

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2020-096299

03/25/2024

HONORABLE ADAM D. DRIGGS

CLERK OF THE COURT  
C. Avena  
Deputy

CIRCLE G RANCHES 4 HOMEOWNERS  
ASSOCIATION

DANIEL S FRANCOM

v.

ALI F HOMSI

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2015 E MYRNA LN  
TEMPE AZ 85284

JUDGE DRIGGS

MINUTE ENTRY

On March 22, 2024, the Court held an evidentiary hearing regarding Plaintiff's Application for Order to Show Cause as to Why Defendant Should Not be in Contempt filed November 13, 2023. The Court heard testimony from board president Amanda Stewart and Defendant Ali Homs. At the conclusion of the hearing, the Court took the matter under advisement. The Court has now further reviewed the exhibits and testimony provided during the hearing, along with the requests of the parties, and issues its ruling.

**THE COURT FINDS** that the parties filed Stipulated Judgment as to Ali F. Homs that was filed with the Court April 28, 2021. This judgment set forth many provisions requiring certain action from Mr. Homs, including a provision that the entire exterior was to be painted at that time and an agreement that Mr. Homs would bring his landscaping back into compliance with the CC&Rs.

**THE COURT FURTHER FINDS** that Mr. Homs has not painted the home as required by the stipulated agreement, although he has recently complied with portions of the stipulated agreement by painting what was referred to during the hearing as the "out building." Mr. Homs

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has further indicated that he will complete the painting requirements of the stipulated agreement. While Mr. Homsí's recent action is certainly a mitigating factor regarding any sanction, the Court believes that Mr. Homsí would not have taken such action without Plaintiff's Order to Show Cause being filed.

**THE COURT FURTHER FINDS** that a potential ambiguity arose during the hearing and the Court did not hear sufficient evidence to make a definitive determination on the issue of whether the stucco in the back of the home must match the approved stucco finish modifications that Mr. Homsí has made to the front of the home. The Court will enter orders below which require that Mr. Homsí complete the painting as required by the stipulated judgment, however, the Court will not order that action be done until it is determined by the Association, either by stipulated agreement with Mr. Homsí or by other means, whether the stucco finish in the home's front and back must match. The Court finds that it would be unreasonable to order Mr. Homsí to paint the entire home within a certain time frame only to have the Association later determine that additional stucco work must be done on the recently painted walls.

**THE COURT FURTHER FINDS** that it appears that Mr. Homsí complied with the provisions of the stipulated agreement regarding his bringing his landscape back into compliance with the CC&Rs. The agreement contained a provision which indicated that the violation could be cured on or before April 30, 2021, which apparently occurred based on testimony. The Court notes that testimony was also provided that indicates that Mr. Homsí is again out of compliance with the CC&Rs, but the Court finds that those violations should not be considered in conjunction with contempt of court allegations stemming from the stipulated agreement since that portion had been cured, and as such, any violation of the landscaping CC&Rs would be considered a new and separate violation which would not be subject to this contempt proceeding.

Based on the Court's findings above,

**IT IS ORDERED** granting the Plaintiff's request and finding Mr. Homsí in contempt of court regarding his failure to comply with the stipulated agreement with regards to painting the home.

**IT IS FURTHER ORDERED** that Mr. Homsí must undertake to have all necessary stucco, wood trim, fascia, and roof flashing repaired and painted within 120 days of Mr. Homsí receiving clear notification of the Association's determination regarding the stucco issue addressed in the Court's findings above.

**IT IS FURTHER ORDERED** awarding attorney's fees and costs to the Association and that such award be secured by the Associations' contractual lien per the Declaration and/or this Court's plenary contempt powers.

**IT IS FURTHER ORDERED** that not later than twenty (20) calendar days after the entry of these Orders, Plaintiff may submit an application for attorney's fees and costs as well as

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a proposed form of Judgment, with blanks left in the proposed form of Judgment for the amount of fees and costs. If Mr. Homsy wishes to object to the application and proposed form of Judgment submitted, a response must be filed not later than 20 calendar days after service of the same. Plaintiff is not permitted to file a reply unless requested to do so by the Court.