

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CARPENTER HAZLEWOOD DELGADO & WOOD, PLC
Attorneys at Law
1400 E. Southern Ave., Suite 400
Tempe, Arizona 85282
t (480) 991-6949, f (480) 991-7040
(Scott B. Carpenter - #015661)
(Carrie H. Smith - #022701)
(Jason E. Smith - #023007)
PHXTWHS.0049.ALJ

Attorneys for Plaintiff

**SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY**

**PHOENIX TOWNHOUSE
HOMEOWNERS ASSOCIATION, an
Arizona nonprofit corporation,**

Plaintiff,

vs.

**ARIZONA OFFICE OF
ADMINISTRATIVE HEARINGS;
ARIZONA DEPARTMENT OF FIRE,
BUILDING AND LIFE SAFETY; and
HONORABLE BRIAN TULLY,
ADMINISTRATIVE LAW JUDGE;**

Defendants,

and

**RON MERITT AND JOHN
HERNANDEZ,**

Real Parties in Interest.

Case No. LC2008-000740-001 DT

**ORDER FOR DECLARATORY AND
INJUNCTIVE RELIEF**

**(Assigned to the Honorable
Paul J. McMurdie)**

The Court having reviewed the pleadings and briefs herein and having given the State of Arizona the opportunity to respond to Plaintiff's claim of unconstitutionality,

1 which the State refused to do, and no other party having appeared and defended, and
2 good cause appearing:

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 4 1. Laws 2006, Ch. 324, § 6, which amended A.R.S. § 41-2198.01 *et seq.* and
5 A.R.S. § 33-1242 and § 33-1803, violates the Arizona Constitution's
6 separation of powers clause and therefore is unconstitutional to the extent
7 that it created an administrative hearing process involving planned
8 community and condominium associations and their members;
- 9 2. The Arizona Department of Fire, Building & Life Safety and Office of
10 Administrative Hearings are enjoined from taking any further action in any
11 pending administrative adjudication and from accepting any new petitions
12 for administrative adjudications; and
- 13 3. ~~Plaintiff is the prevailing party and is entitled to an award of reasonable
14 attorneys' fees and costs pursuant to A.R.S. § 12-348 and may submit an
15 application and affidavit in support of the same.~~ P84

16 IT IS SO ORDERED.

17 DATED this 29th day of January, 2009.

18
19
20
21
22
23
24
25
26
27
28
PAUL J. MC MURDIE
JUDGE OF THE SUPERIOR COURT

Honorable Paul J. McMurdie