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George K. Staropoli
5419 E. Piping Rock Rd
Scottsdale, AZ 85254
602-228-2891

Pro Se

COPY

FEB 11 2009



MICHAEL K. JEANES, CLERK
M. SIMPSON
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

**PHOENIX TOWNHOUSE HOMEOWNERS)
ASSOCIATION,an Arizona nonprofit)
corporation,)**

Plaintiff,)

vs.)

**ARIZONA OFFICE OF ADMINISTRATIVE)
HEARINGS; ARIZONA DEPARTMETN OF)
FIRE, BUILDING AND LIFE SAFETY; and)
HON. BRIAN TULLY, ADMINISTRATIVE)
LAW)
JUDGE)**

Defendants,)

and)

RON MERITT AND JOHN DEFENDANTS)

Real Parties in Interest)

NO. LC 2008-000740

**MOTION TO INTERVENE
BY GEORGE K. STAROPOLI**

(assigned to the
Honorable Paul J. McMurdie)

Pursuant to the Ariz. R. Civil P. R24(a)(2), (b)(2), and (c) George K. Staropoli ("Intervenor"), a member of a homeowners association in Maricopa County who seeks to protect his interest concerning a matter of law and fact in common, submits this Motion to Intervene. Intervenor is

1 aware that a brief was filed by the plaintiff and that a judgment was rendered. If the Court allows this
2 intervention, a response to the brief can be filed rather quickly, if the Court so desires.

3
4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5
6 A. Lack of Awareness of the litigation -- late involvement

7 Intervenor first became aware of this particular case involving a challenge to OAH
8 constitutionality when he received an email announcement of the decision from the HOA attorneys.
9 At a meeting on January 5, 2009 at the invitation of the Director of the Department of Fire, Building
10 and Life Safety (DFBLS) to discuss this constitutionality issue, at which an Assistant Attorney
11 General and Deputy Director Stahmer were present, I asked if anyone was aware of any case pending
12 or in appeal on this issue. There was no acknowledgement of open and forthcoming cases. The
13 invitation was the result of an exchange of emails in which DFBLS Deputy Director had responded
14 that he could not answer questions about future cases, and other concerns. *"Please understand that is*
15 *impossible for the Department of Fire, Building and Life Safety to determine what the Superior Court*
16 *or the Home Owner's Association will do with any future cases."* (The December 3, 2008 response to
17 an email from a "Tenbu Tamonten" by John Stahmer, a copy of which is attached as Exhibit A).

18 Although the Office of Administrative Hearings (OAH) provides much transparency to the public,
19 there was no information available to the public concerning this special action, nor does OAH offer
20 an "alert" service.

21 Intervenor was quite disturbed by the failure of any of the named defendants or real defendants to
22 respond to the Complaint, recognized by the Court in its order as, in reality, a default judgment.

1 Intervention after a judgment has been rendered does not automatically preclude intervention (*Winner*
2 *Enterprises, Ltd v. Superior Court*, 765 P.2d 116 (App. 1998)), nor will intervention in this case
3 "unduly delay or prejudice the adjudication of rights of the original parties" (Ariz. R. Civ. P 24(b);
4 State of Arizona ex rel. Napolitano v. Brown & Williamson Tobacco Corp., 998 P. 2d 1055 (2000).
5 Rather, Intervenor is protecting his right to OAH access, and the rights of others, in the presence of
6 an about face by the Attorney General who, after filing a brief in support in Waugaman, and an
7 Answer in *Terravita v. Brown* (LC2007-000588, Answer of Department of Fire, Building and
8 Life Safety, October 10, 2007, III lines 6-8), but did not participant any further since the
9 question of constitutionality was later determined to not have been raised in the case), declined
10 to become involved in this "round 2" of the OAH constitutionality issue, "round 1" being the
11 Waugaman case.

12

13 B. Intervention by right

14 Intervenor asserts his right to intervene under Ariz. R. Civ. P. 24(a)(2) since he is a homeowner
15 living in an HOA in Maricopa County and his right to seek a fair and just adjudication of complaints
16 against his HOA under the statute in question. (*John F. Long Homes, Inc. v. Holohan*, 97 Ariz. 31
17 (1964); *Weaver v. Synthes*, 784 P.2d 268 (198)). These rights may become non-existent and impair
18 his interests in the issue of constitutionality. if the plaintiff prevails. Furthermore, the failure of any of
19 the defendants to respond and defend the constitutionality of the statute allows intervention under R
20 24(a), "*unless the applicant's interest is adequately represented by existing parties.*"

1 C. Undue delay and prejudice to original parties.

2 By the nature of this constitutionality challenge, the appearance of the Intervenor will not
3 *"prejudice the adjudication of rights of the original parties"*, since justice will be done in place of a
4 default judgment resulting from the absence of the Attorney General and Legislature to defend the
5 statute that has been in existence since September 2006. "Because an intervenor of right may be
6 seriously harmed if not permitted to intervene, the court should be reluctant to dismiss a request for
7 intervention." *Winner Enterprises, Ltd v. Superior Court*, 765 P.2d 116 (1988). The Winner court
8 held that because the time frame was shortened by the special action and that other parties would not
9 be prejudices, it allowed the intervention even though a judgment had been rendered. This
10 Intervenor's appearance will not unduly delay proceedings, but will serve the interest of justice that
11 was lacking by the current default judgment. A response to the plaintiff's brief can be quickly filed, if
12 the Court deems necessary or appropriate.

13
14 **Wherefore**, Intervenor requests the Court's indulgence and allow this intervention by right or
15 permission as permitted under Ariz. R. Civ. P. 24(a)(2) and (b).

16
17
18 RESPECTFULLY SUBMITTED this _____ day of February , 2009

19
20 George K. Staropoli
21 5419 E. Piping Rock Rd
22 Scottsdale, AZ 85254
Pro Se

1 ORIGINAL filed and COPY of the foregoing
mailed this _____ day of February, 2009 with:

2 Maricopa County Superior Court Clerk of the Court
3 101/201 W. Jefferson
Phoenix, AZ 85003

4 COPY of the foregoing mailed this ____ day of February, 2009 to:

5 Hon. Paul J. McMurdie
6 101/201 W. Jefferson
Phoenix, AZ 85701

7 Jason E. Smith, Esq.
8 Carpenter, Hazlewood, Delgado & Wood, PLC
400 E. Southern Ave., Ste. 640
9 Tempe, AZ 85282

10 Office of Administrative Hearings
400 W. Washington, Ste. 101
11 Phoenix, AZ 85007

12 Ron Merritt/John Hernandez
3154 E. Brookwood
13 Phoenix, AZ 85048

14 Robert Barger, Director
Arizona Department of Fire, Building and Life Safety
15 1110 W. Washington St., St. 100
Phoenix, AZ 85087

16
17 Camila Alarcon/Hunter Perlmeter
18 Assistant Attorney General
19 1275 W. Washington
20 Phoenix, AZ 85007-2997

21
22 _____
23 George K. Staropoli

24

1 **EXHIBIT A. DFBLS email denying any knowledge of any appeals**

2 (emphasis added)

3
4 -----
5
6 --- On **Wed, 12/3/08, John Stahmer** <*john.stahmer@dfbls.az.gov*> wrote:

7
8 From: John Stahmer <*john.stahmer@dfbls.az.gov*>

9 Subject:

10 To: *tenbutamonten@yahoo.com*

11 Date: Wednesday, December 3, 2008, 4:34 PM

12
13 Dear Mr. Tamonten:

14
15 This is in response to your inquiry regarding Case No. LC2007-000598. **Please understand that is**
16 **impossible for the Department of Fire, Building and Life Safety to determine what the Superior Court**
17 **or the Home Owner's Association will do with any future cases.**
18

19 Should you have further questions, please do not hesitate to contact me.

20
21 Thank you for your inquiry if necessary please seek the advice of legal counsel as the Department of Fire,
22 Building and Life Safety does not render legal advice.

23
24 Sincerely,

25
26 John Stahmer

27
28 On Behalf of: Bob Barger

29
30 #####

31
32 Copy received by email 12/8/09