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AUG 20 2018

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AMY M. WOOD, CLERK
BY hmb

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IN THE COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

R. L. WHITMER, an individual
Petitioner/Appellant,

v.

HILTON CASITAS HOMEOWNERS
ASSOCIATION, also known as HILTON
CASITAS COUNCIL OF
HOMEOWNERS, also known as
COUNCIL OF CO-OWNERS, also
known as HILTON CASITAS COUNCIL
OF CO-OWNERS; and MICHAEL
BENGSON, President of the named
Respondent;

Respondents. /Appellees.

1 CA-CV 17-0543

Maricopa County Superior Court
Case No. CV2016-055080

Hon. Aimee L. Anderson

**PLAINTIFFS'/APPELLANTS'
REPLY TO MOTION TO PERMIT
THE FILING OF AN AMENDED
STATEMENT OF COSTS; AND
RESPONSE TO APPELLEES'
MOTION TO STRIKE**

The Defendants'/Appellees' attorney wrongly argues in his response that somehow *Rule 21* precludes this Court from having the discretion to allow an amendment to a statement of costs. Instead of citing any legal or rational basis for denying the motion, the Defendants'/Appellees' attorney asks this court to strike the motion based upon the false premise that the reply/motion was filed late, when their objection to the statement of costs was filed and mailed to the Plaintiff/Appellant on July 25, 2018. As a paper filer, the Plaintiff/Appellant is entitled to five business days and five calendar days¹ (August 6, 2018).

¹ARCAP Rule 5 "Computing and Modifying Deadlines" cites to ARCP Rule 6(c) "Additional Time After Service Under Rule 5(c)(2)(C). When a party may or must act within a specified time after service and service is made under Rule 5(c)(2)(C) [mailing it by U.S. mail to the person's last-known address], 5 calendar days are added after the specified period would otherwise expire under Rule 6(a)."

1 As the Plaintiff's/Appellant's motion was timely filed on August 6, 2018, it
2 is clear that the Defendants'/Appellees' attorney is knowingly attempting to
3 mislead the Court. The Defendants'/Appellees' attorney's request for Rule 11
4 sanctions is just a regurgitation from their answering brief:

5 It is therefore clear that Petitioner brought the Lawsuit
6 without substantial justification ... and lacked a good faith
7 and nonfrivolous basis in violation of Rule 11(b)(2).
8 Petitioner engaged in conduct that served only to increase
9 the cost of litigation, delay proceedings, waste judicial
resources and harass the Association. (pages 19 - 20).

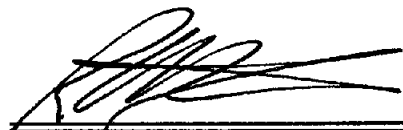
10 In reversing and remanding this case the Court obviously disagreed. The
11 Court should deny the motion to strike as frivolous, increasing the cost of litigation,
12 delaying the proceedings, wasting judicial resources and harassing the
13 Plaintiff/Appellant.

14 The Defendants'/Appellees' attorney argued in the appeal that the Court
15 should hold Plaintiff/Appellant "to the same standards as attorneys regarding
16 procedures, statutes, rules, and legal principles." (Answering brief, page 18).
17 Accordingly, the Court should hold the Defendants'/Appellees' attorney to those
18 standards. Given Defendants'/Appellees' attorney's proclivity to make frivolous
19 filings to harass the Plaintiff/Appellant in this case as well as other repeated
20 frivolous filings to this Court (see **Ex. 2**), and his record of abusing pro per
21 litigants², the Plaintiff/Appellant requests the Court to impose **Rule 25** sanctions.

22
23
24 ² Superior Court Judge Peter Swan (now a Court of Appeals judge) in North Canyon
25 Ranch Owners Assoc. v. Mobbs noted: "Compounding the Court's concern is Mr. Shaw's
26 filing of a plainly frivolous motion..." "The Court has also reviewed Mr. Shaw's ...
correspondence to Ms. Mobbs in this regard, and finds it to be abusive and inconsistent
with the fundamental principles of professionalism sought to be advanced by the Supreme
Court and the State Bar."

1 Just as the Court used its discretion to deny sanctions against the
2 Defendants'/Appellees' attorneys in spite of their bizarre and frivolous defense that
3 an administrative law judge could use rules of procedure to grant themselves
4 contempt powers, the Court should now use its discretion to allow the
5 Plaintiff/Appellant to amend his statement of costs, and impose appropriate
6 sanctions on the Defendants'/Appellees' attorney.
7

8 DATED this 20th day of August, 2018.
9

10 
11 _____
12 R. L. Whitmer
13 6333 N. Scottsdale Road, Casita 21
14 Scottsdale, Arizona 85252
15 Pro per

16 COPY of this Reply was
17 Mailed August 20, 2018 to:
18 A. Shaw, M. Lines, N. Payne
19 Shaw & Lines
20 4523 E. Broadway Rd.
21 Phoenix, Arizona 85040
22 Attorneys for Respondents/Appellees
23
24
25
26

Exhibit 2

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 1/8/18
AMY M. WOOD,
CLERK
BY: RB

COLLEEN LONDON, et al.,)
) Court of Appeals
) Division One
Plaintiffs/Appellees,) No. 1 CA-CV 17-0741
)
v.) Maricopa County
) Superior Court
HILTON CASITAS HOMEOWNERS) No. LC2017-000273-001
ASSOCIATION,)
)
Defendant/Appellant.)
)

ORDER DISMISSING APPEAL

The court has reviewed the record pursuant to its duty to determine whether it has jurisdiction over this appeal. See *Sorensen v. Farmers Ins. Co.*, 191 Ariz. 464, 465 (App. 1997).

This case originated in Dreamy Draw Justice Court and was appealed to the superior court. When an action is initially filed in a justice court and then appealed to the superior court, appellate relief has been exhausted, and the Court of Appeals does not have jurisdiction to hear another appeal. *State v. Poli*, 161 Ariz. 151, 153-54 (App. 1989). Although some exceptions to this rule exist, this case does not fall within any of the exceptions. See *Sanders v. Moore*, 117 Ariz. 527, 528 (App. 1977). Therefore,

IT IS ORDERED dismissing this appeal for lack of jurisdiction.

_____/s/_____
Melina Brill, Judge Pro Tempore

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 7/17/18
AMY M. WOOD,
CLERK
BY: RB

COLLEEN LONDON, et al.,)
) Court of Appeals
) Division One
Plaintiffs/Appellees,) No. 1 CA-CV 18-0318
)
v.)
) Maricopa County
) Superior Court
HILTON CASITAS HOMEOWNERS) No. LC2017-000273-001
ASSOCIATION,)
) DEPARTMENT M
Defendant/Appellant.)
_____)

ORDER DISMISSING APPEAL

Judges Diane M. Johnsen, Paul J. McMurdie, and David D. Weinzwieg have reviewed the record pursuant to the court's duty to determine whether it has jurisdiction over this appeal. See *Sorensen v. Farmers Ins. Co.*, 191 Ariz. 464, 465 (App. 1997).

Because this case originated in justice court and then appealed to the superior court, this court lacks jurisdiction over the appeal. *State v. Poli*, 161 Ariz. 151, 153-54 (App. 1989); *Roubos v. Miller*, 213 Ariz. 36, 37, ¶ 2 (App. 2006). Therefore,

IT IS ORDERED dismissing this appeal for lack of jurisdiction.

_____/s/
Diane M. Johnsen, Presiding Judge

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 8/13/18
AMY M. WOOD,
CLERK
BY: RB

COLLEEN LONDON, et al.,)
) Court of Appeals
) Division One
Plaintiffs/Appellees,) No. 1 CA-CV 18-0318
)
v.)
) Maricopa County
) Superior Court
HILTON CASITAS HOMEOWNERS)
ASSOCIATION,) No. LC2017-000273-001
)
) DEPARTMENT M
Defendant/Appellant.)
_____)

ORDER DENYING MOTION TO RECONSIDER

Judges Diane M. Johnsen, Paul J. McMurdie, and David D. Weinzweig have considered appellant's Motion to Reconsider Jurisdiction.

IT IS ORDERED denying the motion.

_____/s/_____
Diane M. Johnsen, Presiding Judge

A copy of the foregoing
was sent to:

Lisa M Borowsky
Lily Richardson
Augustus H Shaw IV
Mark E Lines
Nicole Danielle Payne
Patrick J Whelan