016.

Located: Hilton Hotel Boardroom

Time: 4:00pm

Agenda:

- Call meeting to order
- Read and approve prior minutes
- Discuss and vote on new rules and regulations
- Adjourn

Executive Session

- Delinquencies
- Adjourn

Homeowners are welcome to attend!

Thank you-

Evon Potocki
Community Manager



Cornerstone Properties, Inc.
P.O. Box 62073
Phoenix, AZ 85082

Office: (602) 433-0331 x103
Fax: (602) 244-9214
E-Mail: evon@cpihoa.com
<http://www.cpihoa.com>



Cornerstone Properties, Inc.
P.O. Box 62073
Phoenix, AZ 85082

Office: (602) 433-0331 x103
Fax: (602) 244-9214
E-Mail: evon@cpihoa.com
<http://www.cpihoa.com>

R L Whitmer

Subject: Hilton Casitas Council of Homeowners - Open Board Meeting
11/29/2016

On Tuesday, November 22, 2016 10:33 AM, Evon Potocki <Evon@cpihoa.com> wrote:

BOARD OF DIRECTORS MEETING NOTICE

**The Board of Directors open meeting
scheduled for:**

Date: Tuesday November 29th, 2016
Located: Sunset Board Room Hilton Hotel
Time: 9:00 a.m.

Agenda:

- Call meeting to order
- Review and approve prior meeting minutes
- Discuss and approve full time management
- Discuss security
- Discuss roads
- Open forum with owners and the Board
- Adjourn

Executive Session

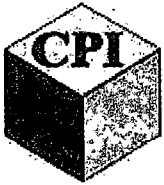
- Adjourn

Homeowners are invited to attend!

Best Regards-

(For the Board of Directors)

Evon Potocki
Community Manager



Cornerstone Properties, Inc.

P.O. Box 62073
Phoenix, AZ 85082

Office: (602) 433-0331 X103

Fax: (602) 244-9214

E-Mail: evon@cpioha.com

<http://www.cpioha.com>

Exhibit 6

Scottsdale Hilton Casita Worksheet
2016 Expenses

EXPENSES:
Note - Landlease paid separately

| | Jan | Feb | Mar | Apr | May | Jun | July | Aug | Sept | Oct | Nov | Dec | 2015 |
|---|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|---------------|-------------|---------------|
| Projected Revenues @ \$289.04 per unit | \$ 8,382.16 | \$ 8,382.16 | \$ 8,382.16 | \$ 8,382.16 | \$ 8,382.16 | \$ 8,382.16 | \$ 8,382.16 | \$ 8,382.16 | \$ 8,382.16 | \$ 8,382.16 | \$ 8,382.16 | \$ 8,382.16 | \$ 100,585.92 |
| <i>(assuming all pay)</i> | | | | | | | | | | | | | |
| Expenses: | | | | | | | | | | | | | |
| City of Scottsdale- Sewer | \$ 942.16 | \$ 942.16 | \$ 942.16 | \$ 942.16 | \$ 942.16 | \$ 942.16 | \$ 866.48 | \$ 866.48 | \$ 866.48 | \$ 866.48 | \$ 866.48 | \$ 866.48 | \$ 10,851.84 |
| State Farm - Insurance | | | \$ 1,595.00 | | | | | | | | | | \$ 1,595.00 |
| Hortzon - Landscapers | \$ 480.00 | \$ 480.00 | \$ 480.00 | \$ 480.00 | \$ 862.00 | \$ 480.00 | \$ 1,295.00 | \$ 480.00 | \$ 480.00 | \$ 480.00 | \$ 480.00 | \$ 480.00 | \$ 8,644.15 |
| Safeguard Security Svc | \$ 2,844.00 | \$ 2,844.00 | \$ 2,844.00 | \$ 2,844.00 | \$ 2,844.00 | \$ 2,844.00 | \$ 2,844.00 | \$ 2,844.00 | \$ 2,844.00 | \$ 1,146.55 | \$ 1,146.55 | \$ 1,146.55 | \$ 29,035.65 |
| Street Sweepers | | | | | | | | | | | | | \$ 500.00 |
| CenturyLink | | 70.09 | | | 284.29 | | 69.50 | 71.71 | 71.49 | 70.14 | 35.55 | 40.71 | \$ 478.87 |
| APS | \$ 44.96 | | \$ 80.26 | \$ 38.22 | \$ 40.00 | \$ 43.75 | \$ 40.51 | \$ 40.68 | \$ 37.26 | \$ 36.97 | \$ 35.55 | \$ 40.71 | \$ 478.87 |
| HCA Reserve | \$ 1,648.36 | \$ 1,648.36 | \$ 1,648.36 | \$ 1,648.36 | \$ 1,648.36 | \$ 1,648.36 | \$ 1,648.36 | \$ 1,648.36 | \$ 1,648.36 | \$ 3,345.81 | \$ 3,345.81 | \$ 3,345.81 | \$ 24,872.67 |
| Trash - Hotel | \$ 725.00 | \$ 725.00 | \$ 725.00 | \$ 725.00 | \$ 725.00 | \$ 725.00 | \$ 725.00 | \$ 725.00 | \$ 725.00 | \$ 725.00 | \$ 725.00 | \$ 725.00 | \$ 8,700.00 |
| Mgmt Fee - Hotel | \$ 1,015.00 | \$ 1,015.00 | \$ 1,015.00 | \$ 1,015.00 | \$ 1,015.00 | \$ 1,015.00 | \$ 1,015.00 | \$ 1,015.00 | \$ 1,015.00 | \$ 1,015.00 | \$ 1,015.00 | \$ 1,015.00 | \$ 12,180.00 |
| Total Expenses | \$ 7,699.48 | \$ 7,724.61 | \$ 9,329.78 | \$ 7,692.74 | \$ 8,350.81 | \$ 7,698.27 | \$ 8,503.65 | \$ 7,791.23 | \$ 7,787.59 | \$ 7,785.95 | \$ 9,482.89 | \$ 7,789.00 | \$ 97,636.20 |
| Profit/Loss (Projected Revenues less Expenses) | \$ 682.68 | \$ 657.55 | \$ (947.62) | \$ 689.42 | \$ 31.35 | \$ 683.89 | \$ (121.69) | \$ 590.93 | \$ 594.57 | \$ 596.21 | \$ (1,100.73) | \$ 593.16 | \$ 2,949.72 |

| | Original Budget | Per Casita | 2016 Expenses | Per Casita | Variance |
|--------------------------|-----------------|------------|---------------|------------|----------|
| City of Scottsdale | \$ 5.40 | \$ 31.18 | \$ 31.18 | \$ 25.78 | |
| State farm | \$ 5.12 | \$ 4.58 | \$ 4.58 | \$ (0.54) | |
| Hortzon - Grounds | \$ 15.00 | \$ 24.84 | \$ 24.84 | \$ 9.84 | |
| Safeguard | \$ 125.00 | \$ 83.44 | \$ 83.44 | \$ (41.56) | |
| ACE - street sweeping | \$ 3.00 | \$ 1.44 | \$ 1.44 | \$ (1.56) | |
| APS - elec | | \$ 2.24 | \$ 2.24 | \$ - | |
| HCA - increased May 2016 | | \$ 1.38 | \$ 1.38 | \$ (74.14) | |
| Trash - Hotel | \$ 25.00 | \$ 71.47 | \$ 71.47 | \$ - | |
| Mgmt Fee - Hotel | \$ 289.04 | \$ 35.00 | \$ 35.00 | \$ - | |
| | | \$ 289.04 | \$ 289.04 | \$ (8.48) | |

Extra Expenses:

Horizon (in addition to monthly maintenance of \$480)

| | |
|---------------------------------------|-------------------|
| may - trim palms | \$ 372.00 |
| July - trim 18 palms | \$ 815.00 |
| Nov - winter lawn, irrigation repairs | \$ 847.15 |
| Nov - repair to casita entrance curb | \$ 850.00 |
| Total | \$2,884.15 |

Exhibit 7

Unofficial Document

When recorded return to :
Paul Westworth
Snell & Wilmer
400 Security Building
Phoenix, Arizona

DKT 9448 PAGE 790

02-R MISC.
120139

DECLARATION OF HORIZONTAL PROPERTY REGIME

for

HILTON CASITAS

STATE OF ARIZONA }
County of Maricopa } ss

I hereby certify that the within instrument was filed and recorded at request of

IRASANELCA TITLE INSURANCE COMPANY

BOOK 2272-D-12

in Docket 9448

pages 790-846

Witness my hand and official seal the day first above written.

Notary Public

County of Maricopa
By *[Signature]*
Notary Public

70

DKT 9448 PAGE 816

the provisions set forth in Section 8.3 herein. Any Casita Owner may obtain, at his own expense, such additional insurance coverage as he may deem necessary or appropriate.

ARTICLE VIII

COMMON EXPENSES

Section 8.1. Personal Obligation: All charges, costs and expenses whatsoever incurred by the Council for or in connection with the administration of the Property, including but not limited to operation of the Property and maintenance, repair, replacement and restoration of the General Common Elements, any additions and alterations thereto, all labor, services, materials, supplies and equipment therefor, and all liability whatsoever for loss or damage arising out of or in connection with the General Common Elements or any accident or fire on the General Common Elements or any nuisance thereon shall constitute common expenses of the Property. The Casita Owners shall be personally and severally liable for their respective proportionate shares (as determined in accordance with Section 3.6 hereof) of the common expenses.

Section 8.2. Establishment and Basis of Common Expenses:
The Owner of each Casita, for himself, his heirs, executors,

DKT 9448 PAGE 817

administrators, successors and assigns covenants and agrees that each Casita shall be subject to an annual assessment in an amount to be determined by the Council, which shall be such Casita's pro rata share (as determined in Section 3.6 hereof) of the following aggregate costs:

(1) The actual cost to the Council of all taxes, insurance, repairs, maintenance, management and related charges and expenses necessary to carry out the purposes of the Council as set forth in this Declaration, the Bylaws, and any Articles of Incorporation.

(2) Such sum as the Council shall determine to be fair and prudent for the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, management and administrative costs and other charges as specified herein.

(3) The actual cost to the Council of all expenses and related charges necessary to carry out any construction of additional buildings and structures pursuant to Section 6.9 herein.

The pro rata share of the annual common expenses chargeable to each Casita shall be collected by the Council at monthly, semi-annual or such other regular intervals (but not less than once a year) as may be fixed by the Council.

DKT 9448-2-818

Section 8.3. Insurance Premiums and Expenses:

(a) Except only as provided in Section 8.3(b) herein, all charges, costs and expenses whatsoever incurred by the Council for or in connection with the purchase of all insurance policies provided for in Section 7.1 herein shall constitute common expenses of the Property (as provided in Section 8.1 herein) to be collected by the Council from each Casita Owner in the manner provided for in Section 8.2 herein.

(b) Notwithstanding any other provision in this Declaration, the Council shall have the authority to allocate such expenses attributable to the cost of insurance among the Owners on such other basis that the Council determines will result in fair and equitable treatment of the Owners. Any such allocation of insurance costs (which allocation may be unequal among the Owners) shall be computed solely by the Council, and the Council may rely upon the insurable values established by the insurer in making its determination for equitable allocation among all the Owners.

(c) If the Council shall be unable to make a determination as contemplated in Section 8.3(b)

DKT 9448 PAGE 819

herein, then the expenses attributable to the cost of insurance shall be allocated by the Council among the Owners in the manner provided in Section 8.2 herein.

Section 8.4. Refund Obligation: The Council shall not be obligated to spend in any year all the assessments received by it in such year, and may carry forward as surplus any balances remaining. Nor shall the Council be obligated to apply any such surpluses to the reduction of the amount of the annual assessment in the succeeding year, but may carry forward from year to year such surplus as the Council in its discretion may determine to be desirable for the greater financial security of the Council and the effectuation of its purposes.

Section 8.5. Waiver of Use: No Owner may exempt himself from liability for his contribution toward the common expenses, or exempt himself from membership in the Council, by waiver or abandonment of the use or enjoyment of any of the General Common Elements or his Unit.

ARTICLE IX

COMMON EXPENSES CONSTITUTE LIEN

Section 9.1. Creation of Lien: All sums assessed by the Council and all expenses incurred in enforcing the collection

Exhibit 8

Unofficial Document

When recorded return to :
Paul Wentworth
Snell & Wilmer
400 Security Building
Phoenix, Arizona

CH. 9448 PAGE 790

02-R MISC.
129139

DECLARATION OF HORIZONTAL PROPERTY REGIME

for

HILTON CASITAS

STATE OF ARIZONA }
County of Maricopa } ss

I hereby certify that the within instrument was filed and recorded at request of

TRANSAMERCA TITLE INSURANCE COMPANY

WM 2272-D 12

in District 9448

Case No. 790-846

Witness my hand and official seal this 22nd day of May 1972.

Notary Public

E. Court, Esq.
Et. [Signature]

70

Section 1.4. "Council" shall mean the Council of Co-owners as defined in the Horizontal Property Regime Act, and consists of all of the Owners of the Casitas.

Section 1.5. "Declaration" shall mean this Declaration of Horizontal Property Regime, and any and all amendments hereof or supplements hereto.

Section 1.6. "General Common Elements" shall consist of (a) Tracts 1 to 29 inclusive as shown on the Plat of Hilton Casitas, (b) the concrete foundations and concrete slabs of the Building and patio slabs situated on Tracts 1 to 29 inclusive, and (c) Tracts A through G, including any and all private roadways, guard house, walls, landscaped areas and other amenities located thereon. However, each Owner of a Unit shall have an easement for the exclusive use of the numbered tract on which his Unit is located.

Section 1.7. "Limited Common Elements" consist of the block work and partitions separating Units.

Section 1.8. "Owner" shall mean the record owner of a Casita. Except as otherwise indicated in this Declaration, the term "Owner" shall include the Corporation in its capacity as the owner of an unsold Casita (i.e., the owner of an unsold Unit located in a space which has not been subleased, together with a fractional interest in the General Common Elements).

Exhibit 9

| Hilton Casitas 2016 Legal Expenses | | | |
|------------------------------------|--|--------------------|--------------|
| Clark Hill Invoices | | Monthly | Year to date |
| February 16, 2016 | | \$97.50 | \$97.50 |
| March 24, 2016 | | \$2,145.00 | \$2,242.50 |
| April 28, 2016 | | \$5,037.50 | \$7,280.00 |
| May 28, 2016 | | \$455.00 | \$7,735.00 |
| June 29, 2016 | | \$812.50 | \$8,547.50 |
| July 28, 2016 | | \$2,730.00 | \$11,277.50 |
| August 29, 2016 | | \$260.00 | \$11,537.50 |
| September 27, 2016 | | \$694.70 | \$12,232.20 |
| September 27, 2016 | | \$4,095.00 | \$16,327.20 |
| October 28, 2016 | | \$257.00 | \$16,584.20 |
| November 15, 2016 | | \$715.00 | \$17,299.20 |
| November 15, 2016 | | \$1,155.00 | \$18,454.20 |
| December 8, 2016 | | \$595.00 | \$19,049.20 |
| TOTAL | | \$19,049.20 | |

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
March 24, 2016
INVOICE # 645220
Page 2

DETAILED DESCRIPTION OF SERVICES

| | | | | |
|----------|---|------------|------|-----------|
| 02/11/16 | Review comments to Declaration from Board members and Reply. | R Anderson | .90 | 292.50 |
| 02/12/16 | Review and revise Declaration. | R Anderson | 2.80 | 910.00 |
| 02/16/16 | Review Declaration and bylaws; attend Homeowners Association Board meeting (No Charge). | R Anderson | 3.20 | NO CHARGE |
| 02/24/16 | Revise Declaration per Board's comments (2.2); telephone call to M. Bengson regarding changes to Declaration (.3). (Discount 1.0 hours from total). | R Anderson | 1.50 | 487.50 |

\$1,690.00

TIMEKEEPER SUMMARY

| | | | | |
|-----|--------------------|---------------|------------|------------|
| RGA | Robert G. Anderson | 3.20 hours at | \$0.00 = | \$0.00 |
| RGA | Robert G. Anderson | 5.20 hours at | \$325.00 = | \$1,690.00 |

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 649885

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

April 28, 2016
Client: 48320
Matter: 179849

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through March 31, 2016

| | |
|-----------------|------------|
| Total Services: | \$2,892.50 |
| INVOICE TOTAL | \$2,892.50 |

| | | |
|----------|--------|-----------|
| 12/16/15 | 631943 | \$357.50 |
| 02/16/16 | 639112 | \$97.50 |
| 03/24/16 | 645220 | \$1690.00 |

Outstanding Balance:

\$2,145.00

TOTAL AMOUNT DUE

\$5,037.50

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute

April 28, 2016

INVOICE # 649885

Page 2

DETAILED DESCRIPTION OF SERVICES

| | | | | |
|----------|--|------------|------|-----------|
| 03/10/16 | Review memorandum regarding voting for Board (.1); review condominium statutes and reply to B. Pollock, review issue of short term leases (.2); telephone call to M. Bengson regarding lease issue on Declaration, Whitmer's recent actions, HOA meeting, revision of rules and regulations (.8); research case law on amending Declaration, scope of amendment, (.9); review original declaration regarding rental issue and new Declaration (.7); memorandum to S. Pollock regarding amendment and fines for violating rules and regulations (.2). | R Anderson | 2.90 | 942.50 |
| 03/14/16 | Telephone call from S. Pollock regarding Declaration and leasing issue (No Charge). | R Anderson | .20 | NO CHARGE |
| 03/15/16 | Review and revise Declaration in final format. | R Anderson | 1.00 | 325.00 |
| 03/15/16 | Telephone call to M. Bengson regarding meeting (.2); review Declaration and make revisions to Declaration (.5). | R Anderson | .70 | 227.50 |
| 03/21/16 | Telephone call from M. Bengson regarding annual meeting (No Charge). | R Anderson | .20 | 65.00 |

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
 Condominium Reorganization and Whitmer Dispute
 April 28, 2016
 INVOICE # 649885
 Page 3

| | | | | |
|----------|--|------------|------|--------|
| 03/23/16 | Prepare letter to members, Notice of Meeting and Agenda, review Absentee ballot. | R Anderson | 1.30 | 422.50 |
| 03/24/16 | Telephone call to M. Bengson regarding rules and regulations (.2); review memorandum from E. Sluder (.2). | R Anderson | .40 | 130.00 |
| 03/28/16 | Telephone call from S. Pollock regarding issues with violation of rules and regulations. | R Anderson | .40 | 130.00 |
| 03/29/16 | Review letter from attorney R. Porter regarding new Declaration. | R Anderson | .30 | 97.50 |
| 03/30/16 | Review emails and prepare for meeting (.5); telephone call from Mike regarding corporation not ready to ratify new declaration, rules and regulations, issues at meeting (.8). | R Anderson | 1.30 | 422.50 |
| 03/31/16 | Review email from Cameron and Lamar regarding issues with Declaration (.1); telephone call to Mike B. regarding agenda, Cameron letter (.2); review email from Pollock (.1); Attend HOA meeting (2.1 No Charge). | R Anderson | .40 | 130.00 |

\$2,892.50

TIMEKEEPER SUMMARY

| | | | | |
|-----|--------------------|---------------|------------|------------|
| RGA | Robert G. Anderson | 0.20 hours at | \$0.00 = | \$0.00 |
| RGA | Robert G. Anderson | 8.90 hours at | \$325.00 = | \$2,892.50 |

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 655227

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

May 28, 2016
Client: 48320
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through April 30, 2016

| | |
|-----------------|----------|
| Total Services: | \$455.00 |
| INVOICE TOTAL | \$455.00 |

| | | |
|----------|--------|-----------|
| 12/16/15 | 631943 | \$357.50 |
| 02/16/16 | 639112 | \$97.50 |
| 03/24/16 | 645220 | \$1690.00 |
| 04/28/16 | 649885 | \$2892.50 |

Outstanding Balance: \$5,037.50

TOTAL AMOUNT DUE \$5,492.50
=====

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 660064

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

June 29, 2016
Client: 48320
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through May 31, 2016

Total Services: \$812.50

INVOICE TOTAL \$812.50

| | | |
|----------|--------|-----------|
| 12/16/15 | 631943 | \$357.50 |
| 02/16/16 | 639112 | \$97.50 |
| 03/24/16 | 645220 | \$1690.00 |
| 04/28/16 | 649885 | \$2892.50 |
| 05/28/16 | 655227 | \$455.00 |

Outstanding Balance: \$5,492.50

TOTAL AMOUNT DUE

\$6,305.00
=====

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
June 29, 2016
INVOICE # 660064
Page 2

DETAILED DESCRIPTION OF SERVICES

| | | | | |
|----------|--|------------|------|--------|
| 05/10/16 | Review letter from L. Whitmer regarding assessments. | R Anderson | .20 | 65.00 |
| 05/18/16 | Telephone call to M. Bengson regarding new Rules and Regulations; | R Anderson | .40 | 130.00 |
| 05/19/16 | Telephone call from M. Bengson regarding Witmer lawsuit and rules and regulations. | R Anderson | .40 | 130.00 |
| 05/25/16 | Work on rules and regulations. | R Anderson | 1.50 | 487.50 |

\$812.50

TIMEKEEPER SUMMARY

RGA Robert G. Anderson 2.50 hours at \$325.00 = \$812.50

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 664445

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

July 28, 2016
Client: 48320
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through June 30, 2016

Total Services: \$2,730.00

INVOICE TOTAL \$2,730.00

| | | |
|----------|--------|----------|
| 05/28/16 | 655227 | \$455.00 |
| 06/29/16 | 660064 | \$812.50 |

Outstanding Balance: \$1,267.50

TOTAL AMOUNT DUE \$3,997.50

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
July 28, 2016
INVOICE # 664445
Page 2

DETAILED DESCRIPTION OF SERVICES

| | | | | |
|----------|---|------------|------|--------|
| 06/02/16 | Telephone call from M. Bengson regarding rules and regulations. | R Anderson | .20 | 65.00 |
| 06/03/16 | Prepare complaint for judicial foreclosure of Unit 21. | R Anderson | 2.10 | 682.50 |
| 06/21/16 | Review and revise Complaint for foreclosure on Unit 21 (.5); Review records of Maricopa County on other liens (.4); Prepare Verification (.2). | R Anderson | 1.10 | 357.50 |
| 06/22/16 | Review late fee calculations (.2); Revise Whitmer Complaint (.2); Telephone call to M. Bergson regarding late fees (.2); Review bylaws and declaration regarding board resolution for late fee (3.). | R Anderson | .90 | 292.50 |
| 06/22/16 | Prepare Complaint for Schaffer delinquency (1.1); Review condition of title to Eli property (.5). | R Anderson | 1.60 | 520.00 |
| 06/23/16 | Review memorandum from Corey (.1); Review Whitmer Complaint and allegations (.3); Review original Declaration (.4); Review new proposed declaration (.4); Memorandum to Corey (.8); Review prior judgment (.3). | R Anderson | 2.30 | 747.50 |
| 06/24/16 | Prepare Complaint for filing. | R Anderson | .20 | 65.00 |

\$2,730.00

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
July 28, 2016
INVOICE # 664445
Page 3

TIMEKEEPER SUMMARY

| | | | | |
|-----|--------------------|---------------|------------|------------|
| RGA | Robert G. Anderson | 8.40 hours at | \$325.00 = | \$2,730.00 |
|-----|--------------------|---------------|------------|------------|

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 669279

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

August 29, 2016
Client: 48320
Matter: 179849

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through July 31, 2016

Total Services: \$260.00

INVOICE TOTAL \$260.00

| | | |
|----------|--------|-----------|
| 05/28/16 | 655227 | \$455.00 |
| 06/29/16 | 660064 | \$812.50 |
| 07/28/16 | 664445 | \$2730.00 |

Outstanding Balance: \$3,997.50

TOTAL AMOUNT DUE

\$4,257.50
=====

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
August 29, 2016
INVOICE # 669279
Page 2

DETAILED DESCRIPTION OF SERVICES

| | | | | |
|----------|--|------------|-----|-----------|
| 07/18/16 | TT First American re status of title reports (NO CHARGE). | R Anderson | .20 | NO CHARGE |
| 07/26/16 | Review memorandum from Mike Bengson, review proposed changes to Rules and Regulations, review new Arizona Statutes to take effect August 1, 2016. | R Anderson | .80 | 260.00 |

\$260.00

TIMEKEEPER SUMMARY

| | | | | |
|-----|--------------------|---------------|------------|----------|
| RGA | Robert G. Anderson | 0.20 hours at | \$0.00 = | \$0.00 |
| RGA | Robert G. Anderson | 0.80 hours at | \$325.00 = | \$260.00 |

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 673736

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

September 27, 2016
Client: 48320
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through August 31, 2016

Total Services: \$195.00

FOR EXPENSES INCURRED OR ADVANCED:

Service of Process \$499.70

Total Expenses: \$499.70

INVOICE TOTAL \$694.70

TOTAL AMOUNT DUE \$694.70
=====

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
September 27, 2016
INVOICE # 673736
Page 2

DETAILED DESCRIPTION OF SERVICES

| | | | | |
|----------|--|------------|-----|--------|
| 08/23/16 | Review revised Rules and Regulations; review lease form; telephone call from M. Bergson regarding Rules and Regulations. | R Anderson | .60 | 195.00 |
|----------|--|------------|-----|--------|

\$195.00

TIMEKEEPER SUMMARY

| | | | |
|-----|--------------------|--------------------------|----------|
| RGA | Robert G. Anderson | 0.60 hours at \$325.00 = | \$195.00 |
|-----|--------------------|--------------------------|----------|

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 683075

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

November 15, 2016
Client: 48320
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through October 31, 2016

| | | | |
|----------------------|--------|----------|-------------------|
| Total Services: | | | \$715.00 |
| INVOICE TOTAL | | | \$715.00 |
| 09/27/16 | 673736 | \$694.70 | |
| Outstanding Balance: | | | <u>\$694.70</u> |
| TOTAL AMOUNT DUE | | | <u>\$1,409.70</u> |

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
November 15, 2016
INVOICE # 683075
Page 2

DETAILED DESCRIPTION OF SERVICES

| | | | | |
|----------|--|------------|------|--------|
| 10/06/16 | Telephone conference with Mike regarding Answer to Compliant regarding Safeguard; review Summary of Safeguard Contract and Benefits to Association; prepare Answer to Complaint. | R Anderson | 1.50 | 487.50 |
| 10/07/16 | Continue to prepare of answer to Whitmer Complaint; telephone conference with Mike regarding allegations by Whitmer regarding use of Safeguard Services. | R Anderson | .70 | 227.50 |

\$715.00

TIMEKEEPER SUMMARY

| | | | |
|-----|--------------------|--------------------------|----------|
| RGA | Robert G. Anderson | 2.20 hours at \$325.00 = | \$715.00 |
|-----|--------------------|--------------------------|----------|

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, Arizona 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

Invoice # 673740
September 27, 2016
Client: 48320
Matter: 306528

=====

RE: London, Colleen and Whitmer, R.L.

FOR SERVICES RENDERED through August 31, 2016

Total Services:

\$4,095.00

INVOICE TOTAL

\$4,095.00

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
London, Colleen and Whitmer, R.L.
September 27, 2016
INVOICE # 673740
Page 2

DETAILED DESCRIPTION OF SERVICES

| | | |
|----------|---|------|
| 08/04/16 | RGA Telephone call from M. Bengson regarding production of documents for Whitmer, short term rental issues, new legislation; review file; review Whitmer Motion to Dismiss and documents attached; prepare Response to Motion to Dismiss. | 2.90 |
| 08/05/16 | RGA Telephone call from M. Bengson regarding payment of delinquent assessments (No Charge). | .20 |
| 08/08/16 | RGA Review briefs and Court Judgments received from Corey Hill, continue to work on Response to Whitmer Motion, telephone call to M. Bengson regarding additional delinquency for July and August. | 2.70 |
| 08/09/16 | MSS Discussion with R. Anderson regarding effective and proper arguments for response to motion to dismiss. | .70 |
| 08/09/16 | RGA Continue preparation of Response to Motion to Dismiss, telephone call to M. Bengson regarding payment by Whitmer. | 3.50 |
| 08/18/16 | RGA Review letter from Whitmer regarding review of books and records, telephone call to M. Bengson regarding Whitmer request for records and response. | .60 |
| 08/19/16 | RGA Review correspondence from B. Porter, attorney for Whitmer regarding Board Meeting. | .20 |
| 08/25/16 | RGA Review Whitmer's Reply to HOA's Response to Motion to Dismiss; telephone call to M. Bengson regarding Reply. | .70 |
| 08/30/16 | RGA Review memo to Whitmer and attachments; review memo from Whitmer to Mike regarding Safeguard overcharges and offset. | .40 |

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
London, Colleen and Whitmer, R.L.
September 27, 2016
INVOICE # 673740
Page 3

\$4,095.00

TIMEKEEPER SUMMARY

| | | | | |
|-----|--------------------|----------------|------------|------------|
| MSS | Mark S. Sifferman | 0.70 hours at | \$350.00 = | \$245.00 |
| RGA | Robert G. Anderson | 0.20 hours at | \$0.00 = | \$0.00 |
| RGA | Robert G. Anderson | 11.00 hours at | \$350.00 = | \$3,850.00 |

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 679335

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

October 28, 2016
Client: 48320
Matter: 306528

RE: London, Colleen and Whitmer, R.L.

FOR SERVICES RENDERED through September 30, 2016

Total Services:

\$245.00

FOR EXPENSES INCURRED OR ADVANCED:

Filing Fees

\$12.00

Total Expenses:

\$12.00

INVOICE TOTAL

\$257.00

09/27/16

673740

\$4095.00

Outstanding Balance:

\$4,095.00

TOTAL AMOUNT DUE

\$4,352.00

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
London, Colleen and Whitmer, R.L.
October 28, 2016
INVOICE # 679335
Page 2

DETAILED DESCRIPTION OF SERVICES

| | | |
|---|-----|----------|
| 09/23/16 RGA Review new complaint from Whitmer re Safeguard, TT Mike re new complaint. | .40 | |
| 09/26/16 RGA TF Mike Bergson re new complaint. | .30 | |
| | | \$245.00 |

TIMEKEEPER SUMMARY

| | | | |
|-----|--------------------|--------------------------|----------|
| RGA | Robert G. Anderson | 0.70 hours at \$350.00 = | \$245.00 |
|-----|--------------------|--------------------------|----------|

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 683076

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

November 15, 2016
Client: 48320
Matter: 306528

=====

RE: London, Colleen and Whitmer, R.L.

FOR SERVICES RENDERED through October 31, 2016

| | | | |
|----------------------|--------|-----------|-------------------|
| Total Services: | | | \$1,155.00 |
| INVOICE TOTAL | | | \$1,155.00 |
| 09/27/16 | 673740 | \$4095.00 | |
| 10/28/16 | 679335 | \$257.00 | |
| Outstanding Balance: | | | <u>\$4,352.00</u> |
| TOTAL AMOUNT DUE | | | <u>\$5,507.00</u> |

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
London, Colleen and Whitmer, R.L.

November 15, 2016

INVOICE # 683076

Page 2

DETAILED DESCRIPTION OF SERVICES

| | | |
|--------------|---|------|
| 10/10/16 RGA | Review and revise Complaint and file in Justice Court. | .30 |
| 10/11/16 RGA | Review Whitmer Application for Costs. | .20 |
| 10/17/16 RGA | Prepare response in Opposition of Defendants Application for Costs; telephone conference with M. Bengson regarding issues with Opposition to Application; copy of May delinquency notice, Justice Court Answer. | 2.60 |
| 10/18/16 RGA | Telephone conference with M. Bengson regarding notices to Whitmer, Answer to Justice Court Complaint. | .20 |

\$1,155.00

TIMEKEEPER SUMMARY

| | | | |
|-----|--------------------|--------------------------|------------|
| RGA | Robert G. Anderson | 3.30 hours at \$350.00 = | \$1,155.00 |
|-----|--------------------|--------------------------|------------|

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, Arizona 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

Invoice # 686637
December 8, 2016
Client: 48320
Matter: 306528

RE: London, Colleen and Whitmer, R.L.

FOR SERVICES RENDERED through November 30, 2016

Total Services: \$595.00

FOR EXPENSES INCURRED OR ADVANCED:

Filing Fees \$6.00

Total Expenses: \$6.00

INVOICE TOTAL \$601.00

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
London, Colleen and Whitmer, R.L.
December 8, 2016
INVOICE # 686637
Page 2

DETAILED DESCRIPTION OF SERVICES

| | | |
|----------|---|-----|
| 11/08/16 | RGA Telephone call from M. Bengson regarding response to Whitmer's letter challenging Board's Notice of Violation. | .30 |
| 11/16/16 | RGA Review letter from Whitmer regarding dispute of assessments and fines; telephone call to M. Bengson regarding response (No Charge). | .50 |
| 11/17/16 | RGA Review letter from Whitmer; review Declaration, bylaws and statutes regarding Whitmer claims. | .80 |
| 11/28/16 | RGA Telephone call to M. Bengson regarding architectural control and response to Whitmer letter and Board meeting. | .60 |

\$595.00

TIMEKEEPER SUMMARY

| | | | | |
|-----|--------------------|---------------|------------|----------|
| RGA | Robert G. Anderson | 0.50 hours at | \$0.00 = | \$0.00 |
| RGA | Robert G. Anderson | 1.70 hours at | \$350.00 = | \$595.00 |

Exhibit 10

Hilton Casitas Council of Homeowners

2016 Budget

| | | |
|-----------------------|--------------|---------------|
| Beginning Cash | \$ 12,111.71 | \$12,111.71 |
| Added Cash receipts | \$ 19,780.32 | 100,585.92 |
| <hr/> | | <hr/> |
| Total Cash | \$ 31,892.03 | \$112,697.63 |
| Estimated Expenses | | |
| Accounting | \$ 400.00 | |
| Legal | \$ 15,000.00 | |
| Bank Fees | \$ 360.00 | |
| Manangement | \$ 3,000.00 | |
| Misc | | |
| Total | \$ 18,760.00 | - 18,760.00 |
| Estimated ending cash | \$ 13,132.03 | - \$13,132.03 |
| <hr/> | | <hr/> |

Based on no change in the monthly dues of \$289.04

* \$ 80,865.60 out of balance

X 29 casitas
\$8,382.16
X 12 months

Total Annual Receipts \$100,585.92

* Plaintiff's notes & analysis.

Hilton Casitas Council of Homeowners

| 2016 Budget | | 2015 Actual expenses | 2015 Budget Expenses |
|---------------------------|---------------------|-----------------------------|-----------------------------|
| Beginning Cash | \$ 12,111.71 | \$ 13,641.26 | \$ 13,641.26 |
| Added Cash receipts | \$ 19,780.32 | \$ 19,383.60 | \$ 19,780.32 |
| Total Cash | \$ 31,892.03 | \$ 33,024.86 | \$ 33,421.58 |
| Estimated Expenses | | | |
| Accounting | \$ 400.00 | \$ 400.00 | \$ 400.00 |
| Legal | \$ 15,000.00 | \$ 17,059.72 | \$ 14,500.00 |
| Bank Fees | \$ 360.00 | \$ 29.95 | \$ 360.00 |
| Manangement | \$ 3,000.00 | \$ 2,838.48 | \$ 2,500.00 |
| Misc | | \$ 585.00 | \$ - |
| Total | \$ 18,760.00 | \$ 20,913.15 | \$ 17,760.00 |
| Estimated ending cash | \$ 13,132.03 | \$ 12,111.71 | \$ 15,661.58 |

Based on no change in the monthly dues of \$289.04

Exhibit 11

R L Whitmer

Subject: Scottsdale Hilton Casitas - Board Meeting Notice- (Change of Location!)

On Monday, February 15, 2016 3:40 PM, Evon Potocki <Evon@cpihoa.com> wrote:

Note: Change of Location!

BOARD OF DIRECTORS MEETING NOTICE

The Board of Directors meeting scheduled for:

Date: Tuesday February 16th, 2016.

Located: Scottsdale Hilton Ballroom

Time: 4:30pm

Agenda:

- Approve the last Board minutes
- Parking signs
- Noncompliance Issues
- Discuss the amended Declarations.
- Date for annual meeting and vote on the amended Declarations.
- Questions
- Adjourned

Homeowners are welcome to attend!

Thank you-

The Hilton Casitas Council of Homeowners

Evon Potocki
Community Manager



Cornerstone Properties, Inc.
P.O. Box 62073
Phoenix, AZ 85082

Office: (602) 433-0331 x103
Fax: (602) 244-9214
E-Mail: <mailto:evon@cpihoa.com>
<http://www.cpihoa.com/>

Exhibit 12

R L Whitmer

From: Michael Bengson [mike@mbengson.com]
Sent: Thursday, January 05, 2017 3:23 PM
To: 'R L Whitmer'
Subject: Hilton Casita's

Lamar,

I thought it might be useful to let you know what I would present to the court on your latest complaint.

- #6 We emailed out an agenda and a PDF of the Amended Declarations.
- #7 The budget was discussed in the Board meeting previous to the annual meeting. It did not take very much time as everything remained the same from the previous year,
- #8 We hand delivered a packet before the meeting that contained the results from 2015 budget and the proposed new budget. I dropped yours off a packet at your house myself.
- #11 The Administrative order was given the first week on 2016. We complied by having the March meeting of the members and passing the appropriate budget. This was a reasonable time after the order was given.

With the above in mind consideration should be given to drop this complaint. The association now has to have legal fee's to defend. I am guessing it will be 2-4K (\$137/unit). This is out of all of our pockets. At this point I am not going to try to save the HOA money by representing the HOA on any complaints. Everything will go thru Bob Anderson and we will all have to absorb the bill. This will raise our legal costs but I am going to spend as little time on it as possible.

The following will or has happened:

- Cornerstone will be our only management company.
- Cornerstone will do all accounting and bill paying
- Cornerstone will provide all Financial Statements
- Cornerstone will set up a Community Web site to post all information so we have total transparency.
- Cornerstone will be contracting to a company to do a proper reserve study.
- Possible repaving our roads. They badly need it.

After we have the "Reserve Study" we will be adjusting our budget based on their recommendation. It will no longer be a guess. It will be cut and dry and will be the best for budget purposes.

This is professional and how it should be done.

My hope is you help us minimize legal costs. If you choose not to then we will just put it into the budget every year. I have no problem doing that. The problem we have is that the higher the HOA dues the more impact it has on our values.

Happy New Year.

-Michael Bengson-
480-688-7002

Exhibit 13

A meeting of the Board of Directors of the H.O. A of Casita owners took place on Feb.16 4.30 p.m. in the Hilton Hotel.

Attending were Mike Bengson (president) and board members Steve pollock, Don Randolph, Barrie Bercuson and David Cameron (by conference call). Also attending were Bob Anderson (lawyer) and three casita owners.

The meeting was brought to order and the minutes from previous Board Meeting approved.

The purpose of this meeting was to go over the H.O.A. declarations that were amended by the board at the last meeting, and Mr. Anderson gave his comments and suggestions before presenting them to a general meeting of owners.

Also discussed were signs restricting overnight parking and approved by the board.

There were discussions about penalties for owners behind on dues and fines with comments from Bob Anderson of how to enforce penalties.

Also discussed was the option for owners to rent out their casitas, with the decision to bring it to a vote with all owners participating with a 51% margin for approval or disapproval.

Suggestions were made of forming an architectural committee to standardize exterior casita appearances but no decision taken. To be raised at next general meeting.

The meeting was ajourned with a motion from Don Randolph and seconded by Steve Pollock.