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9 *Attorneys for Defendant*

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **MARICOPA COUNTY**

12 NORMAN ZWICKY,) NO. CV2015-051911
13)
14 Plaintiff,)
15) **CIVIL APPEALS DOCKETING**
16 v.) **STATEMENT**
17)
18 PREMIERE VACATION COLLECTION)
OWNERS ASSOCIATION, f.k.a. Premiere) (Assigned to the Honorable John Hannah)
Vacation Club, an Arizona nonprofit)
corporation,)
Defendant.)
_____)

19 **A. TIMELINESS OF APPEAL**

- 20 1. Date judgment/order was entered: **September 15, 2016.**
21 2. Is the judgment/order signed as required by Rule 58(a)? **Yes.**
22 3. Was the time for appeal extended by motion? **No.**
23 4. Are any motions currently pending in superior court? **Yes.**
24 5. Notice(s) of appeal filed on: **October 14, 2016. See Exhibit A.**
25 6. Has more than one party appealed from the judgment or order? **No.**

26 If yes, state the date each notice of appeal was filed and identify the party filing the notice of
27 appeal:
28

1 **B. APPEALABLE JUDGMENT OR ORDER**

2 1. Basis for appellate jurisdiction: **A.R.S. § 12-1201(A)(1).**

3 2. List all parties involved in the superior court action: **Norman Zwicky, Plaintiff;**
4 **Premiere Vacation Collection Owners Association f.k.a. Premiere Vacation**
5 **Club, Defendant.**

6 3. If all parties in superior court are not parties to this appeal, explain in detail (with
7 specific reference to the record) why those parties are not included in this appeal, e.g., the parties
8 were dismissed, not served, or other: **N/A.**

9 4. Describe (in three to five words) each party's separate claims, counterclaims,
10 cross-claims or third party claims, and the manner each such claim was resolved in the superior
11 court (i.e., bench trial, jury verdict, dismissal, summary judgment, default judgment or other).
12 Include specific references to the record. Use a separate sheet, if necessary: **Plaintiff's claim**
13 **for inspection of timeshare association records "pursuant to A.R.S. § 10-11602 (nonprofit**
14 **corporations), ARS. § 33-2209 (timeshare owner associations), and/or the common law"**
15 **was granted on summary judgment. [Verified Compl., May 12, 2015, at 6:18-20; Final**
16 **Judgment, Sept. 14, 2016]**

17 5. State the nature and basis of the judgment/order appealed from (i.e., bench trial,
18 jury trial, summary judgment, grant of motion to dismiss, denial of motion for relief from
19 judgment, discovery sanction). **Summary judgment.**

20 6. Does the judgment/order appealed from dispose of all claims and all parties?

21 **Yes.**

22 a. If yes, is it certified as final pursuant to Ariz. R. Civ. P. 54(c)? **Yes.**

23 b. If no, was it made appealable pursuant to Ariz. R. Civ. P. 54(b) or Ariz R.
24 Fam. L.P. 78(B)? **N/A.**

25 c. Specify any claims that remain pending in superior court, including any
26 claims for attorney's fees: **N/A.**

27 7. Did this case originate in a justice of the peace court or municipal court? **No.**

28

1 8. Does this appeal involve a contempt judgment or order? **No.**

2 **C. OTHER INFORMATION**

3 1. Do you intend to order any transcripts of the proceedings from which the appeal is
4 taken? **Yes.**

5 If yes:

6 a. Have you made all necessary arrangements with the court reporter(s) for
7 preparation of the transcript(s)? **Yes.**

8 b. State estimated date of completion of transcript(s): **Approximately**
9 **November 3, 2016.**

10 2. Identify issues raised on appeal: **(1) Whether the superior court erred in**
11 **concluding that Plaintiff was entitled to inspect certain records pursuant to A.R.S. § 10-**
12 **11602 (nonprofit corporations), ARS. § 33-2209 (timeshare owner associations), and/or the**
13 **common law; (2) whether the superior court erred in modifying the protective order; (3)**
14 **whether the superior court erred in ordering Defendant to send a “Notice of Court Order”**
15 **pursuant to A.R.S. § 33-2210 to certain of its members.**

16 3. Are you aware of any pending appeals in this court raising the same or closely
17 related issues? **No.**

18 4. Would this appeal be appropriate for acceleration pursuant to Ariz. R. Civ. App.
19 P. 29: (Parties may stipulate to accelerated treatment under Rule 29(a)(1) by filing a form
20 prescribed by the Court.) **No.**

21 5. Would this appeal be appropriate for the appellate settlement program? (A party
22 wishing to participate in the settlement program should file a written request, which shall be
23 treated as confidential. *See* Ariz. R. Civ. App. P. 30(f).): **Yes.**

24 6. Would this appeal be appropriate for inclusion in the Court’s Connecting With
25 The Community High School Program? **No.**

26 7. Are you requesting to participate in the Appellate Pro Bono Pilot Program in
27 Maricopa County? **No.**

1 8. Does this case involve an assertion or allegation that a state, statute, ordinance,
2 franchise or rule is unconstitutional on its face, or that a municipal ordinance or franchise is
3 facially invalid? **No.**

4 **D. OTHER PENDING AND PRIOR PROCEEDINGS**

5 1. Has any other notice of appeal, petition for special action or petition for review
6 been filed from the same or consolidated superior court action? **No.**

7 2. Are there any other appeals pending in the Court of Appeals involving the same
8 parties, events or transactions giving rise to this appeal? **No.**

9 3. Has any bankruptcy court petition been filed or has any other proceeding been
10 commenced in another court that affects this court's jurisdiction over this appeal? **No.**

11 **E. CONTACT INFORMATION**

12 1. This Docketing Statement is filed by or on behalf of **Premiere Vacation**
13 **Collection Owners Association.**

14 John E. DeWulf, Esq.
15 Katherine DeStefano, Esq.
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22 *Attorneys for Appellants*

23 2. Opposing party information:

24 Jon L. Phelps, Esq.
25 **PHELPS & MOORE**
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27 Suite A-102
28 Phoenix, Arizona 85050
 (602) 788-2089
 jon@phelpsandmoore.com

Attorneys for Appellee

1 Edward L. Barry, Esq.
2 Law Office of Edward L. Barry
3 2120 Company Street, Third Floor
4 Christiansted, Virgin Islands 00820
5 ed@attorneyedbarry.com

6 *Co-Counsel for Appellee*

7 DATED this 28th day of October, 2016.

8 **COPPERSMITH BROCKELMAN PLC**

9 By /s/ John E. DeWulf
10 John E. DeWulf
11 Katherine DeStefano
12 2800 N. Central Avenue, Suite 1200
13 Phoenix, Arizona 85004
14 Attorneys for Defendant

15 ORIGINAL e-filed and a copy mailed
16 this 28th day of October, 2016, to:

17 Jon L. Phelps, Esq.
18 PHELPS & MOORE
19 4045 E. Union Hills Drive
20 Suite A-102
21 Phoenix, Arizona 85050
22 Attorneys for Plaintiff

23 Edward L. Barry, Esq.
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26 Christiansted, Virgin Islands 00820
27 Co-Counsel for Plaintiff

28 By /s/ Verna Colwell

Exhibit A

Exhibit A

1 John E. DeWulf (#006850)
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9 *Attorneys for Defendant*

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **MARICOPA COUNTY**

12 NORMAN ZWICKY,) NO. CV2015-051911
13)
14 Plaintiff,)
15) **NOTICE OF APPEAL**
16 v.)
17)
18 PREMIERE VACATION COLLECTION) (Assigned to the Honorable John Hannah)
OWNERS ASSOCIATION, f.k.a. Premiere)
Vacation Club, an Arizona nonprofit)
corporation,)
Defendant.)

19 **NOTICE IS GIVEN** that Defendant Premiere Vacation Collection Owners
20 Association (“PVCOA”) appeals to the Court of Appeals, Division One from the Judgment
21 entered by the Clerk on September 15, 2016 in favor of Plaintiff Norman Zwicky
22 (“Plaintiff”) (1) granting Plaintiff’s Motion for Summary Judgment and ordering the
23 production of specified documents to Plaintiff; (2) granting Plaintiff’s Motion for
24 Modification of Protective Order and Order to Disclose Owners List, permitting Plaintiff or
25 his attorneys to quote or refer to the information produced in connection with this litigation
26 in a complaint or other court filing in the proposed class action litigation, and requiring
27 Defendant to send a specified “Notice of Court Order” to Defendant’s members; (3) and
28

1 awarding Plaintiff his taxable costs in the amount of \$349.00, plus interest at the rate of
2 4.25% per annum (a true and correct copy is attached hereto as Exhibit "A").

3 DATED this 14th day of October, 2016.

4 **COPPERSMITH BROCKELMAN PLC**

5 By /s/ Katherine DeStefano
6 John E. DeWulf
7 Katherine DeStefano
8 2800 N. Central Avenue, Suite 1200
9 Phoenix, Arizona 85004
10 Attorneys for Defendant

11 ORIGINAL e-filed and a copy mailed
12 this 14th day of October, 2016, to:

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23 Co-Counsel for Plaintiff

24 By /s/ Verna Colwell

Exhibit A

Exhibit A

9/15/16 FILED 9:22 a.m.
MICHAEL K. JEANES, Clerk
By W. Tenover
Deputy

1 LAW OFFICES
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18 Attorneys for Plaintiff Norman Zwicky

19 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**
20 **IN AND FOR THE COUNTY OF MARICOPA**

21 NORMAN ZWICKY,

22 Plaintiff,

23 vs.

24 PREMIERE VACATION COLLECTION
25 OWNERS ASSOCIATION, f.k.a. Premiere
26 Vacation Club, an Arizona nonprofit
corporation,

Defendant.

Case No. CV2015-051911

FINAL JUDGMENT

(ASSIGNED TO THE HONORABLE
JOHN HANNAH)

Based on this Court's orders granting Plaintiff's Motion for Summary Judgment (and subsequent orders clarifying that order) and the Plaintiff's Motion for Modification of Protective Order and Order to Disclose Owners List, pursuant to A.R.S. sections 10-11602 and 33-2209 and the common law right of inspection,

1 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant Premier
2 Vacation Collection Owners Association (“the Association”) shall produce copies of the
3 following documents to Plaintiff through his counsel:

- 4 1. All Public Reports, timeshare plans, notifications of material change, or other
5 documents filed with the Arizona Department of Real Estate relating to the
6 Association.
- 7 2. All property management agreements between the Association and Diamond
8 Resorts International or affiliates (hereinafter, collectively, “DRI”), and any
9 amendments or modifications, and
- 10 a. Documents showing the management fees paid or owed to DRI by the
11 Association for the years 2012, 2013, 2014 and 2015.
- 12 b. Documents showing the precise nature, description and amount of any
13 “reimbursement of resort management and general and administrative
14 expenses” paid or owed to DRI by the Association for the years 2012, 2013,
15 2014 and 2015.
- 16 3. All property management agreements between DRI and each constituent Resort
17 (the “Resorts”) of the Association, and any amendments or modifications, and
- 18 a. Documents showing the management fees paid or owed to DRI by the Resorts
19 for the years 2012, 2013, 2014 and 2015.
- 20 b. Documents showing the precise nature, description and amount of any
21 “reimbursement of resort management and general and administrative
22 expenses” paid or owed to DRI by the Resorts for the years 2012, 2013, 2014
23 and 2015.
- 24 4. Profit and Loss statements (or similar) for the Resorts for the years 2012, 2013,
25 2014 and 2015, showing the revenues and expenses of the Resorts (whether or not
26

1 classified as common revenues or common expenses of the Resorts' owners
2 association).

3 5. Profit and Loss statements (or similar) for the owners association ("HOA") of the
4 Resorts for the years 2012, 2013, 2014 and 2015.

5 6. Annual budgets for the Association for the years 2012, 2013, 2014 and 2015.

6 7. Annual budgets for the HOA of the Resorts for the years 2012, 2013, 2014 and
7 2015.

8 8. All documents showing room occupancy totals (measured by room-days or any
9 similar measurement used by the Association or DRI) in the Resorts for the years
10 2012, 2013, 2014 and 2015 for each of the following categories:

11 a. Room rentals to the general public;

12 b. Room rentals to members of a DRI collection other than the Association;

13 c. Room rentals to non-DRI owners utilizing an "exchange" program such as
14 RCI;

15 d. Occupancy by Association members through the use of their "points."

16 e. Unoccupied/vacant units.

17 9. All documents showing annual room rental revenues of the Resorts for the years
18 2012, 2013, 2014 and 2015 for each of the following categories:

19 a. Room rentals to the general public;

20 b. Room rentals to members of a DRI collection other than the Association;

21 c. Room rentals to non-DRI owners utilizing an "exchange" program such as
22 RCI;

23 d. Occupancy by Association members through the use of their "points."

24 10. All documents relating to any sharing or allocation of any category or type of room
25 rental revenues between DRI and the Association, or between DRI and the Resorts
26

1 HOAs, and any agreements or other documents specifying the same.

2 11. All documents showing the annual room rental costs or expenses of the Resort for
3 the years 2012, 2013, 2014 and 2015, for each of the following categories:

- 4 a. Room rentals to the general public;
5 b. Room rentals to members of a DRI collection other than the Association
6 through the use of their “points”;
7 c. Room rentals to non-DRI owners utilizing an “exchange” program such as
8 RCI;
9 d. Occupancy by Association members through the use of their “points.”

10 12. All documents relating to any sharing or allocation of room rental costs and
11 expenses between DRI and the Association (or between DRI and the Resorts
12 HOAs), and any agreements or other documents specifying the same.

13 **IT IS FURTHER ORDERED** that the documents provided to Plaintiff shall not be
14 disclosed to any person other than Plaintiff’s attorneys, accountants, or other consultants, or
15 to persons similarly situated to Plaintiff that may in the future retain the services of
16 Plaintiff’s counsel, except that Plaintiff or his attorneys may quote or refer to the
17 information produced in connection with this litigation in a complaint or other court filing in
18 the proposed class action litigation.

19 **IT IS FURTHER ORDERED** the foregoing protective order shall remain in effect
20 until 60 days after the proposed class action lawsuit is filed in the District Court, and it shall
21 then expire.

22 Nothing in this order shall be construed as any attempt to limit the independent power
23 of the District Court to enter its own protective order upon appropriate motion in that court.
24 Further, either party may apply to the District Court for further modification of the
25 protective order prior to its expiration.
26

