

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2021-000258-001 DT

08/25/2022

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT
P. McKinley
Deputy

HAINING XIA

HAINING XIA
14830 E RHOADS CT
FOUNTAIN HILLS AZ 85268

v.

DORSEY PLACE CONDOMINIUM
ASSOCIATION (001)

NICHOLAS C NOGAMI

JUDGE KILEY
OFFICE OF ADMINISTRATIVE
HEARINGS
REMAND DESK-LCA-CCC

MINUTE ENTRY

OAH Case No. 21-F-H2120016-REL

In a ruling issued in June 2022, this Court affirmed the July 14, 2021 decision of an administrative law judge with the Office of Administrative Hearings (the “OAH”) that had dismissed the Homeowners Association Dispute Process Petition (“Petition”) that Appellant Haining Xia (“Appellant”) filed with the Arizona Department of Real Estate (the “Department”) in September 2020. *See* Minute Entry of June 15, 2022 at p. 6. This Court’s June 2022 ruling was based on a prior ruling issued in litigation pending in the Superior Court involving the same parties known as *Haining Xia, et al., v. Dorsey Place Condominium Ass’n, et al.*, Maricopa County Superior Court Case No. CV2019-055353 (the “Superior Court case”). The plaintiffs in the Superior Court case, including Appellant, had challenged the validity of a termination agreement (the “2019 Termination Agreement”) which, by its terms, terminated the condominium governing the residential complex where the plaintiffs in the Superior Court case resided. *See* Minute Entry of June 15, 2022 at pp. 1, 3. On December 15, 2020, the judge in the

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Superior Court case issued a ruling that essentially upheld the validity of a termination agreement. *Id.* at p. 3.

Holding that “[t]he determination” by the judge in the Superior Court case “of the validity of the 2019 Termination Agreement...was entitled to preclusive effect” in this appeal, this Court ruled that the termination of the condominium in 2019 deprived the Department and the OAH of jurisdiction to consider the Petition that Appellant filed in 2020. Minute Entry of June 15, 2022 at p. 5. *See also* A.R.S. § 32-2199.01(A) (conferring jurisdiction on the Department to adjudicate disputes “between an owner and a condominium association or planned community association...”). Accordingly, the Court affirmed the dismissal of the Petition, and gave Appellee Dorsey Place Condominium Association (“Appellee”) leave to file an application for an award of fees and costs. Minute Entry of June 15, 2022 at pp. 5-6.

Appellee filed its Application for Attorneys’ Fees and Costs in this case shortly thereafter.

Subsequently, on July 7, 2022, the Arizona Court of Appeals issued an opinion vacating the December 15, 2020 ruling by the judge in the Superior Court case. *See Cao v. PFP Dorsey Investments, LLC*, 1 CA-CV 21-0275, 2022 WL 2526694 at *7 ¶ 35 (Ariz.App., Div. 1, July 7, 2022).

In the wake of the Court of Appeals decision, Appellant has filed a Motion to Vacate Minute Entry, asserting that this Court’s ruling affirming the dismissal of the Petition must be set aside because the basis for this Court’s ruling - - *i.e.*, the preclusive effect accorded the December 15, 2020 ruling in the Superior Court case - - is no longer valid because the December 15, 2020 ruling has been vacated. Motion to Vacate Minute Entry at pp. 1-2.

As Appellee correctly notes, however, the decision of the Court of Appeals that vacated the December 15, 2020 ruling in the Superior Court case is not final. *See* Objection to Appellant’s Motion to Vacate Minute Entry at p. 1. The decision of the Court of Appeals will not be final until a mandate is issued pursuant to Rule 24 of the Arizona Rules of Civil Appellate Procedure. *See State v. Ward*, 120 Ariz. 413, (1978) (“Unless [otherwise] indicated by the appellate court,” an appellate court’s “decision is not final until after time for rehearing has passed and the order (or mandate) has issued.”). Until the mandate is issued in the appeal in the Superior Court case, the Court will not address the Motion to Vacate Minute Entry, nor will the Court take any action on the other filings that are pending before this Court.¹

¹ The filings that are pending before this Court are Appellee’s July 6, 2022 Application for Attorneys’ Fees and Costs; Appellee’s July 6, 2022 Affidavit in Support of Attorneys’ Fees; Appellee’s July 6, 2022 Statement of Costs; Appellant’s July 11, 2022 Response to Application for Attorneys’ Fees and Costs.
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In accordance with the foregoing,

IT IS ORDERED that, within ten calendar days of the issuance of the mandate in *Cao v. PFP Dorsey Investments, LLC*, 1 CA-CV 21-0275, each party shall file a Notice with this Court attaching a copy of the mandate and indicating whether the opinion issued by the Court of Appeals on July 7, 2022, has been affirmed, reversed, or modified. Upon receipt of the Notice filed by each party, the Court will address the Motion to Vacate Minute Entry and the other filings that are pending in this appeal.

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.

Costs; Appellee's July 20, 2022 Reply in Support of [Appellee's] Application for Attorneys' Fees and Costs; Appellant's July 15, 2022 Motion to Vacate Minute Entry; Appellee's July 27, 2022 Objection to Appellant's Motion to Vacate Minute Entry; Appellant's August 2, 2022 Reply in Support of Motion to Vacate Minute Entry; and Appellee's August 10, 2022 Motion to Strike Appellant's Motion to Dismiss Appellee's Application for Attorneys Fees and Costs. The last filing is puzzling, because it makes reference to a motion to dismiss purportedly filed by Appellant on or about August 2, 2022. The Court file contains no such motion to dismiss.