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**SUPERIOR COURT OF MARICOPA COUNTY, ARIZONA**

10 Linda W. Swain, an individual; and Eileen R.  
11 Breslin, an individual,

12 Plaintiffs,

13 v.

14 TTLC Ahwatukee Lakes Investors, LLC, an  
15 Arizona limited liability company,

16 Defendants.  
17

Case No. CV2014-051035

**ALCR, LLC’S BRIEF AS TO WHY  
IT IS NOT IN CONTEMPT FOR  
VIOLATING INJUNCTION TO  
RESTORE GOLF COURSE**

18  
19 ALCR, LLC (“ALCR”) is the owner of the property upon which the Ahwatukee  
20 Lakes Golf Course (“the Golf Course”) existed before it was closed in 2013. Although  
21 injunctive relief was granted to the Plaintiffs, ALCR should not be found to be in contempt  
22 of the Court’s injunction for numerous reasons. ALCR is currently preparing to file a  
23 petition for certiorari to the United States Supreme Court; second, it has taken steps to  
24 meet with the Plaintiffs to work out a resolution including looking into building a golf  
25 course on the subject property or turn it into open public spaces; third, the Court ordered  
26 the property owners to operate a golf course on the property and there is not one at this  
27 time, and fourth, it is not in a financial position to build a golf course and operate it.  
28 ALCR’s position is supported by the attached memorandum of points and authorities.

1  
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **A. Background**

4 In June 2006, Bixby Village Golf Course, Inc. (“Bixby”) and a group of investors  
5 purchased the Golf Course and operated it as a golf course. Bixby closed the Golf Course  
6 in May 2013, after the Great Recession hit the United States. The property upon which  
7 the Golf Course was built began to return to its natural state. (See ALRC Ex. 4, Ex. 5)  
8  
9 The Plaintiffs sued Bixby in October 2014, seventeen months after the Golf Course was  
10 closed claiming the closing of the Golf Course violated the applicable CC&Rs. In June  
11 2015, TTLC Ahwatukee Lakes Investors, LLC (“TTLC”) purchased the property where  
12 the Golf Course had been and substituted in as the Defendant in the pending lawsuit.  
13  
14 TTLC executed a Promissory Note in favor of Bixby and also executed a Deed of Trust  
15 and Assignment of Rents against the Land securing the Note when it purchased the  
16 property.  
17  
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19 Following a bench trial, the Court ruled in favor of Plaintiffs, against TTLC and  
20 entered its Findings of Fact and Conclusions of Law on January 2, 2018. On May 31,  
21 2018, the Court entered its Final Judgment and Order for Permanent Injunction (“Order  
22 for Injunction”) in favor of Plaintiffs. (ALCR Ex. 1) The Court’s order stated that TTLC  
23 “shall operate a golf course on the subject property, . . . shall provide information  
24 concerning restoration of the golf course to the plaintiffs, their attorneys and  
25 representatives . . . upon reasonable request, sufficient to allow the Plaintiffs and  
26 Benefitted Persons to determine whether the property owners are complying with the  
27 permanent injunction.” (ALCR Ex. 1, p. 2) Thus, the Court ordered TTLC to operate a  
28

1 golf course on the subject property but there was no golf course to operate since by the  
2 time of the Order for Injunction, the Golf Course had ceased to operate for over five years,  
3 the greens and fairways were gone, the Lakes were drained and the Club House had burned  
4 down.  
5

6 After the Order for Injunction was entered, TTLC appealed to the Arizona Court  
7 of Appeals. While the case was on appeal, TTLC defaulted on the Promissory Note and  
8 on May 14, 2018, Bixby recorded a Notice of Trustee's Sale that was held on September  
9 20, 2018. In or about July or August 2018, Bixby executed an Assignment of Beneficial  
10 Interest Under Deed of Trust transferring the TTLC Deed of Trust to ALCR (an Arizona  
11 limited liability company that was organized on August 1, 2018). The Assignment of  
12 Beneficial Interest Under Deed of Trust was recorded on September 17, 2018. On  
13 September 20, 2018, ALCR conducted a trustee's sale and purchased the property. On or  
14 about September 21, 2018, ALCR took title to the property pursuant to the Trustee's Deed  
15 Upon Sale.  
16  
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19 ALCR substituted in as an appealing party in the Arizona Court of Appeals. ALCR  
20 was aware of the trial court's ruling and stated that it would be subject to the trial court's  
21 injunction if the injunction was affirmed on appeal. On September 19, 2019, the Arizona  
22 Court of Appeals issued its opinion affirming the Order for Injunction. (*Swain et al. v.*  
23 *Bixby Village, et al.*, 247 Ariz. 450 P.3d 270 (Ariz. Ct. App. 2019).  
24  
25

26 On October 20, 2019, Plaintiffs filed an Application for Order to Show Cause Re:  
27 Contempt for Violating Injunction to Restore Golf Course. On November 1, 2019, ALCR  
28 filed a Petition for Review to the Arizona Supreme Court. On November 12, 2019, ALCR

1 filed a Response to which Plaintiffs filed a Reply but then on December 18, 2010,  
2 Plaintiffs filed a Notice of Withdrawal of Plaintiffs' Application for Order to Show Cause.  
3 (ALCR Ex. 2) On April 3, 2020, the Arizona Supreme Court denied ALCR's Petition for  
4 Review.  
5

6 **B. Steps Taken by ALCR to Comply with Order for Injunction**

7  
8 First, ALCR believes that what the Plaintiffs really want is open spaces or a park  
9 atmosphere on the property where the Golf Course was located. No one has decided how  
10 much of the property must be used as a golf course, how it will be configured, how many  
11 holes it must have or whether it must have water hazards. Thus, after the Arizona Supreme  
12 Court denied the petition for review in 2020, ALCR sent the Ahwatukee Lakes Proposal  
13 2020 (ALCR Ex. 3) to the Plaintiffs, which was not accepted.  
14

15 In early May 2020, approximately a month after the Petition for Review was  
16 denied, ALCR representative, Wilson Gee ("Mr. Gee") contacted Bill Israel ("Mr.  
17 Israel"), a representative of the Plaintiffs, to set up a meeting between Mr. Gee and the  
18 Plaintiffs to discuss settling the dispute. (ALCR Ex. 6, p. 3) A Zoom meeting was held  
19 between the Plaintiffs, Mr. Israel and Mr. Gee on May 14, 2020. (ALCR Ex. 6, p. 3) Mr.  
20 Gee explained his position that the Golf Course was designed over 40 years earlier and to  
21 attract players it would have to be redesigned and would cost between \$4 - \$6 million.  
22 Mr. Gee proposed building a botanical garden and even proposed giving much of the  
23 property to the Phoenix Desert Botanical Garden. (ALCR Ex. 6, p. 3) He told the  
24 Plaintiffs that there was \$2.7 million tax lien on the property that had been purchased from  
25 the county and that the purchaser was probably not considering building a golf course  
26  
27  
28

1 since he could buy the Ahwatukee County Club golf course for \$2.7 million. (ALCR Ex.  
2 6, p. 3, ALCR Ex. 8, Ex. 9) On May 15, 2020, Mr. Israel e-mailed Mr. Gee that the  
3  
4 Plaintiffs found the botanical garden idea intriguing but the Plaintiffs had directed their  
5 counsel to proceed to enforce the Order for Injunction but the Plaintiffs would be  
6 consulting with the leadership of the Save the Lakes groups concerning the recent  
7  
8 proposal. (Ex. 6, p. 2) Mr. Gee understood that the Save the Lakes group was an informal  
9 group of residents in the area near the Golf Course.

10 Mr. Gee wrote to Mr. Israel again on May 26, 2020 and advised that he had asked  
11  
12 Forrest Richardson, a golf course designer, to prepare an estimate of cost for a preliminary  
13 design of an 18-hole golf course and a driving range and that Mr. Gee was speaking to  
14  
15 different golf academies about bringing a teaching center to the Golf Course (ALCR Ex.  
16 6, p. 2) Also, Mr. Gee explained the need for a development component to make the  
17  
18 project financially feasible. Lastly he advised Mr. Israel that he had contacted the Desert  
19 Botanical Gardens but had not received a response. (ALCR Ex. 6, p. 2)

20 On May 26, 2020, Mr. Gee received a contract from Mr. Richardson to perform  
21  
22 golf course architectural services and concept planning for an 18-hole par-3 golf course  
23 and practice area. (ALCR Ex. 7) Mr. Gee contacted Mr. Israel again on June 5, 2020  
24  
25 advising that he had tentative approval from a lender to obtain a loan to pay off the tax  
26  
27 lien on the property and cover the legal fees and capital for the preliminary plans for a golf  
28 course and development and requested another Zoom meeting with the Plaintiffs. (ALCR  
Ex. 6, p. 1) Mr. Israel responded on June 8, 2020 that the Plaintiffs appreciated Mr. Gee's

1 effort but they had decided to press forward with the enforcement action. (ALCR Ex. 6,  
2 p. 1)

3  
4 On July 13, 2020, Mr. Wilson sent another e-mail to Mr. Israel and the Plaintiffs  
5 providing them with a new alternative solution based on a new bill in Congress called the  
6 “Great American Outdoors Act” that might permit the federal government to purchase the  
7 property and turn it into a park. (ALCR Ex. 10)  
8

9 Thus, ALCR has been diligently working to come up with a solution that would  
10 resolve the dispute over how this property is to be used including using most of it for a  
11 golf course. ALCR is looking at ways to comply with the Court’s Order for Injunction.  
12 Since the Arizona Supreme Court denied the Petition for Review, even though it is seeking  
13 review from the highest court in the land, ALCR has made numerous efforts to try and  
14 resolve this dispute with the Plaintiffs and comply with the Court’s Order for Injunction.  
15  
16

17 ALCR is a single asset corporation. Since taking title to the property pursuant to  
18 the Trustees Deed Upon Sale, ALCR has paid to keep the growth trimmed on the property  
19 while it pursued the appeal in the Arizona Court of Appeals, filed the Petition for Review  
20 in the Arizona Supreme Court, and has retained counsel to file a Petition of Certiorari in  
21 the United States Supreme Court. Throughout this process, it has sought various ways to  
22 seek a resolution with the Plaintiffs including offering to build a golf course.  
23  
24

25 As the Court can see, ALCR is seeking a resolution to this dispute and is trying to  
26 work with the Plaintiffs to resolve it and to comply with the Court’s Order for Injunction.  
27 The primary issue is money. Mr. Gee testified at the bench trial that the Golf Course was  
28 closed in 2013 because it was losing money. There is now a \$2.7 million tax lien on the

1 property. ALCR does not have the financial ability to pay off the tax lien, pay for the  
2 rebuilding of a golf course, and then operate it. (ALCR Ex. 11) However, as Mr. Gee  
3 advised Mr. Israel and will testify, ALCR is seeking aid from lenders.  
4

5 Civil contempt is “a party’s disobedience to a specific and definite court order by  
6 failure to take all reasonable steps within the party’s power to comply.” *Reno Air Racing*  
7 *Ass’n, Inc. v. McCord*, 453 F.3d 1126, 1130 (9<sup>th</sup> Cir. 2006). Civil contempt sanctions are  
8 imposed as a means of forcing compliance with a court order. *Int’l Union, United Mine*  
9 *Workers of Am. v. Bagwell*, 512 U.S. 821, 828 (1994).  
10

11 The law is clear; the subject of an injunction order cannot be held in contempt if  
12 the party lacks the financial ability to comply with the order. *SEC v. Ormont Drug &*  
13 *Chemical Co., Inc.*, 739 F.2d 654, 657 (D.C. Cir. 1984); 43A C.J.S. Injunctions § 465  
14 (2017). The party moving for contempt sanctions bears the burden of proving that his  
15 adversary violated a court order by clear and convincing evidence. The burden then shifts  
16 to the alleged contemnor to demonstrate why it is unable to comply. *Stone v. City and*  
17 *County of San Francisco*, 968 F.2d 850, 856 n.9 (9<sup>th</sup> Cir. 1992).  
18  
19  
20

21 ALCR does not have the financial ability to comply with the Court’s injunction to  
22 build and operate a golf course although it is seeking ways to comply since the Golf  
23 Course will have to be rebuilt in order to comply with the Court’s Order for Injunction.  
24

25 For all of the reasons stated above, ALCR should not be found to be in contempt  
26 of the Court’s Order for Injunction. The Order of Injunction says a golf course must be  
27 operated but it does not say what it must look like. The Court’s order lacks specificity  
28 and is not clearly definite. ALCR is taking all reasonable steps to comply.

1           WHEREFORE, ALCR respectfully requests that this Court find that ALCR is not  
2 in contempt and it requests instructions from the Court on how to proceed in order to be  
3 in compliance.  
4

5           RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of August, 2020.

6                                   **MAYNARD CRONIN ERICKSON**  
7                                   **CURRAN & REITER, P.L.C.**

8                                   By /s/Daniel D. Maynard  
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14           **ORIGINAL** of the foregoing e-filed this 12<sup>th</sup> day of August, 2020, to:

15 Clerk of the Court  
16 Maricopa County Superior Court  
17 Northeast Regional Center (NE)  
18 18380 N. 40<sup>th</sup> Street  
19 Phoenix, AZ 85032

20           **COPY** of the foregoing electronically delivered this 12<sup>th</sup> day of August, 2020, to:

21 Honorable Theodore Campagnolo  
22 Maricopa County Superior Court  
23 Northeast Regional Center  
24 18380 N. 40<sup>th</sup> Street, G107  
25 Phoenix, AZ 85032

26           **COPY** of the foregoing e-mailed this 12<sup>th</sup> day of August, 2020, to:

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By /s/Stacey McClellan