

MICHAEL K. JEANES, CLERK
BY *B. Colwell*
DEP
FILED

17 MAR 23 PM 4:50

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

6 Pro Per

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

9 R. L. WHITMER,

10 Plaintiff.

11 CV2016-055080

12 v.

13 **MOTION FOR RECONSIDERATION**
14 **UNDER RULE 7.1(E)**

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

24 Defendants.

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

27 Pursuant to ARCP Rule 7.1(e) the Petitioner requests that the Court
28 reconsider its ruling dismissing the complaint which has been based on the
Court's conclusion that the proper venue for the contempt of court proceedings is
in the administrative courts, and not the Superior Court.

29 **I. THE OFFICE OF ADMINISTRATIVE HEARINGS LACKS JURISDICTION**

30 Based on the Court's ruling, the Petitioner requested information from Mr.
31 Greg Hanchett Esq., the Interim Director of the Office of Administrative Hearings
32 ("OAH"), of the location for filing the contempt complaint, and the fees involved
33 (Ex. 1).

34 Mr. Hanchett informed the Petitioner that "there is nothing in OAH's enabling
35 statutes (ARS § 41-1092 et. seq.), that would enable OAH to enforce its own

1 decisions through contempt proceedings that it would hold. Administrative
2 tribunals have only those powers specifically prescribed by statute or rule (Ex. 2).
3 OAH's response is that the Petitioner cannot seek the requested remedy from
4 OAH.

5 The legislature clearly provides, under ARS §32-2199.02.B, a remedy of
6 enforcement of an administrative law judge order through the contempt of court:

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

10 The only venue that has statutory authority for contempt of court
11 proceedings is the Superior Court. The Superior Court has jurisdiction under
12 Rule 65(f) which is the same as Rule 65(j) as to contempt proceedings as to
13 injunctions. The Rule does not limit the jurisdiction to Superior Court injunctions,
14 as an injunction is not defined in a restrictive way to exclude an administrative law
15 judge order. Such an order is enforceable through contempt of court proceedings
16 under ARS §32.2199.02.B, and therefore it can be enforced by this Court.

17 The only trial court which has the power to enforce the administrative law
18 judge order through contempt of court proceedings is the Superior Court under
19 Rule 65(f) (previously Rule 65(j)), and therefore the right venue for such a process
20 is the Superior Court.

21 **II. CONCLUSION**

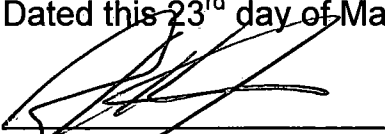
22 The Superior Court Rules do not limit its jurisdiction to Superior Court
23 injunctions, and "injunction" in the Court's Rules do not exclude an order of an
24 administrative law judge, nor is it defined in any other restrictive way. Therefore
25 the Superior Court has jurisdiction and is the proper venue for the petitioner's
26 complaint.

27 Accordingly the Court should reconsider and vacate its ruling to dismiss
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and set an evidentiary hearing.

Dated this 23rd day of March, 2017.



R. L. Whitmer

ORIGINAL filed this
23rd day of March, 2017, with the Court;

and a COPY mailed this same date to:

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

Exhibit 1

R L Whitmer

Subject: Superior court ruling contempt proceedings
Attachments: m7766740.pdf

From: R L Whitmer [<mailto:rlw@fulcrumgroup.biz>]
Sent: Tuesday, March 21, 2017 4:58 PM
To: 'oah@azoah.com'
Cc: 'ashaw@shawlines.com'; 'Nicole Payne'; 'Bob Porter'; 'Lisa Borowsky'
Subject: Superior court ruling contempt proceedings

Dear Mr. Hanchett,

Please find the attached a minute entry ruling from the Superior Court regarding my recent filing for an order of contempt of an administrative law order. In her minute entry ruling Judge Anderson found:

“Pursuant to Ariz. Rev. Stat. Sec. 32-2199.02 the proper venue for a contempt of court hearing (seeking to enforce the administrative decision) is the Administrative Courts, not the Superior Court.”

Accordingly, now that the court has ruled that OAH i[s] the proper jurisdictional venue, please inform me where at the Office of Administrative Hearings I can file the contempt complaint and how much the filing fee is.

Thank you for your kind attention.

R. Lamar Whitmer

Exhibit 2

Office of Administrative Hearings

1400 West Washington, Suite 101 - Phoenix, Arizona 85007
Telephone (602)-542-9826 FAX (602)-542-9827

Douglas A. Ducey
Governor

Greg Hanchett
Interim Director

March 23, 2017

Mr. R.L. Whitmer
6333 N. Scottsdale Road
Casita 21
Scottsdale, AZ 85250
rlwnaz@gmail.com

Via US mail and email

Re: Your email of March 21, 2017

Dear Mr. Whitmer:

I am in receipt of your email of March 21, 2017 (received in our office on March 22, 2017) inquiring as to filing a "contempt proceeding" against the Hilton Casitas Homeowners Association with the Office of Administrative Hearings (OAH) and whether there is a filing fee. I am unaware of any statutory process that exists to file any matter related to HOA complaints arising under ARS § 32-2199.02 et seq. directly with OAH. The administrative process for HOA cases envisioned under ARS § 32-2199.01 et seq. provides that a petition "shall be filed with the *department*" (emphasis added), i.e., the Arizona Department of Real Estate, not the OAH. Furthermore, there is nothing in OAH's enabling statutes (ARS § 41-1092 et. seq.), that would enable OAH to enforce its own decisions through contempt proceedings that it would hold. Administrative tribunals have only those powers specifically prescribed by statute or rule. As I suggested in my March 6, 2017 letter to you, you should *immediately* seek the advice of an Arizona licensed attorney to assist you in deciding an appropriate course of action to take.

Sincerely,

Greg Hanchett

Greg Hanchett
Acting Director

Cc: Augustus Shaw IV, by email to ashaw@shawlines.com
Mark Bainbridge, by email to mark@bainbridgelawfirm.com



Mission Statement: We will contribute to the quality of life in the State of Arizona by fairly and impartially hearing the contested matters of our fellow citizens arising out of State regulation.