

Anatomy of an Escalation

How a Routine HOA Records Request
Triggered Multi-Party Superior Court Litigation

William M. Brown v. Terravita Country Club, Inc., et al.

The Lifecycle of a Civil Escalation

1. The Origin (Administrative)



In July 2016, a homeowner issues a targeted records request regarding HOA legal expenditures. The HOA's alleged non-compliance leads to an Arizona Department of Real Estate (ADRE) order favoring the homeowner.

2. The Escalation (Judicial)



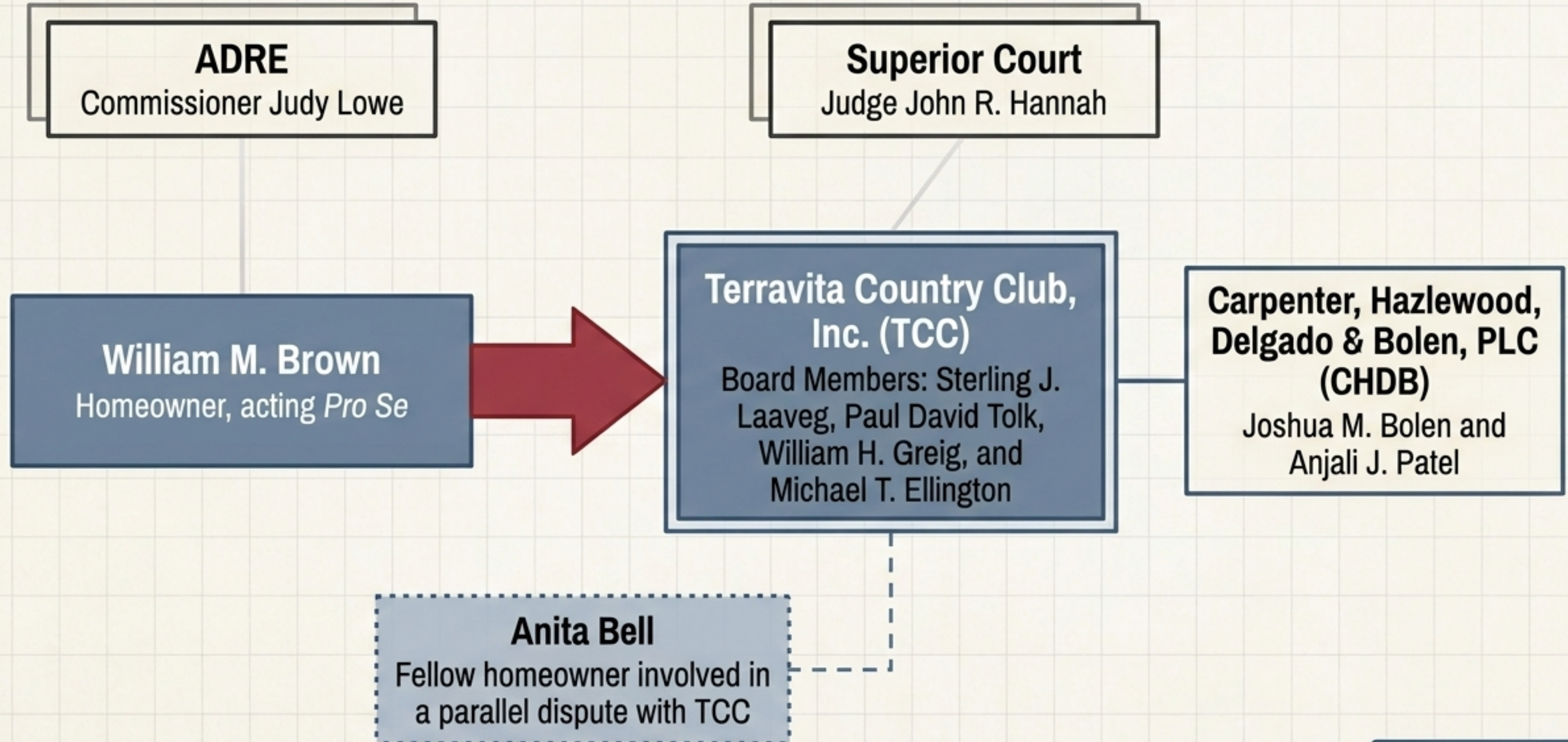
Armed with the ADRE order, the homeowner files a Verified Complaint in Superior Court, demanding punitive contempt sanctions against the HOA, its board members, and its legal counsel.

3. The Resolution (Dismissal)



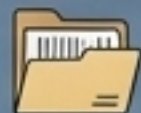
After intense procedural maneuvering, including motions to transfer and judicial reassignments, the Court dismisses the suit with prejudice in June 2018, noting the HOA ultimately complied—but denies the HOA its attorney fees due to the delayed compliance.

The Cast of Characters



Phase I: The Administrative Origin

July 29, 2016



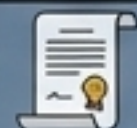
Brown makes a formal records request under A.R.S. § 33-1805 for TCC's records regarding legal fees in the matter of Bianco v. TCC.

June 19, 2017



An administrative hearing is held on the merits before an Administrative Law Judge (ALJ).

August 15, 2016



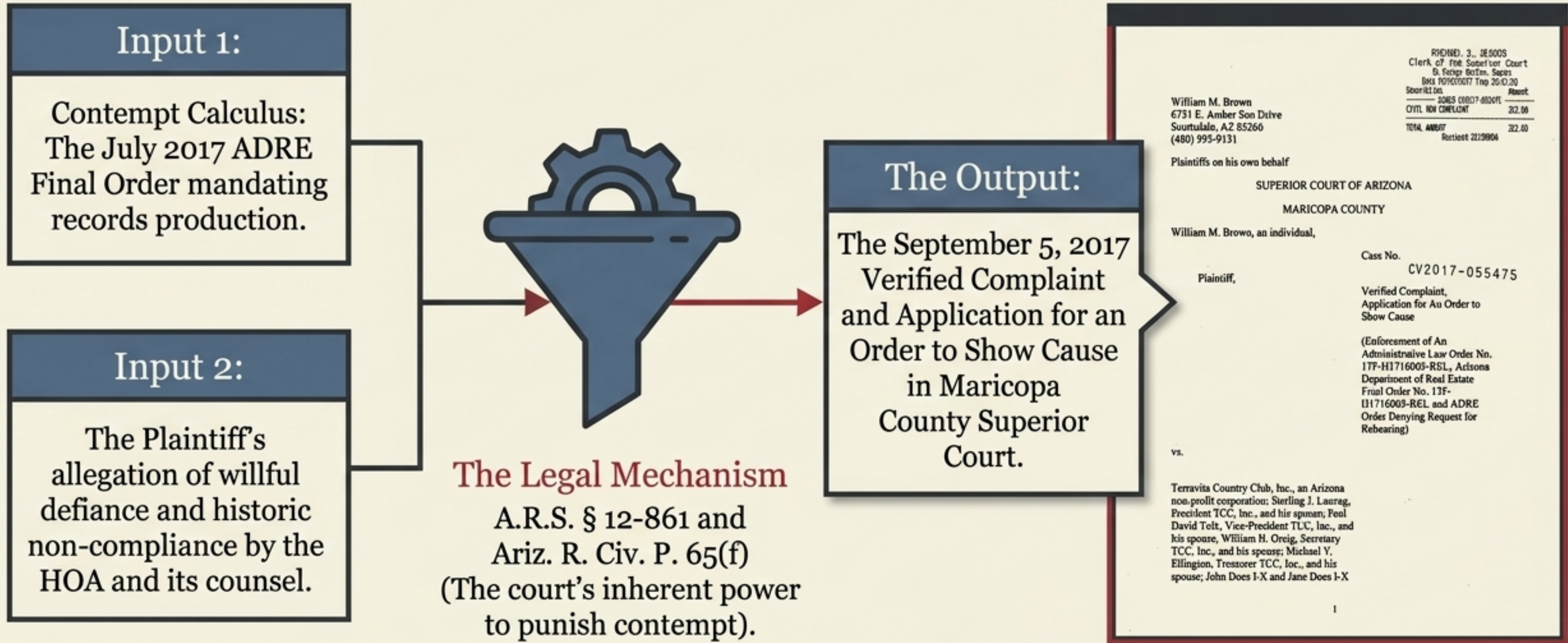
Alleging non-compliance, Brown files an HOA Dispute Process Petition with the Arizona Department of Real Estate (ADRE).

July 11, 2017



ADRE Commissioner Judy Lowe issues a Final Order accepting the ALJ's decision. Brown is deemed the prevailing party, and TCC is ordered to comply with the records request.

Phase II: Triggering Superior Court Jurisdiction



The Relief Sought

“defiance intended to frustrate the administration of justice, to harass Plaintiff, to cause unnecessary litigation...”

The Show Cause Hearing

A demand for the Court to force all defendants to appear and explain why they should not be found in willful contempt of the ADRE order.

The Financial Sanction

**\$10,000
per defendant**

Demanded as a penalty for disrespect for the administration of justice.

The Taxable Costs

A demand that defendants cover the plaintiff's costs in bringing the matter to court.

The HOA's Containment Strategy



*Defendant TCC's Answer
to Plaintiff's Complaint
(October 26, 2017).*

Core Argument 1: The Administrative Shield

TCC asserts that the findings of the Office of Administrative Hearings (OAH) and ADRE speak for themselves, refusing to litigate the administrative facts in civil court.

Core Argument 2: Factual Denials

TCC denies receiving the initial July 29, 2016 records request and denies that Plaintiff filed the dispute petition on August 15, 2016.

Core Argument 3: Statutory Protections

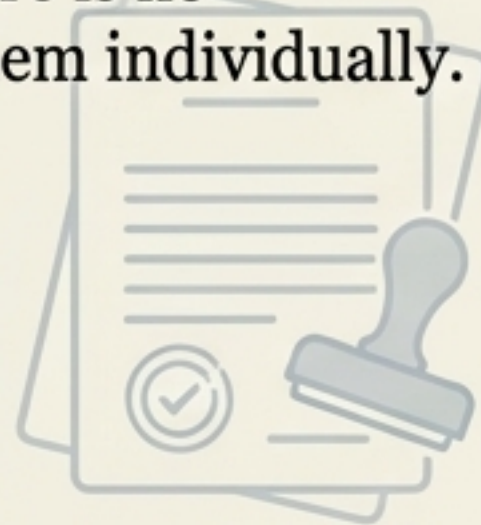
TCC claims affirmative defenses under the Nonprofit Corporation Act, the Arizona Condominium Act, and the Association's own governing documents.

The Counsel's Defense: Pushing Back on Liability

The Legal Argument

Filed by Carpenter, Hazlewood, Delgado & Bolen, LLP (CHDB), Joshua Bolen, and Anjali Patel.

- The firm argues there is simply no legal duty owed to the Plaintiff by the Defendants. The ADRE order only binds the Plaintiff and the Association, not the Association's lawyers.
- Counsel officially characterizes the lawsuit as a form of harassment, stating there is no justifiable reason for naming them individually.



Procedural Friction

From: "Josh Bolen" <josh.bolen@carpenterhazlewood.com>
To: "William Brown" <wmbc-pp@mcn.com>
Cc: "Therese Laupenthal" <Therese.Laupenthal@carpenterhazlewood.com>; "Allison Preston" <Allison.Preston@carpenterhazlewood.com>
Sent: Monday, November 06, 2017 8:13 AM
Subject: Re: C9E017-058475...Stipulation

Mr. Brown,

At this point, we cannot agree to a second extension without just cause. The motions to dismiss are separate issues from the records request. We need to keep this matter moving forward.

Sincerely,



This email was sent from my phone, I apologize for any typos.

Josh Bolen, Esq.

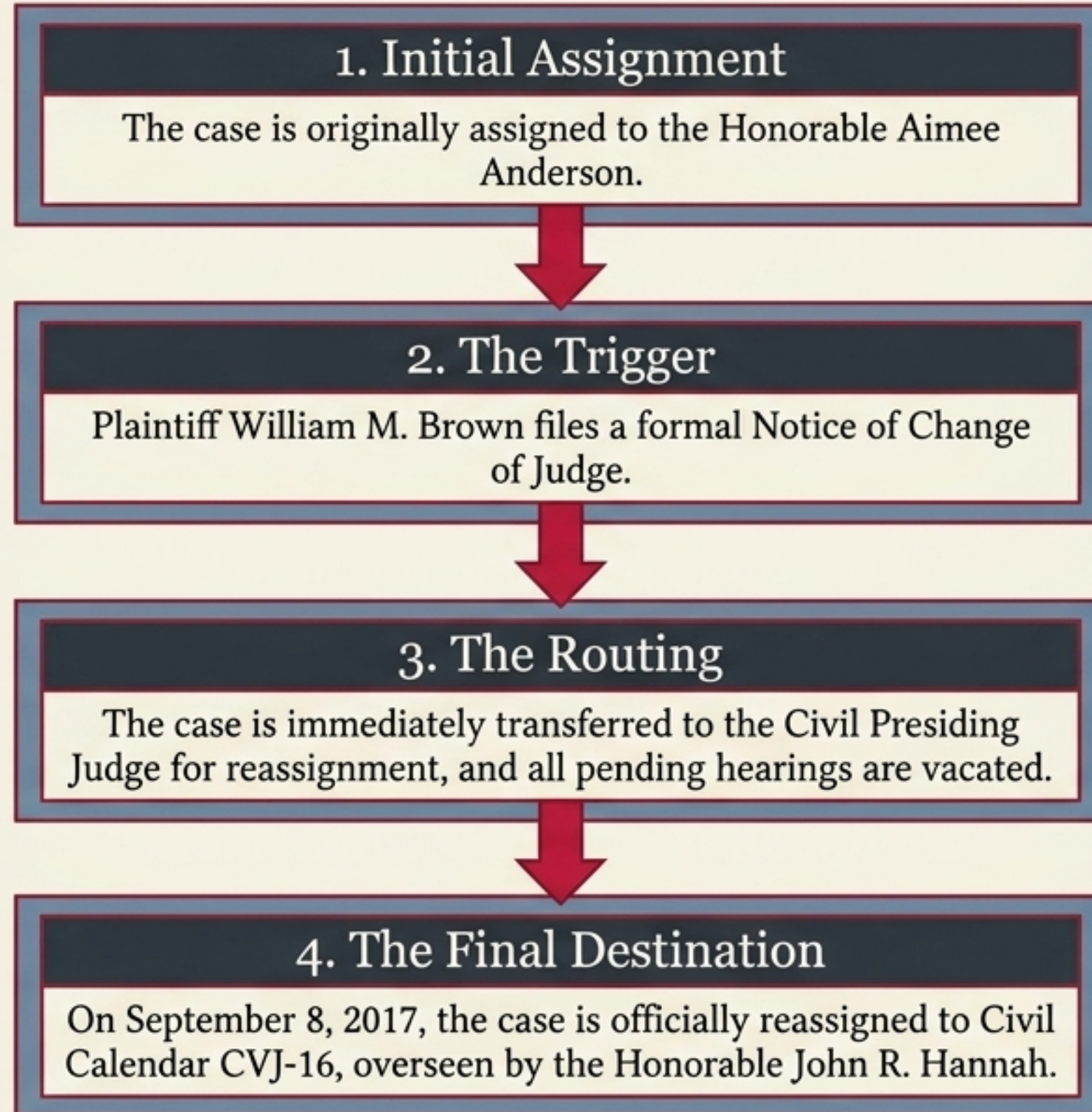
Direct Line: 480-427-2862

josh.bolen@carpenterhazlewood.com

“we cannot agree to a second extension without just cause... We need to keep this matter moving forward.”

The information in this e-mail is ATTORNEY-CLIENT PRIVILEGED AND CONFIDENTIAL and is intended solely for the use by the individual or entity named above. If you believe that it has been

Procedural Tactics: The Judicial Shuffle



The Parallel Suit

Maricopa County Superior Court Case No. CV2016-091991. TCC sued homeowner Anita Bell to force her occupants to comply with TCC rules.

The Dismissal & Fee

TCC voluntarily dismissed the suit. The Court ordered TCC to reimburse Ms. Bell a \$237.00 appearance fee.

The Standoff

Despite TCC's efforts to pay, Ms. Bell refused to accept the \$237.00 payment.

The Judgment Satisfaction Matter

Forced to resolve the ledger, TCC filed a new suit (CV2017-013317) simply to deposit the \$237.00 with the Court and obtain a legal satisfaction of judgment.

The Consolidation Battle: Motion to Transfer

Plaintiff's Rationale for Consolidation

- **Judicial Economy:** Both cases involve the same property (6751 East Amber Sun Drive) and substantially the same parties.
- **Pattern of Harassment:** Plaintiff argues the Bell case is part of a broader pattern of palatable tension and abuse of process by the HOA.

Terravita Litigation: Seventy-two (72) lawsuits thru September 21, 2017
Maricopa County Civil Court Information

<http://www.superiorcourt.maricopa.gov/docket/CivilCourtCases/caseSearch.asp>

Since incorporation, October 8, 1993, Terravita Community Association, Inc. has been a litigant in the following lawsuits beginning with TCA v. Wussow on January 9, 1997 thru June 28, 2017.

TCA, Inc.; Ekmark & Ekmark, L.L.C. (CHD&B, PLC)

CV1997-000433	TCA v. Adolph H. Wussow
CV1099-062237	TCA v. Margaret Rowland
CV2007-051545	WMD v. TCA CNN books and records
CV2001-067348	TCA v. Neer Marie Notke
CV3009-013449	Juan Pizarella, Robert Hall, John Abbott, Stephanie Wolff, Jo Ann Sharp v. TCA/TOC
CV3005-010874	WMB v. Lenze A. Harkinson, TCA, CCMC Civil - defamation, dismissal WMB
CV5000-610899	TCA v. Belene Ivy Kadio
CV3009-010062	TCA v. Stephanie Barcello Leon
CV2000-010982	TCA v. Tamara M. Darric
CV2016-052140	TCA v. AB/WMD: Superior Court, iroo pyric, 1 of 800+ similarly sinated HOAs sued
CV2015-053400	TCA v. Hefene Ho Kardin
CV5015-051113	TCA v. Mary Ann Lowther
CV2013-033163	TCA v. Valande C. Pena
CV2015-053193	Bianco v. TEC/TCA
CC2006-090393	Brian W. Kuckinck v. TCA, CCMC
T22010-001810	TCA v. Jndilh A. Moore
T22010-615765	TEA v. Tamra M. Davis
LC3018-015755	TCA v. Eosre M. Davis
LC3009-000568	TCA v. WMR, DPBL/DAIE Superior Court; not action; no city fees
LC3015-000699	WMB v. TCA, DERLEDAIC Superior Court Consent of Appoint
1 CA-CV 14 -4833	WMB v. TCA, Court of Appaia Decision 7/30/2015

Defendants' Legal Objection

- **Distinct Legal Issues:** Defendants argue the cases are legally unrelated and consolidation serves no judicial economy.

Case 1: Enforcing an administrative records request.

Case 2: A purely procedural matter of a judgment debtor satisfying a debt with the Court because the creditor refused payment.

The Climax: The Show Cause Hearing

The Procedural Climax

SUPERIOR COURT OF ARIZONA
COUNTY OF MARICOPA

FILED
9/11/17 4:58 P.M.
COURT CLERK
W/17 TERRAVITA
10000 N. CENTRAL AVENUE

William M. Brown Case No. CV2017-655475
Plaintiff

Terravita Country Club; Sterling Laaveg;
Paul Tolk; William Madigo Michael Ellington
Joshua Bolen; Anjali Patel
Defendant

ORDER TO APPEAR

READ ME: This is an important Court Order that affects your rights. Read this order carefully. If you do not understand this Order, contact a lawyer for help.

All parties, whether represented by attorneys or not, must be present. If there is a failure to appear, the court may make such orders as are just, including granting the relief requested by the party who does appear.

IT IS ORDERED THAT YOU Terravita Country Club; Sterling Laaveg; Paul Tolk; William Grix; Michael Ellington; Joshua Bolen; Anjali Patel appear for a Return Hearing at the time and place stated below to the court can determine whether to grant the relief asked for in the Application for Provisional Remedy.

INFORMATION ABOUT COURT HEARING TO BE HELD:

NAME OF JUDICIAL OFFICER: JOHN R. HANNAH

DATE AND TIME OF HEARING: OCTOBER 18, 2017 @ 10:30am

PLACE OF HEARING: Maricopa Co. N.E. Facility, 15380 N. 40th ST, Phx, AZ, 85032 - Bm. 102

TIME ALLOTTED FOR HEARING: 15 minutes


EVIDENCE **WILL NOT** be presented unless the parties reach an agreement, but the parties may be asked to present argument on whether the petition established adequate cause to set an evidentiary hearing.

IT IS FURTHER ORDERED that a true copy of this Order to Appear and a true copy of the Application for Provisional Remedy with Notices and documents filed with the Application for Provisional Remedy shall be served by the moving party on the parties who are required to appear and a true copy of these documents shall be mailed immediately to parties who have appeared in this action, in accordance with Arizona Rules of Civil Procedure, Rule 3.

THE MOVING PARTY MUST BRING PROOF TO THE CONFERENCE THAT THE PARTY WHO IS ORDERED TO APPEAR HAS BEEN TIMELY SERVED IN ACCORDANCE WITH THE RULES.

Requests for reasonable accommodation for persons with disabilities must be made to the office of the Judge or Commissioner scheduled to hear this case five days before the scheduled court date.

Date 9.12.17


Judicial Officer
JOHN HANNAH
JUDGE OF THE SUPERIOR COURT

The Command

IT IS ORDERED THAT YOU appear for a Return Hearing... so the court can determine whether to grant the relief asked for in the Application for Provisional Remedy.

The Roster

The order specifically commands Terravita Country Club, its board members, and its legal counsel (Bolen and Patel) to appear.

The Timeline

The hearing is set for October 18, 2017, before Judge Hannah, with exactly 15 minutes allotted—signaling the Court's intent to resolve the matter swiftly rather than entertain a protracted trial.

The Final Ruling: The Merits (June 2018)

The Court's Findings on the Merits

- Judge Hannah finds that the defendant has complied with the administrative law judge's order.
- The HOA produced documents on October 27, 2017, and forwarded information through their attorney, providing a complete and coherent answer to the questions posed by the plaintiff.
- The Court notes that even if the HOA acted in bad faith in the past, the Plaintiff failed to make a colorable showing that the HOA was withholding additional responsive information now.

Chris DeRosa, Clerk of Court
*** E 999 ***

Legal Consequence

CV 2017-055475 06/04/2018

CLERK OF THE COURT
W. Tenoerer
Deputy

HONORABLE JOHN R. HANNAH JR.

WILLIAM M BROWN
[7M LAKEVIEW SSS STATE DR
DOORPRINTS, NY]

Dismissed with prejudice.

v.
TERRA

The Application for an Order to Show Cause is dismissed.

MINUTE ENTRY

Before the Court are the parties' filings pursuant to the order entered on October 27, 2017. The Court ordered the parties to file a memorandum to the Application for Order to Show Cause "first specifies precisely what the defendant should have produced that they have not produced and what the plaintiff should produce as a violation of the administrative law judge's order." The plaintiff submitted his filing, the defendant responded and the plaintiff replied. The Court has delayed addressing the matter based on the plaintiff's request that the matter be stayed through April 2, 2018.

The Court now finds that the defendant has complied with the administrative law judge's order. The documents produced on October 27, 2017, the documents previously produced at the time of the ALJ's order in July and the information forwarded through the defendant's attorney, taken together, provide a complete and coherent answer to the questions posed by the plaintiff. Even assuming for the sake of discussion that the plaintiff could prove that the defendant has not acted in good faith in the past, and that its representatives have not been credible, the plaintiff has not made a colorable showing that the defendant is likely to have additional responsive information.

Docket Code 019 Fees VV06A Page 1

The Final Ruling: Costs & Fees

IT IS THEREFORE ORDERED dismissing the Application for an Order to Show Cause with prejudices.

The HOA's Request for Relief

Having successfully defeated the Plaintiff's contempt application, the Defendants request an award of attorneys' fees and costs pursuant to A.R.S. §§ 12-341 and 12-341.01.

The Court's Denial

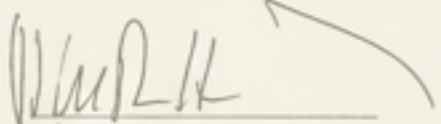
~~Because the defendant notably did not produce some of the responsive documents until~~
after the plaintiff had filed suit, the Court finds that the defendant is not the prevailing party for purposes of A.R.S. sections 12-341 and 12-341.01. Even if it was, the Court in its discretion, **denies** the request for fees.

IT IS THEREFORE ORDERED the defendants' request for an award of attorneys' fees and costs is denied.

No further matters are pending in this case. Judgment is entered pursuant to Ariz. R. Civ. P. 54(c).

The Rationale

Because the HOA arguably did not produce some of the responsive documents until after the plaintiff had filed suit, the Court finds that the defendant is not the true prevailing party for the purposes of awarding fees.


John R. Hannah
Judge of the Superior Court

Key Takeaways & Synthesis



Timing is Everything

Even if an HOA ultimately defeats a lawsuit on the merits, delaying compliance with records requests until after litigation commences can destroy the right to recover attorney fees.



The Limits of Attorney Liability

Plaintiffs will aggressively target external counsel to maximize pressure, but courts maintain strict boundaries. An administrative order against an HOA does not instantly create a legal duty for the HOA's law firm.



The Boundaries of Consolidation

A general history of bad blood or concurrent lawsuits between parties is not sufficient to consolidate cases. Courts require a strict alignment of legal questions—not just shared addresses and shared grievances.