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6 **SUPERIOR COURT OF MARICOPA COUNTY, ARIZONA**

7 LINDA W. SWAIN, an individual; and EILEEN
8 T. BRESLIN, an individual,

Case No. CV2014-051035

9 Plaintiffs

10 vs.

11 TTLC AHWATUKEE LAKES INVESTORS,
12 LLC, an Arizona limited liability company,

13 **APPLICATION FOR ORDER TO
SHOW CAUSE RE: CONTEMPT
FOR VIOLATING INJUNCTION
TO RESTORE GOLF COURSE**

(Assigned Hon. Theodore Campagnolo)

14 Defendant.

15 Plaintiffs Linda W. Swain and Eileen T. Breslin (“Plaintiffs”) request the Court
16 issue an Order to Show Cause requiring ALCR, LLC, the owner of the Ahwatukee Lakes
17 Golf Course, to appear and show cause why it should not be held in contempt for violating
18 the permanent injunction ordering the owner of the Ahwatukee Lakes Golf Course to
19 operate a golf course on that property. In support of this Application, Plaintiffs allege:

20 1. Following a bench trial, the Court ruled in favor of Plaintiffs, against
21 Defendant TTLC Ahwatukee Lakes Investors, LLC (“TTLC”) and entered its Findings
22 of Fact and Conclusions of Law on January 2, 2018.

23 2. On May 31, 2018, the Court issued a minute entry setting out, among other
24 things, its reasoning in granting injunctive relief in favor of Plaintiffs and against TTLC.

25 3. On May 31, 2018, the Court entered its Final Judgment and Order for
26 Permanent Injunction (“Judgment and Permanent Injunction”) in favor of Plaintiffs and
27 against TTLC, Bixby Village Golf Course, Inc., Hiro Investment, LLC, Nectar
28 Investment, LLC and Kwang Co., LLC and Ahwatukee Golf Properties (“Bixby
Village”).

1 4. Regarding the injunctive relief, the Judgment and Permanent Injunction
2 provided, in part:

3 IT IS HEREBY ORDERED that the owners of the Ahwatukee Lakes Golf
4 Course (legally described on Exhibit A (pages 11-17) to the 1992
5 Covenants, Conditions and Restrictions) are permanently enjoined to and
6 shall operate a golf course on the subject property, for the benefit of those
7 described in the 1992 Covenants, Conditions and Restrictions as Benefitted
8 Persons, in conformity the ‘Declaration of Use Restriction’ set forth in
9 paragraph 2 of the 1992 Covenants, Conditions and Restrictions.

10 5. TTLC, Bixby Village Golf Course, Inc.¹, Hiro Investment, LLC, Nectar
11 Investment, LLC and Kwang Co., LLC and Ahwatukee Golf Properties, LLC filed
12 Notices of Appeal challenging, among other orders, the Judgment and Permanent
13 Injunction (collectively, “Appellants”).

14 6. As part of the 2015 transaction in which TTLC purchased the Ahwatukee
15 Lakes Golf Course (the “Golf Course”) from Bixby Village, TTLC executed a
16 Promissory Note (the “TTLC Promissory Note”) in favor of Bixby Village and also
17 executed a Deed of Trust and Assignment of Rents (the “TTLC DOT”) against the Golf
18 Course securing the TTLC Promissory Note.

19 7. TTLC defaulted on the TTLC Promissory Note and on May 14, 2018,
20 Bixby Village recorded a Notice of Trustee’s Sale scheduling a trustee’s sale for August
21, 2018, which was subsequently postponed to September 20, 2019.

22 8. In or about July or August 2018, Bixby Village executed an Assignment
23 of Beneficial Interest Under Deed of Trust transferring the TTLC DOT to ALCR, LLC.
24 The Assignment of Beneficial Interest Under Deed of Trust was recorded on September
25 17, 2018.

26 9. On September 20, 2018, ALCR, LLC conducted a trustee’s sale and
27 purchased the Golf Course at that trustee’s sale.

28 ¹ Bixby Village Golf Course, Inc. is wholly owned by Wilson Gee and his wife. A copy of the
29 Arizona Corporation Commission website report for ALCR, LLC is attached as Exhibit A.

1 10. On or about September 21, 2018, ALCR, LLC took title to the Golf Course
2 pursuant to the Trustee's Deed Upon Sale. A certified copy of the Trustee's Deed Upon
3 Sale is attached as Exhibit B.

4 11. ALCR, LLC is an Arizona limited liability company that was organized on
5 August 1, 2018. ALCR, LLC is comprised of Nectar Investment, LLC and Ahwatukee
6 Golf Properties, LLC as Managers and Hiro Investment, LLC, Nectar Investment, LLC
7 and Kwang Co., LLC as Members. A copy of the Arizona Corporation Commission
8 website report for ALCR, LLC is attached as Exhibit C.

9 12. ALCR, LLC is not an appealing party in the Arizona Court of Appeals
10 matter along with the Appellants.

11 13. Ahwatukee Golf Properties, LLC is an Arizona limited liability company.
12 A copy of the Arizona Corporation Commission website report for ALCR, LLC is
13 attached as Exhibit D.

14 14. Ahwatukee Golf Properties, LLC is wholly owned by Wilson Gee and his
15 wife. *See* Finding of Fact nos. 18 and 19, January 2, 2018, Findings of Fact and
16 Conclusions of Law.

17 15. In Appellants' Opening Brief Statement of the Case filed in the Arizona
18 Court of Appeals, Appellants stated:

19 Because the trial court's Judgment is against TTLC and Bixby, those parties
20 remain proper Appellants and they are pursuing the appeal. ALCR, LLC is
21 aware of the trial court's ruling, however, and understands that it would be
subject to the trial court's injunction if the injunction is affirmed on appeal.

22 A copy of page 5 of Appellant's Opening Brief is attached as Exhibit E.

23 16. On September 19, 2019, the Arizona Court of Appeals issued its opinion
24 affirming the Court's "ruling granting the injunction". A copy of that opinion is attached
25 as Exhibit F.

26 17. Plaintiffs' filed a Notice of Final Judgment and Order for Permanent
27 Injunction on December 28, 2018 and served a copy of that Notice, along with a certified
28 copy of the Judgment and Permanent Injunction, on ALCR, LLC (as required by A.R.S.

1 § 12-1556²). A copy of the Notice of Final Judgment and Order for Permanent Injunction
2 is attached as Exhibit G and a copy of the Certificate of Service by Process Server is
3 attached as Exhibit H.

4 18. In a September 25, 2019, article in the *Ahwatukee Foothills News*, Wilson
5 Gee, a principal in Bixby Village Golf Course, Inc., Ahwatukee Golf Properties, LLC
6 and ALCR, LLC was quoted as saying, “[the Golf Course] will never be a golf course
7 again”. Wilson Gee was further quoted as saying of the Arizona Court of Appeals
8 September 19, 2019, Opinion,

9 It really doesn’t change anything. Obviously, we’re not going to do anything
10 and the next guy’s not going to do anything because it doesn’t make sense to
11 be a golf course. That’s wrong. That’s the reality. Doesn’t matter what the
12 courts rule. It’s not going to happen.

13 The September 25, 2019, *Ahwatukee Foothills News* article is attached as Exhibit I.

14 19. To date the Golf Course has continued to deteriorate and no apparent steps
15 have been taken to restore the Golf Course so that ALCR, LLC can operate a golf course
16 on the Golf Course. The Declaration of Linda W. Swain attached as Exhibit J.

17 20. Because the Appellants did not seek a Rule 62(e), Ariz.R.Civ.P., stay of the
18 final Judgment and Permanent Injunction from this Court ³ pending the outcome of their
19 appeal and because ALCR, LLC is not a party to the appeal⁴, this Court is not stayed

20 2 “When a judgment requires the performance of any act other than is designated in the preceding
21 sections of this article [regarding executions on judgments], a certified copy of the judgment shall
22 be served upon the party against whom the judgment was given, or upon the person required by
23 the judgment or by law to obey it. Obedience thereto may be enforced by the court by the power
24 to punish by contempt.”

25 3 Likewise, Appellants did not seek a stay from the Arizona Court of Appeals under Rule 7(c),
26 Ariz.R.Civ.App.P. (although that rule requires an appellant must first seek a stay from the trial
27 court in order to request a stay from the court of appeals).

28 4 Trial court’s stay pending outcome of appeal erroneous if party before trial court is not a party
29 to the appeal. *State v. Allison*, 296 S.W. 2d 104, 111 (Mo. 1956) (citing *Dey v. McAlister*, 19
30 Ariz. 306, 169 P. 458 (1918), in which the Arizona Supreme Court held a trial court [*continued*]
31 erred in refusing to proceed to trial before the results of another matter pending in the Arizona
32 Supreme Court). Cf. *Lockwood v. Superior Court*, 31 Ariz. 460, 254 P. 232 (1927) (postponement
33 of sheriff’s sale erroneous even if other matters pending).

1 from its statutory authority under A.R.S. § 12-1556 and Rule 65(f), Ariz.R.Civ.P. to order
2 ALCR, LLC to appear and show cause why it should not be held in contempt for violating
3 the Judgment and Permanent Injunction.

4 21. A court may issue sanctions for disobedience of an injunction as civil
5 contempt, or for criminal contempt as allowed by law, against a party or person who
6 violates an injunction. Rule 65(f)(1), Ariz.R.Civ.P.; *Green v. Lisa Frank, Inc.*, 22 Ariz.
7 138, 211 P.3d 16 (App. 2009) (recognizing trial court has inherent authority to punish for
8 contempt when a party fails to obey a lawful judgment of the court).

9 Wherefore, Plaintiffs respectfully urge the Court:

10 A. To, in accordance with Rule 65(f)(3), Ariz.R.Civ.P., issue an order to show
11 cause setting a date for and requiring ALCR, LLC to appear and respond to the allegations
12 of this Application and show cause why ALCR, LLC should not be held in contempt for
13 violating the Judgment and Permanent Injunction;

14 B. If, in accordance with Rule 65(f)(5), Ariz.R.Civ.P., at the order to show
15 cause hearing ALCR, LLC establishes there is a genuine dispute of material fact
16 regarding Plaintiffs' assertion that the Golf Course has continued to deteriorate and no
17 apparent steps have been taken to restore the Golf Course so that ALCR, LLC can operate
18 a golf course on the Golf Course, Plaintiffs request the Court to set an evidentiary hearing
19 pursuant to Rule 43(f), Ariz.R.Civ.P., to consider any evidence regarding the status of
20 ALCR, LLC's efforts to comply with the Judgment and Permanent Injunction; and

21 C. If at the order to show cause hearing the Court finds that ALCR, LLC
22 violated the injunction, Plaintiff requests the Court set a separate hearing to determine
23 appropriate remedies and sanctions under the law of civil and criminal contempt as
24 provided in Rule 65(f)(6).

25 Dated this 20th day of October 2019.

26 TIMOTHY H. BARNES, P.C.

27 By /s/ Timothy H. Barnes (SBN 003373)
28 Timothy H. Barnes
Attorney for Plaintiffs