Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-051035 11/09/2020

HONORABLE THEODORE CAMPAGNOLO

CLERK OF THE COURT
G. Chavez
Deputy

LINDA W SWAIN, et al. TIMOTHY H BARNES

v.

BIXBY VILLAGE GOLF COURSE INC, et al. DANIEL D MAYNARD

CHRIS R BANISZEWSKI
JUDGE CAMPAGNOLO

UNDER ADVISEMENT RULING

On November 2, 2020, the Court held an evidentiary hearing and heard oral arguments on the imposition of sanctions based on the Court's order of August 18, 2020 that ALCR, LLC (ALCR) was in contempt for failing to comply with a Final Judgment and Order for Permanent Injunction entered on May 31, 2018 (the Judgment). The Court has reviewed and considered the evidence presented on August 18, 2020 and November 2, 2020, all relevant filings, the parties' pre-hearing briefs, the Mandate entered on July 9, 2020, the Court of Appeals' opinion, the on-line filings in Case No. 20-288 before the United States Supreme Court, the oral arguments in this case, and the applicable law. The Court now enters findings of fact and conclusions of law as to the issue of sanctions, and enters orders based on such findings and conclusions. If a finding of fact would be deemed to be a conclusion of law, or vice-versa, they shall be so deemed, but that does not affect the ultimate rulings in this case.

FINDINGS OF FACT

1. A four-day bench trial on Plaintiffs' Amended Complaint was heard by the Honorable John R. Hannah, Jr. on October 24, 25, & 26 and November 1, 2017.

2. The Court took the matter under advisement. On January 2, 2018, the Court issued its Findings of Fact and Conclusions of Law. (Docket #96)

3. On January 3, 2018, the Court entered its Verdict in favor of Plaintiffs/Counter-Defendants Linda Swain and Eileen T Breslin, and against TTLC Ahwatukee Lakes Investors, LLC. (Docket #95). TTLC Ahwatukee Lakes Investors, LLC has been generally referred to as "True Life," which term the Court will use in this Ruling.

4. On May 31, 2018, the Court entered the Final Judgment and Order for Permanent Injunction (the Judgment), which required that the owners of Ahwatukee Lakes Golf Course restore and operate a golf course on the subject property. (Docket #122). At the time of the Judgment, True Life was the owner of the subject property. ALCR is now the owner.

5. The Court will highlight certain historical facts for purposes of this Ruling. However, so as to avoid repeating all of the history of this case, the Court incorporates herein the Findings of Fact and Conclusions of Law filed on January 2, 2018, which provides a detailed summary of all events in this case from the creation of the Declaration of Covenants, Conditions, Restrictions and Easements on October 16, 1986 (the CCR) through the end of the trial on November 1, 2017. Additionally, the Court of Appeals' Opinion in this case provides an excellent factual and procedural summary of the case.

6. The CCR required that approximately 110 acres of land were designated solely for the purpose of an 18-hole executive golf course with any golf course amenities, known as the Ahwatukee Lakes Golf Course (the Golf Course). Pursuant to subsequent amendments, this restriction became permanent prior to 2006. Section D of the Recitals provided that the CCR's provisions were for the benefit of the owner of the Golf Course and the property owners located within the Ahwatukee master planned community. The Judgment referred to this group as the "Benefitted Persons." For purposes of this Ruling, the Court will generally refer to this group as the "Property Owners," because they make up nearly all of the "Benefitted Persons," and are the ones most interested in enforcing the CCR and the Judgment.

7. The CCR also provided that the golf course restriction was made pursuant to A.R.S. §§42–125.01 and 42–146, which statutes provide valuable tax benefits for the operation

of a golf course. These tax benefits can be achieved only if golf can be played or practiced on the Golf Course. *Swain v. Bixby Village Golf Course, Inc.*, 247 Ariz. 405, ¶23 (App. 2019).

8. In June 2006, the original defendants in this case, Bixby Village Golf Course, Inc., Hiro Investment, LLC, Nectar Investment, LLC, and Kwang Co., LLC, (collectively referred to as "the Bixby Group") purchased the Golf Course and the Ahwatukee Country Club for $5.6 million, subject to the aforementioned CCR. The testimony showed that $4.2 million was allocated to the Golf Course, with the remaining amount allocated to the purchase of the Ahwatukee Country Club.

9. Mr. Gee was a member of Bixby Village Golf Course, Inc. As a member of one of the purchasing entities, he had full knowledge that his entity, along with the other purchasers, were bound by the CCR's requirement that the subject property could only be used for the operation of an 18-hole executive golf course.

10. In June 2006, the Bixby Group entered into a lease with Ahwatukee Golf Properties (AGP) in which AGP leased the Golf Course in return for AGP paying the Bixby Group $280,000.00 in annual rent. The lease also pertained to the Ahwatukee Country Club, for which the lease agreement provided for an additional lease payment of $140,000.00 to that entity.

11. Wilson Gee and his wife were the sole owners of AGP in 2006, and remain to this day as the sole owners of AGP, either in their own names or through their ownership of RMJ Properties, Inc.

12. From 2006 to May 2013, the Bixby Group continued to operate the Golf Course. In May 2013, the Bixby Group closed the Golf Course, and proceeded over time to turn off the water supply to, and remove equipment from, the Golf Course. Some of this equipment was used on other golf courses owned by members of the Bixby Group, including a golf course owned by Bixby Village Golf Course, Inc. Without a water supply, the Golf Course's grass died, and its physical condition deteriorated.

13. In July 2013, the Bixby Group entered into a Memorandum of Real Estate Purchase and Sale Agreement with Pulte Home Corporation to develop a residential community on the Golf Course. All of the parties to that Memorandum were fully aware that the CCR prohibited such use of the Golf Course, unless it was modified by the approval of 51% of the Property Owners. The Memorandum never resulted in a sale of the Golf Course to Pulte Home Corporation.

14. In June 2015, the Bixby Group sold the Golf Course to True Life for $9 million with the Bixby Group's understanding that True Life's sole purpose was to attempt to obtain a modification of the CCR, and to then develop residential properties on the Golf Course.

15. Based on this, the parties negotiated a non-recourse loan to protect True Life from any substantial monetary liability if the deed restriction was not removed. The Bixby Group and AGP retained a deed of trust on the Golf Course. The sale documents provided that the only recourse against True Life for a default on the loan was to foreclose on the deed of trust. True Life's obligation on the note would come due in approximately June 2018.

16. Wilson Gee testified at the 2017 trial on behalf of the Bixby Group. True Life appealed the Judgment. True Life was the owner of the Golf Course at the time of the trial, the Judgment, the filing of the appeal, and the pendency of the appeal until September 2018. True Life apparently remained the named appellant throughout the appeal.

17. True Life was unable to obtain 51% approval of the Property Owners to modify the CCR within the three-year period. Because its purpose for purchasing the Golf Course was not attained, True Life defaulted on the note in June 2018.

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18. During the pendency of the appeal, the Bixby Group and AGP assigned their interest in the deed of trust to ALCR. The assignment apparently occurred sometime around August 27, 2018, which was the date that ALCR was created. Based on the evidence, AGP and all of the entities in the Bixby Group were originally members of ALCR. No money was paid by ALCR for the assignment. ALCR, however, assumed all liability for the Golf Course. At the contempt hearing, Wilson Gee testified that ALCR was created on the advice of counsel, and to avoid liability to its members that owned other assets.

19. ALCR foreclosed on the deed of trust on September 20, 2018, and received title to the Golf Course on September 21, 2018. Although ALCR never amended the pleadings in this case to substitute itself for True Life, the assignment and foreclosure placed them in True Life's stead in this lawsuit. None of the parties dispute that ALCR has been the owner of the Golf Course since September 21, 2018, nor do they dispute that ALCR is the real party in interest as the assignee of the deed of trust by the Bixby Group and AGP.

20. After September 21, 2018, ALCR was the owner of the Golf Course. ALCR remains the owner of the Golf Course. ALCR is the successor-in-interest to the Bixby Group and True Life, and is bound by the CCR, the Verdict, the January 2, 2018 Findings of Fact and Conclusions of Law, and the May 31, 2018 Final Judgment and Order of Permanent Injunction.

21. ALCR avowed in pleadings before the Supreme Court that it was an appellant-party in the Arizona appellate courts. Nonetheless, the only appellant referenced in the Court of Appeals' opinion and in the Mandate was TTLC Ahwatukee Lakes Investors, LLC, which has been and will be referred to herein as True Life. Mr. Gee testified at the contempt hearing that ALCR assumed the costs of the appeal as of September 21, 2018, but that it did not pay True Life's attorney's fees.

22. On September 19, 2019, the Court of Appeals affirmed the Judgment in a published decision in *Swain v. Bixby Village Golf Course, Inc.*, 247 Ariz. 405 (App. 2019).

23. On October 20, 2019, Plaintiffs filed their Application for Order to Show Cause Re: Contempt for Violating Injunction to Restore Golf Course. (Docket #137).

24. On December 18, 2019, Plaintiffs' filed their Notice of Withdrawal of the Application. (Docket #145). The Notice did not provide a reason for the Notice of Withdrawal. During the contempt hearing, Plaintiffs informed the Court that the Application was withdrawn at that time, because ALCR had filed a petition for review in the Arizona Supreme Court. The withdrawal did not preclude Plaintiffs from refiling the Application at a later time.

25. On April 3, 2020, the Arizona Supreme Court denied True Life's Petition for Review. (Docket #160).

26. On May 22, 2020, Plaintiffs filed their renewed Application for Order to Show Cause Re: Contempt for Violating Injunction to Restore Golf Course. (Docket #151).

27. On June 12, 2020, the Court set a scheduling hearing on Plaintiffs' Application for July 1, 2020. (Docket #152).

28. At the hearing on July 1, 2020, the Court set an evidentiary hearing on Plaintiffs' Application for Contempt on August 18, 2020. (Docket #158).

29. On July 9, 2020, the Mandate was issued, affirming the Judgment. (Docket #160).

30. Sometime in late July 2020 (after the contempt hearing had been scheduled), Hiro Investment, LLC, and Kwang Co., LLC withdrew as members of ALCR. Although it was unclear from the evidence, Bixby Village Golf Course, Inc. also withdrew as a member of ALCR. Nectar Investment, LLC (Nectar) allegedly purchased their interests for an unknown consideration. After this withdrawal, Nectar allegedly owned 72.3% of ALCR, and AGP allegedly owned 27.7% of ALCR.

31. Wilson Gee was the only witness that testified on behalf of ALCR at the contempt hearing on August 18, 2020, and at the sanctions hearing on November 2, 2020. Mr. Gee avowed that he is the managing member of ALCR. No one from Nectar, the majority owner of ALCR, testified at either hearing.

32. Mr. Gee testified that Hiro Investment, LLC, and Kwang Co., LLC withdrew as ALCR members, because they no longer wanted to contribute money for the Golf Course. Hiro Investment, LLC, and Kwang Co., LLC had the same mailing address in California. The evidence showed that Bixby Village Golf Course, Inc. was also no longer a member of ALCR, apparently for the same reason as the other two withdrawn members.

33. The entities that withdrew from ALCR (Hiro Investment, LLC, Kwang Co., LLC and Bixby Village Golf Course, Inc.) owned other golf course properties. The evidence indicated that these entities had and have substantial assets, but that they did not want to expose those assets to a possible sanctions award against ALCR for contemptuous conduct. The evidence also indicated that these withdrawn entities were aware of the upcoming contempt hearing before their withdrawal.

34. The evidence showed that the sole asset of ALCR was the Golf Course. Mr. Gee testified that ALCR has no money to restore and operate an 18-hole executive golf course, as is required by the CCR and the Judgment. The Golf Course now comprises nothing but 110 acres of dirt, scrub brush, a few trees, and a non-functional pumping facility. Wilson Gee testified that the Golf Course is worth approximately $1 million dollars in its current undeveloped condition.

35. Prior to the contempt hearing on August 18, 2020, ALCR had received an offer from an individual named Brad Butler to purchase the Golf Course for $1 million. This offer was consistent with Mr. Gee's testimony that the Golf Course in its current state is worth $1 million. Mr. Butler indicated a desire to restore and operate an executive golf course. Mr. Gee testified at both the contempt and sanctions hearings that ALCR rejected this offer.

36. On August 18, 2020, the Court held an evidentiary hearing on Plaintiff's Application for Order to Show Cause Re: Contempt for Violating Injunction to Restore Golf Course. At the conclusion of the evidence and arguments, the Court entered its findings and conclusions on the record. The Court found ALCR in contempt of Court for violating the Judgment. (Docket #165). The Court set a scheduling conference for September 1, 2020 to set a sanctions hearing.

37. On or about August 31, 2020, ALCR filed a Petition for a Writ of Certiorari in the United States Supreme Court, captioned as *ALCR, LLC v. Linda W. Swain, et al*., Case No. 20-

288, seeking to overturn the Arizona Court of Appeals' affirmance of the Judgment. https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-288.html. In that Petition, ALCR avowed that it and True Life were appellants before the Arizona Court of Appeals and the Arizona Supreme Court. *See* ALCR's Petition for a Writ of Certiorari, ¶3, Aug. 31, 2020. The question for review before the United States Supreme Court was "[w]hether a court order requiring the owner of private property to operate a business on the private property violates the involuntary servitude provision of the Thirteenth Amendment of the United States Constitution." *See* ALCR's Petition for a Writ of Certiorari, ¶2, Aug. 31, 2020.

38. At the scheduling conference on September 1, 2020, the Court set an evidentiary hearing on sanctions for October 22, 2020. (Docket #167).

39. On October 22, 2020, the Court's computer system was experiencing difficulties, such that the evidentiary hearing had to be rescheduled to November 2, 2020. (Docket #172).

40. The evidence showed that ALCR never sought the services of a golf course designer until approximately three days before the sanctions hearing that was scheduled for October 22, 2020. *See* Sanctions Hearing Exhibit 2 (containing a handwritten date of October 19, 2020). This is also discussed in further detail below.

41. On October 5, 2020 (approximately 1½ months after ALCR was found in contempt and only a couple of weeks before the October 22, 2020 hearing), Suntereō Companies, LLC (Suntereō) sent a letter of intent to ALCR's attorney to purchase the Golf Course for $10 million upon closing of escrow. (Sanctions Hearing Exhibit 1). The letterhead described Suntereō as "a Real Estate Development Company." On October 5, 2020, Mr. Gee signed the letter of intent in his stated capacity as managing member of ALCR. A representative of Suntereō did not testify at the hearing on November 2, 2020, and no evidence was presented as to Suntereō's financial wherewithal to consummate such a purchase.

42. The letter of intent required that Suntereō would use 10 acres of the Golf Course to build a "market rate, senior living community highly amenitized golf themed for active 55-plus individuals." The facility would contain a restaurant and golf pro shop that would be available to the facility's residents and to golfers. The letter of intent provided that the remaining acreage would be used to build a golf course, the cost of which would be funded by the escrow funds deposited by Suntereō. Based on Mr. Gee's testimony, he or ALCR would be involved in building the golf course with those funds. Whatever remained of the $10 million purchase price after a golf course was built would be paid to ALCR.

43. The letter of intent contained numerous contingencies, any one of which would void the letter of intent. The following contingencies were contained in the letter of intent:

    a. ALCR and Suntereō had to agree on the construction budget;
    b. Suntereō would deposit into escrow 120% of the construction budget, once such a budget was agreed, which would be used to pay construction costs. Upon completion of the construction, any remaining amount in escrow would be disbursed to ALCR;
    c. The senior living facility would have to be built on the Golf Course (it appeared that Suntereō would pay the construction costs for the senior living facility);
    d. Suntereō would deposit $25,000.00 upon the opening of escrow;
    e. Once escrow was opened, Suntereō would have 180 days to conduct inspections and feasibility studies, including on issues such as the condition and value of the property, and the economic feasibility of the senior living facility, in order to determine if it would actually purchase the Golf Course;
    f. Close of escrow cannot occur until all permits, approval and plans are obtained for Suntereō's senior living facility and the golf course, and the CCR has been modified to allow the mixed use on the Golf Course;
    g. The letter of intent is not a binding agreement.

44. The CCR provided that in order for the owner of the Golf Course to build anything besides a golf course with golf course amenities, the owner must obtain the written agreement of 51% of the Property Owners. Assuming a binding agreement between ALCR and Suntereō was ever signed, obtaining 51% approval would not be an easy task for Suntereō or ALCR. As stated in the January 2, 2018 Findings of Fact and Conclusions of Law, True Life had attempted in 2016 to acquire 51% approval of the Property Owners in order to develop the Golf Course for non-golf course purposes. True Life fell far short of obtaining 51% approval. (January 2, 2018 Findings of Fact at ¶79). See *Swain v. Bixby Village Golf Course, Inc.*, 247 Ariz. at ¶11 (noting that "[a]fter campaigning for nearly two years…, [True Life] obtained approval from only 28 percent of the homeowners, far short of the 51 percent necessary).

45. ALCR's attorney provided a copy of Suntereō's letter of intent to Plaintiffs' attorney. Plaintiffs' attorney replied by letter dated October 14, 2020, with a number of concerns about the letter of intent. (Sanctions Hearing Exhibit 4). Mr. Gee testified that ALCR would accept and/or resolve all of the concerns raised in Plaintiffs' counsel's letter. Nonetheless, ALCR claimed that Plaintiffs had rejected the Suntereō letter of intent. The October 14, 2020 letter was neither an agreement with nor a rejection of the terms of the Suntereō letter; it was merely an acknowledgment of Plaintiffs' concerns.

46. At some unstated time between the contempt hearing and the sanctions hearing, Mr. Gee,

on behalf of ALCR, offered to transfer title of the Golf Course at no cost to Mr. Butler or to Plaintiffs to allow them to build a golf course. However, Mr. Gee testified that none of the purchase price from Suntereō would be used to pay for the construction of the Golf Course, and that the entirety of the $10 million sales price, less $400,000.00 for a prior obligation, would be paid to ALCR. Under Mr. Gee's scenario, Mr. Butler or the Plaintiffs would have to build a golf course with their own funds, with no reimbursement from ALCR. This scenario seems highly implausible, because a golf course built by Mr. Butler or the Plaintiffs would omit a senior living facility, which would negate the Suntereō deal and the windfall payment to ALCR. Nonetheless, this was Mr. Gee's testimony about ALCR's position.

47. In what the Court finds to be a last-minute effort to attempt to show the Court that ALCR should not be sanctioned, Mr. Gee, on behalf of ALCR, obtained a rough-sketch drawing of a proposed golf course on October 19, 2020. (Sanctions Hearing Exhibit 2). It was not a formal plan. The drawing included an 18-hole par three golf course, a driving range, and a 10-acre parcel for the Suntereō senior living facility situated in the middle of the golf course. Clearly, the drawing incorporated Suntereō's plan, which is not in compliance with the CCR.

48. Mr. Gee testified that the person who prepared the rough-sketch drawing was a golf course designer named Brian Curley. Mr. Gee claimed that Mr. Curley was a reputable and well-known golf course designer. ALCR provided brochures and information regarding Mr. Curley. *See* Sanctions Hearing Exhibit 3. Mr. Gee testified that Mr. Curley did not charge for the rough-sketch drawing. There is no evidence that Mr. Gee, on behalf of the Bixby Group or ALCR, had ever sought or obtained a drawing, plan, or design that contains only a golf course, as required by the CCR.

49. Mr. Gee testified that Maricopa County has assessed a $2.7 million tax lien on the Golf Course for unpaid taxes. These taxes were generated largely because the closure of the golf course resulted in the loss of tax benefits provided by A.R.S. §§42–125.01 and 42–146. These tax benefits were specifically contemplated in the CCR's golf course restriction. Some allegedly unknown person or entity purchased the tax lien, but has not foreclosed on it. The tax lien was reduced by a tentative settlement to approximately $1.3 million, which is contingent upon approval by the Maricopa County Board of Supervisors.

50. No testimony was presented on a timeline for construction of a golf course. After the close of evidence, ALCR's attorney argued that sanctions should not be imposed, because a binding agreement with Suntereō would not be signed for at least six months, any construction would not start for at least a year, and the completion of a golf course may

take years. Those arguments were unsupported by any evidence.

51. Mr. Gee has avowed that he was the managing member of the Bixby Group, and that he is the managing member of ALCR. Even if he did not hold himself out as the managing member, however, the evidence clearly showed that Wilson Gee has been the driving force behind the 2006 purchase, and the operation of the Golf Course from 2006 to 2013 by the Bixby Group. He was also the instrumental person in closing the Golf Course in 2013, based on the same contention that he is making now that a golf course was not economically feasible. This flew in the face of the Court's finding in 2018 that there was no evidence that the Golf Course could not have continued to operate without being closed. (Findings of Fact, ¶28, Jan. 2, 2018). Mr. Gee has been the primary person that orchestrated the desolation of the Golf Course by shutting it down, cutting off the water supply, and not maintaining the equipment and/or removing the equipment for use on one of his company's other golf course. He has been the driving force since 2013 in attempting to develop the Golf Course into a residential or commercial development in violation of the CCR. He was the primary decision maker for Bixby Village Golf Course, Inc., and for the Bixby Group. He was the primary decision maker in entering into the Memorandum Agreement with Pulte Home Corporation, and with the sale of the Golf Course to True Life. Although he was not a member of True Life, the Bixby Group and AGP retained the deed of trust on the Golf Course, which was a decision driven by Mr. Gee. Mr. Gee has been the driving force behind ALCR. Since 2013, all of these decisions have been premised on residential and/or commercial development of the Golf Course.

52. The Bixby Group, driven by Mr. Gee, made the business decision to assign the Bixby Group's deed of trust on the Golf Course to a newly-created entity known as ALCR. Despite Mr. Gee's company owning a minority percentage of ALCR, he is again the driving force behind ALCR.

53. When ALCR was created in August 2018, it originally included AGP and the Bixby Group members, some, if not all, of whom had substantial assets. Bixby Village Golf Course, Inc., controlled by Mr. Gee, made a business decision to remove itself from ALCR. Two investors with apparently substantial assets made a business decision to withdraw from ALCR to avoid those assets being subject to a contempt order. These members did not withdraw until after they knew that a contempt hearing had been scheduled. Mr. Gee, again being the driving force, made a business decision that ALCR, a company with no assets, would become the assignee of the Golf Course under the deed of trust.

54. ALCR failed to present any specific testamentary or documentary evidence as to its alleged inability to comply with the Judgment. No evidence was presented as to the

financial conditions of the members of ALCR that withdrew at the last moment to avoid endangering their assets. The only evidence presented was Mr. Gee's general statement that ALCR had no money to restore and operate the Golf Course, which was unsupported by any specific evidence.

55. Mr. Gee absolutely knew that the CCR and the Judgment against the owner of the Golf Course would be binding on ALCR upon its foreclosure of the deed of trust and the title transfer to ALCR on September 21, 2018. Mr. Gee's knowledge of this obligation is imputed to ALCR.

56. With this actual knowledge, ALCR has continued to violate the CCR and the Judgment by refusing to restore and operate the 18-hole executive golf course. Instead, ALCR has continued the same pattern as its predecessors of attempting to develop residential or commercial properties on the Golf Course, with or without the possibility that a golf course may also be included in such development.

57. The United States Supreme Court denied ALCR's Petition for a Writ of Certiorari on November 9, 2020. See *ALCR, LLC v. Swain*, __ U.S. __, 2020 WL 6551786 (Nov. 9, 2020).

Conclusions of Law

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1. Courts have the inherent, equitable power to enforce their own judgments. *Daley v. Earven*, 166 Ariz. 461, 463 (App. 1990). Acting in equity, the trial court retains and possesses the power to control the manner of the execution of its orders, and has the inherent right to modify the manner in which they shall be enforced. *Id*. *See also Ex parte Wright*, 36 Ariz. 8, 13 (1929) (referring to the power of courts of equity to enforce their orders).

2. The Court also has the authority under Rule 70 of the Rules of Civil Procedure to hold in contempt a party who fails to comply with a judgment.

3. The Court entered a civil contempt order on August 18, 2020 based on ALCR's failure to comply with the Judgment. Therefore, the Court can only impose civil sanctions. The purpose of imposing civil sanctions is to seek compliance of a Court Order through coercion, rather than punishment. *Korman v. Strick*, 133 Ariz. 471, 473 (1982). *See also Ex parte Wright*, 36 Ariz. at 14-5 (1929) (holding that civil contempt may be enforced by coercive means). One against whom a civil sanction has been imposed is always purged of the civil contempt when he or she complies with the Court's Order. *Korman v. Strick*, 133 Ariz. at 474. On the other hand, a criminal contempt sanction is punitive, and the

sanction remains in place under its terms, even if the contemnor complies with the Order. *Id*.

4. Despite the clarity of the Judgment that ALCR, as the owner of the Golf Course, must restore and operate the CCR's requirement of an 18-hole executive golf course, ALCR has hemmed and hawed about complying with the Judgment for a number of reasons. For example, Mr. Gee and ALCR's counsel repeatedly claimed that they cannot figure out what kind of golf course is expected to be built, because the Judgment is vague. Because of this claimed confusion, ALCR attempted and continues to attempt to avoid responsibility by blaming Plaintiffs for the delays. ALCR claimed that it is relying upon Plaintiffs to tell ALCR what is supposed to be built, but Plaintiffs will not tell ALCR. Further, ALCR claims that it cannot restore and operate a golf course, because Plaintiffs have not accepted ALCR's proposals, which, by their very terms, violate the CCR and the Judgment.

5. This Court has already found that the Judgment was clear and unambiguous as to ALCR's obligation to restore and operate an 18-hole executive golf course. Although it seems redundant, the Court wants to make this very clear. ALCR knows exactly what needs to be restored and operated. There is nothing in the Judgment that places any burden on Plaintiffs to dictate the design of a golf course. ALCR's claims are baseless, and further demonstrate its contemptuous behavior.

6. The Judgment ordered the owner of the Golf Course (ALCR now) to "restore" the Golf Course. Section A of the Recitals in the CCR clearly state that the Golf Course was an 18-hole executive golf course. Mr. Gee, as well as the withdrawn members of ALCR, know what an 18-hole executive golf course looks like, since they all have operated and/or operate 18-hole golf courses. Further, Mr. Gee and the members of the Bixby Group, which included the members who withdrew from ALCR, operated the Golf Course for approximately seven years. It defies logic and common sense that they do not remember what the Golf Course looked like.

7. The Judgment only required that ALCR provide information to Plaintiffs and the Property Owners about the construction of the Golf Course, upon the latter's reasonable request, so that the latter can determine if the construction complies with the CCR. There was nothing in the Judgment that required pre-approval from the Property Owners before ALCR can design and restore the Golf Course. There is nothing in the Judgment that gave Plaintiffs or the Property Owners a voice in ALCR's decision-making processes. There is nothing in the Judgment that the Property Owners have any ability to change the golf course design, or shut down the construction, simply because one or more of them may disagree with the plans. The Property Owners' only right is to make reasonable

requests to review construction information. By implication, their only recourse if the construction information raises a concern would be to discuss those concerns with ALCR to attempt to resolve them, or if that is unsuccessful, to either drop their concerns, or seek judicial relief. These are avenues that any interested party would have in a situation like this one.

8. ALCR's recurring (and repeatedly rejected) arguments that its hands are tied by Plaintiffs, and that it has no way of knowing how to proceed with the restoration and operation of the Golf Course are nothing more than red herrings. These arguments are simply a means of causing delay in complying with the CCR and the Judgment. ALCR, and its predecessor that was managed by Mr. Gee have been employing baseless reasons to stall and delay their obligations under the CCR for seven years.

9. Therefore, ALCR must stop its hemming-and-hawing charade, and get to work, as required by the Judgment.

10. The Court cannot dictate the business decisions made by ALCR in shedding itself of any assets, so that it is nothing more than a shell company. The Court cannot dictate the business decision that by creating a shell company, ALCR has no money to comply with the CCR. The Court, however, can determine whether those business decisions have resulted in sanctionable activity.

11. When ALCR obtained title to the Golf Course, it knew, because its managing member knew, that it was obligated to restore and operate an 18-hole executive golf course. With that knowledge, it knew that it would be required to fund that restoration and operation. Instead, a shell company with no assets was created by Mr. Gee and his business colleagues, believing that the shell company could thereby avoid restoring and operating a golf course, because it was penniless. ALCR's alleged poverty was orchestrated by its members, and especially its managing member, Wilson Gee.

12. As briefly mentioned above, Brad Butler offered to purchase the Golf Course in its current, barren condition for $1 million to build a golf course. ALCR rejected that offer for an unclear reason, other than the offer was not enough. The Court finds this to be not credible, because Mr. Gee testified that the current value of the Golf Course is $1 million. Further, if ALCR had accepted Brad Butler's offer, the obligation to build the Golf Course would then fall on Mr. Butler, rather than ALCR. If this had occurred, the Court could probably not impose civil sanctions against ALCR, because ALCR would have had no further obligation to comply with the Judgment.

13. ALCR has the right to try to find a potential buyer, such as Suntereō, in which a

condition of the purchase is to obtain 51% approval of the Property Owners to change the CCR. But that does not change ALCR's obligation to begin the process of restoring and operating an 18-hole executive golf course. ALCR has no right to continue to delay its obligations on the hope that it might find a way out at some unknown future time. Suntereō's letter of intent is nothing more than a possibility blowing in the wind.

14. ALCR's reliance on the letter of intent is simply one more attempt to stall and delay its duties under the CCR and the Judgment. It was an understatement for the letter of intent to declare that it is not a binding agreement. Every contingency in the letter of intent does nothing more than allow ALCR to delay its obligations for years. Further, based on Mr. Gee's historical pattern in managing the Bixby Group and ALCR, the end result of the letter of intent would likely lead to no binding agreement ever being signed. This would only continue the unending delays already perpetrated by ALCR.

15. ALCR's recent offer to give the Golf Course to Mr. Butler or the Plaintiffs for no cost is meaningless, and would only unduly enrich ALCR. Mr. Gee testified that his offer would require Mr. Butler or the Plaintiffs to expend their own money to restore and operate the Golf Course, while ALCR would receive a free-and-clear windfall from Suntereō's proposed deal of $9.6 million. First of all, it is unlikely that any reasonable person would accept this offer. Second, ALCR's premise for this scenario that it would still be able to consummate a deal with Suntereō, has so many holes in it that it is almost not worthy of discussion. Suffice it to say that this is nothing more than another tactic to avoid complying with the CCR and the Judgment.

16. Mr. Gee testified on November 2, 2020 that he wants to build a high-quality golf course with Suntereō's money. Putting aside the fact that the Suntereō deal appears unlikely to ever occur, Mr. Gee has taken the opposite position since 2013. The fact that he only made this statement after ALCR was found in contempt and was facing sanctions makes it not credible.

17. Mr. Gee testified that he believed that the appeal process that began in 2018 somehow allowed him not to comply with the CCR and the Judgment. Mr. Gee admitted that he was clearly aware that ALCR had never sought a supersedeas bond to stay the permanent injunction in the Judgment. Mr. Gee basically testified that he did not know that an appeal did not act as a stay. Mr. Gee is a sophisticated businessman, and ALCR has been represented by counsel since its creation. In light of these factors, Mr. Gee's testimony on this issue is simply not credible.

18. Mr. Gee testified that it would likely cost five to six million dollars to build a golf course, but that it could likely only be sold for approximately $4 million, resulting in a net loss of

$2 million. Because it is unlikely that ALCR wants to suffer a financial loss, Mr. Gee apparently provided this testimony to try to show that the construction of a golf course is not economically feasible. Mr. Gee provided no specific evidence to support his numbers. Assuming without accepting that Mr. Gee's numbers are accurate, this argument is irrelevant, because Mr. Gee, as the managing member of ALCR, knew that ALCR's ownership of the Golf Course meant that a golf course had to be built, whether at a profit or at a loss. The argument is also weakened by the absence of testimony that a golf course could not recover its construction expenses, and even turn a profit from income received in operating the golf course.

19. ALCR has continued Mr. Gee's clearly-stated intent since 2013 that the Golf Course's only economic use is to develop it for residential or commercial use. ALCR and the Bixby Group, both managed by Mr. Gee, have considered the inclusion of a golf course as nothing more than an afterthought. This is made clear by the Suntereō letter of intent, where the golf course is contingent upon the building of a senior living facility right in the middle of the golf course. This perspective is not only in direct violation of the CCR, but it amplifies the contemptuous behavior of ALCR.

20. Based on all the evidence, including Mr. Gee's testimony about the net loss in building a golf course, and the continued desire to build houses or office buildings on the Golf Course, the Court reaches two major conclusions.

21. The first conclusion is that ALCR has no interest in restoring and operating the Golf Course, because ALCR's only desire is to build residential or commercial properties on the Golf Course, and then sell the Golf Course (without a golf course) for a quick profit.

22. The second, and more sobering, conclusion is that ALCR's primary endeavor, as driven by Mr. Gee since 2013, was to purposefully maintain the Golf Course as a "barren stench-filled 'wasteland,'" as the subject property was described in *Swain v. Bixby Village Golf Course, Inc.*, 247 Ariz. at ¶34, and to delay any attempt to improve that "wasteland," based on dilatory reasons. By doing so, ALCR hoped to hold this eyesore as ransom against the Property Owners to convince them that their only alternative to a continued dirt pile was to modify the CCR, so that ALCR could theoretically make millions by building houses and/or office buildings on the Golf Course. The closure of the Golf Course resulted in a barren wasteland located in the middle of the Property Owners' homes. ALCR knew that the Property Owners, including Plaintiffs, purchased their homes with the expectation that they would always look upon "views of grass and lakes," *id.*, rather than 110 acres of dirt. The Court concludes that Mr. Gee, through the Bixby Group, and now ALCR, has wagered everything on an empty hand that this years-long, desolate view would ultimately cause the Property Owners to relent, and give in to

ALCR's demands that the CCR be modified to remove the need for a golf course. Despite staring at this eyesore for years, it is clear that the Property Owners have called ALCR's bluff, and refused to fold their hand. ALCR must now make good on its lost wager.

23. As noted above, Mr. Gee has shown an intent since 2013 through his managing of the Bixby Group and ALCR to defy the CCR, and since September 21, 2018 for ALCR to defy the Judgment. Pursuant to the Court's Ruling on August 18, 2020, ALCR has been found in contempt for failing to comply with the Judgment. Since taking title to the Golf Course, ALCR has not taken any substantive or definitive action to comply. As found above, the actions taken by ALCR since the contempt finding on August 18, 2020 have been in furtherance of ALCR's and its managing member's historical pattern of avoiding compliance with the Judgment.

24. In the January 2, 2018 Findings of Fact and Conclusions of Law, Judge Hannah found that Mr. Gee was not credible. In the Court's findings from the Bench on August 18, 2020, the Court found that Mr. Gee was not credible. The Court finds that Mr. Gee's testimony on November 2, 2020 was not credible. Mr. Gee is the managing member of ALCR, and, therefore, his lack of credibility adversely affects the Court's perception of ALCR's position.

25. A court cannot impose monetary sanctions upon an entity that does not have the economic ability to pay the sanctions. *United States v. Rylander*, 460 U.S. 752, 757 (1983). The Supreme Court ruled that a court has no reason to proceed with a civil contempt action "[w]here compliance is impossible." *Id*. In raising the defense that compliance is impossible, however, the defendant has the burden of production. *Id*. The burden of production of evidence to show that it is unable to comply with the Judgment is on ALCR. ALCR has failed to meet that burden.

26. The evidence has shown that the companies managed by Mr. Gee, including ALCR, have expended hundreds of thousands of dollars on legal fees to defend and/or appeal their refusal to comply with the CCR and/or the Judgment. Mr. Gee testified at the contempt hearing that ALCR's funding source for the appeal came from the Bixby Group members. Mr. Gee testified that each member of the Bixby Group became members of ALCR. ALCR was capitalized by each member according to its ownership percentage of the Golf Course.

27. ALCR produced no evidence as to the financial wherewithal of its members that coincidentally withdrew from ALCR when they knew a contempt hearing was scheduled. Nonetheless, there was evidence that these withdrawn members had assets that could have been used to restore and operate the Golf Course. The record shows that these same

members contributed $6 million in 2006 when they purchased the Golf Course. *See* Exhibit G to the Amended Complaint. The evidence showed that the withdrawn members owned other golf courses, including the Ahwatukee Country Club. The Ahwatukee Country Club contains an 18-hole championship golf course.

28. Finally, the evidence showed that Nectar Investment, LLC, the majority owner of ALCR, purchased the interests of the withdrawn members for unstated amounts. No evidence was presented as to the unstated amounts, or that the funds used by Nectar to purchase those interests could not have been used to provide funding or collateral for the restoration and operation of the Golf Course. ALCR's lack of evidence causes the Court to question whether Nectar conveniently disposed of its assets by transferring them to the withdrawn members in order to remove those funds from ALCR's liability. This possibility is amplified by Mr. Gee's testimony at the contempt hearing regarding a company known as RMJ Properties, Inc. (RMJ). The testimony indicated that RMJ may have owned or does own AGP, which is purportedly owned by Mr. Gee and his wife. The implication is that RMJ may have been owned by Mr. Gee and his wife. Mr. Gee also testified that RMJ had or has the same mailing address as Nectar. It is not a difficult leap to question whether there may have been collusion between Mr. Gee and Nectar in purposefully depleting ALCR's assets.

29. The available evidence, and ALCR's failure to meet its burden of production, show that ALCR purposefully shed itself of assets to not only protect the assets of those withdrawn members, but also to allow it to disingenuously argue that sanctions should not be imposed due to lack of assets. No specific evidence was presented that ALCR could not have obtained financial lending to restore and operate the Golf Course, especially when the withdrawn members were still part of ALCR from August 28, 2018 to July 2020. No evidence was presented as to the financial conditions of the members of ALCR that withdrew at the last moment to avoid endangering their assets. The only evidence was Mr. Gee's bald-faced statement, without any supporting basis, that ALCR had no money, and could find no money to restore and operate the Golf Course. Such general statements do not meet ALCR's burden of production.

30. ALCR also argued that the tax lien on the Golf Course, whether $1.3 million or $2.7 million, was further evidence that ALCR could not comply with the Judgment. The Court discounts this contention for a number of reasons. First, the bulk of the unpaid taxes were largely generated by the closure of the Golf Course, which erased sizeable tax credits allowed for the operation of a golf course. The benefit of these tax credits was specifically contemplated in the CCR's requirement that a golf course be operated by specific reference to the applicable statutes. Admittedly, ALCR did not close the Golf Course. However, Mr. Gee, as the manager of the Bixby Group, closed it, and ALCR, of

which Mr. Gee is the managing member, purchased the property with the knowledge of such tax lien or the potential adverse tax consequences for not operating a golf course, as required by the CCR. Second, there was no evidence as to the identity of the unknown lien purchaser. There was no clear evidence that the lien purchaser was an arms-length party, unrelated to any of the current or former members of ALCR. Third, there is no incentive for the lien purchaser to foreclose on the tax lien, because the lien purchaser would then be required to restore and operate the Golf Course. Fourth, for the same reason that the lien purchaser has no incentive to foreclose, ALCR has no reason to concern itself with losing the Golf Course through foreclosure of the tax lien.

31. The Court concludes that, based upon ALCR's failure to meet its burden, as well as on evidence that ALCR and its members had financial assets, ALCR had sufficient assets and/or access to financing, to restore and operate the Golf Course. The Court further concludes that ALCR chose to strip itself of those assets so that it could claim poverty.

32. While a trial court must weigh the relative hardships of the parties in enforcing a judgment, it will not allow "the perpetrator of a wrong to rely upon the contention of relative hardship." *Decker v. Hendricks*, 97 Ariz. 36, 41 (1964). In *Decker*, the party trying to avoid enforcement of the judgment, basically admitted that he knew about the judgment, but violated it due to business reasons. *Id*. In our case, ALCR, through Mr. Gee, made the determination not to restore and operate a golf course, because it was not a good business decision. Because the Court sits in equity in enforcing its judgments, equitable remedies are a matter of grace and not of right. *Id*. at 41-2. They are not to be used to protect an intentional wrongdoer. *Id*.

33. In *Swain*, the Court of Appeals stated that "…whatever hardship will come from requiring the rebuilding of the golf course [True Life] brought upon itself. *Swain*, 247 Ariz. at ¶36. That finding applies equally to ALCR.

34. "It is a cardinal rule of equity that he who comes into a court of equity seeking equitable relief must come with clean hands." *MacRae v. MacRae*, 57 Ariz. 157, 161 (1941). ALCR's argument that it should not be subject to sanctions, because it is financially unable to comply with the Judgment, when ALCR created and perpetuated that situation, is rejected. ALCR does not come into this Court with clean hands to make such an argument. ALCR is the intentional wrongdoer. This equitable conclusion is made in addition and in the alternative to the Court's conclusion that ALCR failed to meet its burden of production as to its alleged inability to comply with the Judgment.

35. Based on the evidence, the Court concludes that monetary sanctions should be imposed in order to coerce ALCR to comply with the Judgment. Therefore, the Court must fashion

an appropriate monetary sanction that will enforce compliance with the Judgment.

36. In fashioning sanctions, the Court takes judicial notice of ALCR's history of failing and refusing to comply with the Judgment entered on May 31, 2018. Based on that history, the Court concludes that it is appropriate to impose civil sanctions based on reasonable deadlines to restore the Golf Course. The Court will not determine the scheduling of sanctions based on Suntereō's letter of intent, because it is neither definite nor binding.

37. Plaintiffs proposed that the Court impose an immediate $2,000,000.00 civil fine to be held by the Clerk until ALCR completes the restoration and construction of the Golf Course. That type of sanction appears inappropriate for various reasons. First, paying a civil fine before beginning the restoration process would likely prevent ALCR from financially complying with the Judgment. ALCR will need funds to begin and complete the process. Second, such a civil sanction would seem to be more punitive than coercive. Third, a civil fine is not generally intended to serve as a bond for future compliance.

38. ALCR needs a reasonable time to obtain actual professional golf course plans prepared by a golf course designer, to obtain the necessary governmental permits and approvals, and to retain surveyors and contractors. Thereafter, ALCR needs a reasonable time to actually begin the construction of the 18-hole executive golf course. Thereafter ALCR needs a reasonable time to complete the construction. ALCR provided no evidence as to these time periods. Instead, ALCR's counsel argued that it may take an unknown number of years to begin the project. Because ALCR failed to provide such evidence, the Court will determine what it believes to be reasonable time periods to complete the planning and construction stages.

39. Because ALCR has demonstrated its ability to expend hundreds of thousands of dollars in delaying its obligations under the CCR, and because ALCR has consciously chosen to rid itself of financial resources, the Court concludes that ALCR will be able to obtain the necessary funds and/or financing to actually comply with the Judgment.

40. The Court concludes that there are three deadlines on which the Court will impose individual civil sanctions. Each sanction stands alone, and the failure to meet one or more of the deadlines will not affect the civil sanctions imposed as to the other deadlines. For example, if ALCR meets the first deadline, the corresponding sanction shall be lifted. But, if ALCR then fails to meet the second and/or third deadline, the corresponding sanction for the missed deadline will be imposed. If all three deadlines are missed, then all three sanctions will be imposed. These three deadlines are as follows:

    a. The completion of preliminary pre-construction matters.

b. The commencement of construction.
c. The completion of construction and the commencement of operating the Golf Course.

41. In light of ALCR's past history, as well as that of its managing member, it is important that these separate deadlines apply. The Court needs to impose the first deadline to coerce ALCR to get to work. Further, the Court wants to avoid the possibility that ALCR completes its pre-construction duties, but then fails to commence construction. Also, the Court wants to avoid the possibility that ALCR puts one shovel in the dirt simply to meet its construction commencement deadline, and then does nothing more. It is also important to ensure completion of the Golf Course, so that the construction continues apace, and so that ALCR can begin operating the Golf Course.

42. As mentioned above, these deadlines are not based on Suntereō's proposed timelines, and are not contingent or made in reliance upon them. If ALCR is able to work with Suntereō to build the Golf Course within the Court's deadlines, ALCR may do so. If ALCR wants to attempt to obtain 51% approval of the Property Owners to build a senior living facility or other type of development within the Court's deadlines, so be it. But, the Court's deadlines shall remain, which means that ALCR cannot seek further delays by claiming that it could not meet Suntereō's guidelines, or could not get 51% approval to modify the CCR. ALCR's only requirement is that it fulfill its obligations under the Judgment. The ability to purge itself of these individual sanctions remains with ALCR, and ALCR alone. The key to extricating itself from these sanctions is in ALCR's hands.

43. Based on what little evidence or arguments that were presented, the pre-construction period should extend for approximately six months from now; the commencement of construction should begin no later than approximately nine months from now; and the Golf Course should be completed within one year from the commencement of construction.

44. As to the first deadline, pre-construction obligations shall include all matters that will be necessary for ALCR to commence construction. This includes, without limitation, surveying, obtaining the necessary city permits and zoning approvals, obtaining professional golf course plans and designs, obtaining commitments from contractors, and whatever else will be necessary to begin construction.

45. The six-month pre-construction period is reasonable for several reasons. First, the need to build a golf course cannot come as a surprise to ALCR. ALCR has known since September 21, 2018, when it obtained title to the Golf Course, that an 18-hole executive golf course had to be built. Second, with this knowledge, ALCR should know exactly what kinds of permits, plans, approvals, and commitments it will need. Third, ALCR

already has found a golf course designer in Mr. Curley. Fourth, ALCR's managing member, Mr. Gee, has experience with golf courses, which means that ALCR should know what kinds of contractors and sub-contractors it will need to prepare for construction.

46. The second deadline is self-explanatory. The construction process must begin. The third deadline as to completion of construction means what it says: Completion means completion. Not substantial completion. Not partial completion. Completion means that the Golf Course is open for golfing on all 18 holes, and that any amenities mentioned in the Declarations, such as a pro shop, pathways, etc. are ready for usage by golfers. Completion means that ALCR shall begin operating the Golf Course. The time period for completion of construction is reasonable, because much of the infrastructure is still there, even though some of it was disabled or cannibalized for use elsewhere.

47. Based on the Court's finding that ALCR entered into its ownership with full knowledge of its responsibilities under the CCR and Judgment, and based on the Court's finding that ALCR is able to comply with those responsibilities, the Court believes it necessary to impose monetary sanctions that will provide ALCR with sufficient motivation to meet the deadlines. The amounts of these coercive sanctions are relatively large, but they need to be for many reasons. First, the cost of building a golf course, based on Mr. Gee's testimony, is in the neighborhood of $5 million, so the specter of sanctions should be relatively high. Second, ALCR's history, as magnified by Mr. Gee's historical involvement with the Golf Course, strongly indicates that ALCR will do all it can to stall and delay its obligations under the Judgment. Third, it makes more economic sense for ALCR to spend its funds for the building of the Golf Course, rather than using that money to pay a civil fine that will only require it to expend additional amounts of money to comply with the Judgment.

48. For the foregoing reason, the Court believes that the following monetary sanctions payable to the Clerk of Court, which will be assessed and processed as required by law, are appropriate and shall be imposed to coerce ALCR to meet the deadlines:

    a. Failure to meet the deadline for pre-construction activities: $500,000.00.
    b. Failure to meet the deadline for commencement of construction of the Golf Course: $1,000,000.00.
    c. Failure to complete construction of the Golf Course and to begin operation of the Golf Course: $2,000,000.00.

49. The Court also believes that an additional and appropriate coercive sanction is to impose Plaintiffs' attorney's fees against ALCR, pursuant to A.R.S. §12-341.01, based on the

failure to meet one or more of the above deadlines. Plaintiffs were awarded attorneys' fees through the Mandate of July 9, 2020. If ALCR fails to meet the first deadline, Plaintiffs' shall be awarded their reasonable attorneys' fees incurred from July 10, 2020 through the first deadline. Even if ALCR meets the first deadline, but does not meet the second deadline, Plaintiffs' shall be awarded a reasonable amount of attorneys' fees incurred from July 10, 2020 through the second deadline. Even if ALCR meets the first and second deadline, but does not meet the third deadline, Plaintiffs' shall be awarded a reasonable amount of attorneys' fees incurred from July 10, 2020 through the third deadline. Any other approach would not provide a fair coercive sanction.

IT IS ORDERED that the Court's Ruling on August 18, 2020 finding ALCR in contempt for knowingly violating the Final Judgment and Order for Permanent Injunction entered on May 31, 2018 is affirmed, pursuant to the Court's inherent powers to enforce a Judgment, and Rule 70(e), ARIZ. R. CIV. P.

IT IS FURTHER ORDERED, pursuant to the Court's inherent powers to enforce a Judgment, and Rule 70(e), ARIZ. R. CIV. P., that the following coercive monetary sanctions are imposed and assessed against ALCR, LLC:

1. Five-hundred thousand dollars ($500,000.00) paid to the Clerk of Court as a civil fine, to be deposited with the Clerk on **June 1, 2021**, if ALCR, LLC has not completed its pre-construction activities as described above by May 31, 2021.

2. One million dollars ($1,000,000.00) paid to the Clerk of Court as a civil fine, to be deposited with the Clerk on **September 1, 2021**, if ALCR, LLC has not commenced construction of the Golf Course (18-hole executive golf course), as described above, by August 31, 2021.

3. Two million dollars ($2,000,000.00) paid to the Clerk of Court as a civil fine, to be deposited with the Clerk on **September 1, 2022**, if ALCR, LLC has not completed construction of the Golf Course (18-hole executive golf course), and begun operation of the Golf Court, as described above, by August 31, 2022.

IT IS FURTHER ORDERED that the above-imposed monetary sanctions shall be lifted as each deadline is met. If a deadline is lifted due to compliance with that deadline, or if a deadline is not met, thereby imposing the designated sanction, that shall not affect the efficacy and imposition of the other deadlines and their corresponding sanctions. Each deadline and corresponding sanction stands alone.

IT IS FURTHER ORDERED that the following coercive monetary sanctions of attorneys' fees shall be imposed against ALCR, LLC:

1. If ALCR, LLC fails to meet any of the above deadlines, ALCR, LLC shall pay to Plaintiffs a reasonable amount of attorneys' fees incurred for the period encompassed by the deadline, as follows:

    a. If ALCR, LLC fails to meet the May 31, 2021 deadline for completion of pre-construction activities, ALCR, LLC shall pay to Plaintiffs a reasonable amount of attorneys' fees incurred from July 10, 2020 through May 31, 2021.

    b. If ALCR then fails to meet the August 31, 2021 deadline for commencement of construction, ALCR, LLC shall pay to Plaintiffs a reasonable amount of attorneys' fees incurred from June 1, 2021 through August 31, 2021.

    c. If ALCR then fails to meet the August 31, 2022 deadline for completion of construction, ALCR, LLC shall pay to Plaintiffs a reasonable amount of attorneys' fees incurred from September 1, 2021 through August 31, 2022.

2. If ALCR meets certain deadlines, but fails to meet others, the following sanctions shall apply:

    a. If ALCR, LLC meets the May 31, 2021 deadline, but fails to meet the August 31, 2021 deadline for commencement of construction, ALCR, LLC shall pay to Plaintiffs a reasonable amount of attorneys' fees incurred from July 10, 2020 through August 31, 2021.

    b. If ALCR, LLC meets the May 31, 2021 and the August 31, 2021 deadlines, but fails to meet the August 31, 2022 deadline for construction completion, ALCR, LLC shall pay to Plaintiffs a reasonable amount of attorneys' fees incurred from July 10, 2020 through August 31, 2022.

3. If ALCR, LLC has already been assessed attorneys' fees for failure to meet a deadline, then ALCR, LLC shall not have to pay those fees a second time.

4. Upon any of the above deadlines not being met by ALCR, LLC, Plaintiffs shall submit an application and affidavit for attorneys' fees. ALCR, LLC will be allowed ten days to file a Response. No Reply will be allowed. The Court will then enter its Ruling on Plaintiffs' Application, pursuant to A.R.S. §12-341.01.

IT IS FURTHER ORDERED that the above coercive sanctions of attorneys' fees shall only be lifted if ALCR, LLC meets all three deadlines as ordered above.

IT IS FURTHER ORDERED that the Contempt Order and the above-imposed sanctions shall run with the land, pursuant to the terms of the CCR, and that they shall apply with full force and effect to the owner of the Golf Course, whether that be ALCR, LLC, or another person or entity that obtains title to the Golf Course.

IT IS FURTHER ORDERED that the Court may enter such further orders as reasonably necessary to carry out the provisions of this Order, including any further orders pursuant to the Court's inherent powers to enforce its Orders and/or Rule 70 of the Arizona Rules of Civil Procedure.

/s/ HON. THEODORE CAMPAGNOLO

HON. THEODORE CAMPAGNOLO
JUDGE OF THE SUPERIOR COURT