

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-000707

07/18/2017

HONORABLE DAWN M. BERGIN

CLERK OF THE COURT
S. Ortega
Deputy

MARKHAM CONTRACTING CO INC

KAREN A PALECEK

v.

PINNACLE POINT DEVELOPERS L L C, et al.

RICHARD Q NYE
FRANK S TOMKINS

MINUTE ENTRY

The Court has reviewed Defendants FDIC's and Prime AZ's Motion for Reconsideration/Reply in Support of Notice of Strike filed on July 12, 2017. Defendants filed a Notice of Strike pursuant to Rule 42.1, A.R.C.P. on June 23, 2017. On June 27, 2017, Plaintiff filed an Objection to the Notice. After reviewing the Objection and the Court of Appeals Opinion and Mandate, the Court issued a minute entry dated June 30, 2017 rejecting the Notice of Strike and affirming assignment of the action to this Division.

Defendants seek reconsideration, arguing that: (1) they were entitled to file a reply in support of their Notice of Strike prior to any ruling by the Court; and (2) the Notice of Strike was valid. Defendants cite *Guberman v. Chatwin*, 19 Ariz. App. 590, 509 P.2d 721 (App. 1973) in support of their argument that they were entitled to file a reply before a ruling was issued. The specific holding in *Guberman* was that "the filing of a resistance to the attempted disqualification is implicit in Rule 42(f) . . ." *Id.* at 592, 509 P.2d at 723. Later in the opinion, the court stated in *dicta*:

In our opinion a resistance to the notice of change of judge having been filed, the Respondent Judge should have awaited the filing of a reply to the resistance.

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Id. at 594, 509 P.2d at 725.

Thus, the Rule itself does not provide for the filing of a reply, and there is no Arizona case holding that a party is entitled to a reply. Nonetheless, in an effort to short-circuit additional delay, the Court will consider Defendants' filing as both a reply in support of the Notice of Strike and a Motion for Reconsideration on the merits of the Court's ruling.

IT IS ORDERED that Plaintiff shall file a Response to the Motion for Reconsideration by **July 26, 2017**. No reply shall be filed.