

MICHAEL K. JEANES, CLERK
BY DEP

H. Norton
K. NORTON, FILED

2017 NOV 13 PM 1:58

William M. Brown
6751 E. Amber Sun Drive
Scottsdale, AZ 85266
(480) 595-9131

Plaintiff on his own behalf

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

William M. Brown, an individual,

Case No. CV2017-055475

Plaintiff,

Plaintiff's Response to
Defendants' Motion to Dismiss
Defendants Bolen, Patel and
Carpenter Hazlewood Delgado
& Bolen, LLP

(Assigned to the Hon. John R.
Hannah, Jr.)

vs.

Terravita Country Club, Inc., an Arizona
non-profit corporation; Sterling J. Laaveg,
President TCC, Inc., and his spouse; Paul
David Tolk, Vice-President TCC, Inc., and
his spouse; William H. Greig, Secretary
TCC, Inc., and his spouse; Michael T.
Ellington, Treasurer TCC, Inc., and his
spouse; John Does I-X and Jane Does I-X
and their spouses; Carpenter, Hazlewood,
Delgado & Bolen, PLC; Joshua M. Bolen
024053 and Anjali J. Patel 028138,

Defendants.

Plaintiff objects to Defendants' Motion to Dismiss Defendants Bolen, Patel and Carpenter Hazlewood Delgado & Bolen, LLP as these defendants are properly named parties in this lawsuit.

Plaintiff's objection is supported by this matter's Verified Complaint, Application for An Order to Show Cause (Contempt), Plaintiff's Supplement to Application for An Order to Show Cause (Contempt), Plaintiff's Response to Defendants' Motion to Dismiss Board of Director Defendants Laaveg, Tolk, Greig and Ellington which are incorporated by this reference and the following Memorandum of Points and Authorities.

Memorandum of Points and Authorities

Introduction

Plaintiff seeks a declaratory judgment finding Defendants' notorious defiance of ALJ Velva Moses-Thompson's Decision and Recommended Order and ADRE's Commissioner Judy Lowe's Final Orders in 17F-H1716005-REL, Defendants' willful violation of A.R.S. § 33-1805 Association financial and other records by Defendants' continuing refusal to provide Plaintiff with documents lawfully requested on July 29, 2016, a contempt upon Arizona's administrative tribunals' judges and commissioners.

Plaintiff's claim against Defendants is proper pursuant to A.R.S. § 32-2199.02, "The order issued by the administrative law judge is enforceable through contempt of court proceedings and is subject to judicial review as

prescribed by section 41-1092.08," § 10-3801 et seq., common law, Defendant's governing documents and Defendants' counsel's advice to directors and officers, "A Guide for Directors and Officers of Arizona Community Associations," ©1998; ©2008.

Legal Argument

A. Conflict of Interest

At the Court's October 18, 2017 Return Hearing Re: Plaintiff's Application for Order to Show Cause, Defendant Joshua M. Bolen made appearances on behalf Defendants Terravita Country Club, Inc., Board of Director Defendants Laaveg, Tolk, Greig and Ellington, Defendant Carpenter, Hazlewood, Delgado & Bolen, PLC, Defendant Anjali J. Patel and himself, Joshua M. Bolen.

The Rules of the Supreme Court of Arizona, Rule 42, Arizona Rules of Professional Conduct, ERs 1.7, 1.8, 1.10 and 1.13 proscribe Bolen's representation of the director defendants, Bolen's law firm, Patel and himself while representing the corporate defendant, TCC, Inc., pursuant to Zemp, Kapsal, Carpenter & Hazlewood, P.L.L.C.'s September 21, 2001 General Representation agreement.

We wish to take this opportunity to thank you for having selected our firm to represent you in the above-referenced matters ("General Representation"). This letter describes the terms of our representation to insure complete understanding and agreement. ZKC&H, P.L.L.C, General Representation, 09/21/2001

B. Derivative Fiduciary Liability

The Director Defendants and their predecessors (2005 to date) regularly proclaim in the corporation's newsletter, President and GM's electronic and written messages and in open board meetings that they are faithfully discharging their fiduciary duties to the corporation and to its members, representations generally clothed in "upon the advice and counsel of our lawyers (Bolen, Patel and others)."

Recent cases, gaining precedential strength, hold lawyers liable if they assist a client with fiduciary duties to others in breaching those duties. Derivative fiduciary duty is not new in Arizona (*Fichett v. Superior Court of Pima County*, 558 P.2d 988, 990-91 (Ariz. Ct. App. 1976) nor does the concept add much to aiding and abetting found in the common law (Restatement (Second) of Torts § 876(b)).

In *Reynolds v. Schrock*, 197 Or. App. 564, 2005 WL 357633 (Or. Ct. App. 2005), the unrepresented party in a joint venture sued the

lawyer's client and the lawyer claiming they were jointly liable for damages. The joint venturer for breach of a fiduciary duty and the lawyer for substantially aiding, encouraging and acting in concert with his client in that breach.

Exhibit A is a partial summary (excerpts from one or more contested matters from late-2014 to date) of Bolen's aiding and abetting TCC in the breach of TCC's fiduciary duties owed to the corporation and its members. (Also see Plaintiff's Response to Defendants' Motion to Dismiss Board of Director Defendants Laaveg, Tolk, Greig and Ellington filed this date)

C. Bolen, Principal or Agent (Lawyer)

1. At the May 24, 2016 Return Hearing Case Dismissed, upon defendant Anita Bell's oral motion for reimbursement of costs, Judge Robert H. Oberbillig inquired of Bolen, "will your client agree to pay Ms. Bell's (prevailing party) filing fee (sic)," whereupon Bolen replied, "No."

There was not a member, officer or director, of TCC's board of directors within +/- 30 miles of Judge Oberbillig's courtroom.

On July 28, 2016 Judge Randall H. Warner entered judgment "...in favor of Defendant Anita Bell and against Plaintiff Terravita Country Club, Inc. for taxable costs in the amount of \$237.00.

TCC's failure to pay the judgment subsequently gave rise to TCC's lawsuit, CV2017-013317 pending transfer to this division, against Ms. Bell.

Bolen's "No" ostensibly on behalf of a client not present and subsequent lawsuit are evidence of the defendants' breach of fiduciary to the corporation and its members and the lawyer's aiding and abetting that breach.

2. On October 21, 2017, Plaintiff requested the Defendants stipulate to extending time for filing the responses to the motions to dismiss (2 - directors and lawyers) to November 13, 2017.

Bolen responded, "Yes I will agree to this extension." Exhibit B

3. At the October 27, 2017 Status Conference Plaintiff suggested to the Court that an additional extension of time to file Plaintiff's

responses to Defendants' motions to dismiss (2) was appropriate given the Court's timeline (file supplement, response and reply) would extend beyond the parties' stipulated date. The Court inquired of Bolen, "...will the defendants agree to an additional extension of time (sic)," and Bolen responded, "No."

There was not a member, officer or director, of TCC's board of directors within +/- 8 miles of this division's courtroom.

4. Throughout these proceedings, and other proceedings between these same parties, Bolen has acted as a principal to the contested matter(s) rather than as an agent (lawyers) of the Defendant Corporation, as such, the Defendant Corporation's breach of its fiduciary to the corporation and its members is made possible by Bolen's aiding and abetting his client's breach, derivative fiduciary liability.

For the reasons above, supported by Plaintiff's Verified Complaint, Application for An Order to Show Cause (Contempt), Plaintiff's Supplement to Application for An Order to Show Cause (Contempt), Plaintiff's Response to Defendants' Motion to Dismiss Board of Director Defendants Laaveg, Tolk, Greig and Ellington incorporated by reference in this response,

Plaintiff requests the Court deny Defendants' Motion To Dismiss Defendants
Bolen, Patel and Carpenter, Hazlewood, Delgado & Bolen, LLP.

Respectfully submitted this 13th day of November 2017.

William M. Brown
6751 East Amber Sun Drive
Scottsdale, Arizona 85266-7029



William M. Brown
Plaintiff, Pro Se

Certificate of Service

Original filed this 13th day of November 2017 with:

Clerk, Superior Court
Maricopa County Superior Court
18380 N. 40th Street
Phoenix, Arizona 85032

Copy delivered this 13th day of November 2017 to:

Hon. John R. Hannah, Jr.
Maricopa County Superior Court
Northeast Court-G
18380 N. 40th Street, Courtroom 108
Phoenix, Arizona 85032-1484

Copy mailed this 13th day of November 2017 to:

Carpenter, Hazlewood, Delgado & Bolen, PLC
1400 E. Southern Avenue, Suite 400
Tempe, Arizona 85282



William M. Brown
Plaintiff, Pro Se

Exhibit A

Exhibit B

RE: Motions to Dismiss

Josh Bolen <josh.bolen@carpenterhazlewood.com>

Mon 10/23/2017 10:55 AM

Inbox

To: 'william brown' <wmbs-pp@msn.com>;

Cc: Theresa Laubenthal <Theresa.Laubenthal@carpenterhazlewood.com>;

Yes, I will agree to this extension.



CARPENTER HAZLEWOOD

Josh Bolen, Esq.

Direct Line: 480-427-2862

josh.bolen@carpenterhazlewood.com

CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP

Phoenix, 480-427-2800, 1400 East Southern Ave, Suite 400, Tempe, Arizona 85282

Tucson, 520-744-9480, 333 North Wilmot Rd, Suite 180, Tucson, Arizona 85711

Prescott, 928-443-0775, 1550 Plaza West Dr, Prescott, Arizona 86303

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From: william brown [mailto:wmbs-pp@msn.com]

Sent: Saturday, October 21, 2017 3:03 PM

To: Josh Bolen

Subject: Motions to Dismiss

Counsel:

Having just received Defendant's Motion to Dismiss Defendants Bolen, Patel and Carpenter, Hazlewood, Delgado & Bolen, LLP (10/16/2017), will the defendants stipulate to extending the time for filing the response to Defendants' Motion to Dismiss Board of Director Defendants Laaveg, Tolk, Greig and Ellington (10/13/2017) and Motion to Dismiss Defendants Bolen, et al. to and including November 13, 2017?

Your timely response is appreciated in advance.

WMB

Exhibit C

william brown

From: "Theresa Laubenthal" <Theresa.Laubenthal@carpenterhazlewood.com>
To: <wmbs-pp@msn.com>
Cc: "Josh Bolen" <josh.bolen@carpenterhazlewood.com>
Sent: Wednesday, April 19, 2017 3:48 PM
Attach: Demand to remove the judgment .pdf
Subject: Bell, Anita Enforcement (TERRAVCC.0147)

Ms. Bell and Mr. Brown:

Attached is a letter from Josh Bolen dated April 19, 2017 regarding a demand for the release of Judgment 2016-0562112.

If you have any questions, please feel free to contact our office.

Thank you,

Theresa



CARPENTER HAZLEWOOD

Theresa Laubenthal, Litigation Paralegal

Direct Line: 480-427-2851

Theresa.Laubenthal@carpenterhazlewood.com

CARPENTER, HAZLEWOOD, DELGADO & BOLEN, PLC

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william brown

From: "Josh Bolen" <josh.bolen@carpenterhazlewood.com>
To: "william brown" <wmbs-pp@msn.com>
Cc: "Theresa Laubenthal" <Theresa.Laubenthal@carpenterhazlewood.com>
Sent: Wednesday, May 17, 2017 10:39 AM
Attach: 33-420 Demand re Bell Judgment.pdf
Subject: RE: Release of Judgment 2016-0562112

Mr. Brown and Ms. Bell,

The twenty day request to satisfy the judgment expired and we have not received a response from you. If you have satisfied the judgment, please send me the recorded satisfaction of judgment. If you have not, this is one last good faith request for you to satisfy the judgment pursuant to the attached request. If we do not hear from you within five business days from the date of this email, we will have no choice but to pursue the claims outlined in the attached letter. Hopefully this will not be necessary.

Hope you are well.

Sincerely,



CARPENTER HAZLEWOOD

Josh Bolen, Esq.

Direct Line: 480-427-2862

josh.bolen@carpenterhazlewood.com

CARPENTER, HAZLEWOOD, DELGADO & BOLEN, PLC

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11/12/2017

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From: Josh Bolen
Sent: Wednesday, April 19, 2017 10:21 AM
To: 'william brown'
Cc: Theresa.Laubenthal@carpenterhazlewood.com
Subject: Release of Judgment 2016-0562112

Mr. Brown and Ms. Bell,

Please see the attached demand to release and satisfy the Judgment recorded at 2016-0562112. We appreciate your anticipated cooperation.

Hope you are well.

Sincerely,



CARPENTER HAZLEWOOD

Josh Bolen, Esq.

Direct Line: 480-427-2862

josh.bolen@carpenterhazlewood.com

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CARPENTER HAZLEWOOD
Carpenter, Hazlewood, Delgado & Bolen, PLC
ATTORNEYS AT LAW

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Tempe, Arizona 85282-5691
T 480-427-2800
F 480-427-2801

Josh M. Bolen, Esq.
Licensed in Arizona, Colorado, New Mexico and Texas
e-mail: josh@carpenterhazlewood.com
direct: 480-427-2862

April 19, 2017

VIA E-MAIL AND FIRST CLASS MAIL

(wmbbs-pp@msn.com)

Anita R. Bell
6751 East Amber Sun Drive
Scottsdale, Arizona 85266

Re: A.R.S. 33-420 Demand for Release of Judgment 2016-0562112

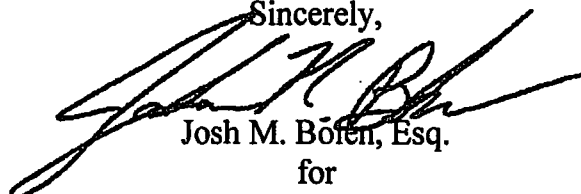
Dear Ms. Bell and Mr. Brown:

As you know, we are the attorneys who represent the Terravita Country Club, Inc. (the "Country Club"). This letter is written to demand that you immediately release the Judgment Recorded against the Country Club in the Office of the Maricopa County Recorder's Office at 2016-0562112 ("Judgment"). See copy of the Judgment attached.

The Country Club paid the Judgment in full and the Judgment has been satisfied. Therefore, pursuant to A.R.S. 33-420(C), the County Club requests that the Judgment be released within twenty (20) days from the date of this letter. We ask that you send this law firm a copy of the recorded release. If the Judgment is not released, we will seek all legal recourse under A.R.S. §33-420. However, we truly hope that this will not be necessary.

If you have any questions or concerns, feel free to put your questions in writing to this office at the address listed above.

Sincerely,



Josh M. Bolen, Esq.
for

CARPENTER, HAZLEWOOD, DELGADO & BOLEN, PLC

Enclosure

ALBUQUERQUE • AUSTIN • DURANGO • PHOENIX • PRESCOTT
SALT LAKE CITY • SAN ANTONIO • SANTA FE • TUCSON

CARPENTERHAZLEWOOD.COM
NATIONWIDE T 800-743-9324 • F 800-743-0494

**Unofficial
20 Document**

**06
Ho**

When recorded, mail to:

**Anita R. Bell
6751 East Amber Sun Drive
Scottsdale, Arizona 85266-7029**

Money Judgment

CV2016-091991

As Against:

Terravita Country Club, Inc.

20160562112

CERTIFIED COPY

Michael K. Jeanes, Clerk of Court
*** Filed ***

**SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY**

8-1-2016 8:00pm

CV 2016-091991

07/28/2016

HON. RANDALL H. WARNER

CLERK OF THE COURT
K. Ballard
Deputy

TERRAVITA COUNTRY CLUB INC

JOSHUA M BOLEN

v.

ANITA BELL

ANITA BELL
6751 E AMBER SUN DR
SCOTTSDALE AZ 85266


DOCKET-CIVIL-CCC

Unofficial Document

JUDGMENT

Before the court and fully briefed is Defendant's Statement of Costs, to which Plaintiff objects. The court finds that Defendant is the successful party and is entitled to costs of \$237.

IT IS ORDERED entering judgment in favor of Defendant Anita Bell and against Plaintiff Terravita Country Club, Inc. for taxable costs in the amount of \$237.

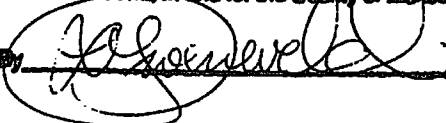


JUDGE OF THE SUPERIOR COURT

The foregoing instrument is a full, true and correct copy of the original on file in this office.

AUG 08 2016

Attest _____ 20
MICHAEL K. JEANES, Clerk of the Superior Court of the State of Arizona, in and for the County of Maricopa.

By  Deputy

Money Judgment Information Statement

Judgment creditor pursuant to A.R.S. § 33-967 attaches to and records the judgment in CV2016-091991 the following money information:

1. The correct name and last known address of the judgment debtor is:

Terravita Country Club, Inc.
34034 N. 69th Way
Scottsdale, Arizona 85266

2. The name and address of the judgment creditor is:

Anita R. Bell
6751 East Amber Sun Drive
Scottsdale, Arizona 85266-7029

3. The amount of the money judgment is: Unofficial Document

A. \$237.00 in principal;

B. Pre-judgment interest at the applicable legal rate on the foregoing from May 24, 2016 to the date of entry of judgment;

C. Post-judgment interest at the applicable legal rate on the foregoing from July 28, 2016 until paid.

4. The judgment debtor is an Arizona non-profit corporation;

5. A stay of enforcement has not been ordered by the Court.