

# Court of Appeals, Division One

## Civil Appeal

**1 CA-CV 23-0736**

**CAVE CREEK et al. v. PHOENIX/CHIULLI**

### Appellate Case Information

Case Filed: 21-Nov-2023

Case Closed: 28-Jun-2024

Dismissal

### Dept/Composition

#### Side 1. CAVE CREEK RE LLC, et al., Plaintiff/Appellant

(Litigant Group) CAVE CREEK RE LLC, et al.

- Cave Creek RE LLC
- Fort Consulting LLC

#### Attorneys for: Plaintiff/Appellant

Cameron C Artigue, Esq. (AZ Bar No. 11376)

Jacqueline Marzocca, Esq. (AZ Bar No. 37140)

#### Side 2. CITY OF PHOENIX BOARD OF ADJUSTMENT, Defendant/Appellee

(Litigant Group) CITY OF PHOENIX BOARD OF ADJUSTMENT

- City of Phoenix Board of Adjustment

#### Attorneys for: Defendant/Appellee

Daniel J Inglese, Esq. (AZ Bar No. 33887)

#### Side 3. ROSEANN J. CHIULLI, et al., Intervenor/Appellee

(Litigant Group) ROSEANN J. CHIULLI, et al.

- Roseann J Chiulli
- Chiulli Living Trust u/t/a dated 6/20/06

#### Attorneys for: Intervenor/Appellee

David E Funkhouser, III, Esq. (AZ Bar No. 22449)

Richard H Herold, Jr, Esq. (AZ Bar No. 18396)

Dina G Aouad, Esq. (AZ Bar No. 36249)

### CASE STATUS

Jun 28, 2024....Case Closed

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR CV2022-005752	Special Action		Rodrick J Coffey, Authoring Judge of Order		
MAR CV2022-012926					

### CASE DECISION

#### 28-Jun-2024 ORDER

ORDERED: Dismissing this appeal.

Filed: 28-Jun-2024

Mandate:

Melina Brill.....Author

Decision Disposition

**Dismissed**

### 33 PROCEEDING ENTRIES

- 21-Nov-2023 FILED: Index of Record, Notice of Appeal from Maricopa County Superior Court filed 10/24/23
- 21-Nov-2023 FILED: e-Record on Appeal: (CV2022-005752)  
Instruments/Minute Entries  
Exhibits: None
- 21-Nov-2023 FILED: e-Record on Appeal: (CV2022-012926)  
Instruments/Minute Entries  
Exhibits: None
- 21-Nov-2023 FILED: Appellate Clerk Notice re: Appellant's Fee/Case Management Statement/Brief Due
- 6-Dec-2023 FILED: Appellants [sic] Notice of Payment of Filing Fee; Certificate of Service of Appellants [sic] Notice of Payment of Filing Fee (Appellant)
- 11-Dec-2023 FILED: Appellants' Case Management Statement; Certificate of Service of Appellants [sic] Case Management Statement (Appellant)

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7.	12-Dec-2023	RECEIPT No.: 2023-01165 ; \$280.00, Authorization: #46016408987, Applied to: ROSEANN J. CHIULLI, et al. - Class A Filing Fee (\$280.00) Paid for: Spencer Fane LLP - By nCourt LLC
8.	12-Dec-2023	FILED: Appellants' ARCAP Rule 3(b) Motion to Suspend the Appeal and Revest Jurisdiction in the Superior Court to Consider Their Motion for Relief From Judgment Under Rule 60(b)(5) and, Alternatively, a Renewed Motion to Intervene Under Rule 24(a) Against Plaintiff; Certificate of Service Appellants' ARCAP Rule 3(b) Motion to Suspend the Appeal and Revest Jurisdiction in the Superior Court to Consider Their Motion for Relief From Judgment Under Rule 60(b)(5) and, Alternatively, a Renewed Motion to Intervene Under Rule 24(a) (Appellant)
9.	13-Dec-2023	ORDERED: Vacating the 01/22/2024 due date for the opening brief. The order ruling on the pending motion to suspend will address the briefing schedule. Melina Brill ProTem Judge - Author
10.	27-Dec-2023	FILED: Response of Plaintiffs/Appellees [sic] to Motion to Suspend the Appeal and Revest Jurisdiction in The Superior Court; (Untitled) Certificate of Service (Appellee Cave Creek re LLC)
11.	2-Jan-2024	RECEIPT No.: 2024-00003 ; \$140.00, Authorization: # 02023929619, Applied to: CAVE CREEK RE LLC - Class B Filing Fee (\$140.00) Paid for: Gammage & Burnham PLC - By nCourt LLC
12.	4-Jan-2024	FILED: Reply in Support of Appellants' Arcap Rule 3(B) Motion to Suspend the Appeal and Revest Jurisdiction in the Superior Court to Consider Their Motion for Relief From Judgment Under Rule 60(B)(5) and, Alternatively, a Renewed Motion to Intervene Under Rule 24(A) Against Plaintiffs and Stay Proceedings; Certificate of Service of Reply in Support of Appellants' Arcap Rule 3(B) Motion to Suspend the Appeal and Revest Jurisdiction in the Superior Court to Consider Their Motion for Relief from Judgment Under Rule 60(B)(5) and, Alternatively, a Renewed Motion to Intervene Under Rule 24(A) Against Plaintiffs and Stay Proceedings (Appellants)
13.	9-Jan-2024	ORDERED: Appellants' ARCAP Rule 3(b) Motion to Suspend the Appeal and Revest Jurisdiction in the Superior Court to Consider Their Motion for Relief From Judgment Under Rule 60(b)(5) and, Alternatively, a Renewed Motion to Intervene Under Rule 24(a) Against Plaintiffs and Stay Proceedings (Appellants) = GRANTED. FURTHER ORDERED: Pursuant to Arizona Rule of Civil Appellate Procedure 3(b), staying this appeal until 02/07/2024. FURTHER ORDERED: If the superior court has not ruled on the motion (Motion for Relief from Judgment) by 02/07/2024, appellants must file a notice in this court regarding the status of the motion. Melina Brill ProTem Judge - Author
14.	26-Jan-2024	FILED: Supplemented Superior Court e-Record with Revised Index of Record
15.	6-Feb-2024	FILED: Appellants' Notice of Ruling; Certificate of Service of Appellants' Notice of Ruling (Appellant)
16.	7-Feb-2024	FILED: Appellants' Motion to Continue Stay of this Appeal; Certificate of Service of Appellants' Motion to Continue Stay of this Appeal (Intervenors/Appellant)
17.	7-Feb-2024	ORDERED: Continuing the stay of this appeal until 03/08/2024, and authorizing the superior court to consider a motion for a signed order corresponding to its minute entry order dated 01/31/2024, and filed 02/01/2024. It is appellants' responsibility to file the motion in the superior court. FURTHER ORDERED: The opening brief is due on 04/08/2024. If the brief is not timely filed, the court will dismiss this appeal. Melina Brill ProTem Judge - Author
18.	8-Feb-2024	ORDERED: Appellants' Motion to Continue Stay of this Appeal (Intervenors/Appellant) = DENIED as unnecessary. Melina Brill ProTem Judge - Author
19.	11-Mar-2024	FILED: Appellants' Notice of Substitution of Counsel within the same Firm; Certificate of Service of Appellants' Notice of Substitution of Counsel within the same Firm (Appellant)
20.	18-Mar-2024	ORDERED: Appellants shall file a status report of the superior court proceedings by 03/29/2024. Melina Brill ProTem Judge - Author
21.	27-Mar-2024	FILED: Supplemented Superior Court e-Record with Revised Index of Record [includes Maricopa County Superior Court ME dated 01/31/2024 filed 02/01/2024]
22.	29-Mar-2024	FILED: Rule 6 Motion for Procedural Order to Extend Deadline for Filing of Opening Brief; Certificate of Service of Appellants' Rule 6 Motion for Procedural Order to Extend Deadline for Filing of Opening Brief (Appellant)
23.	29-Mar-2024	FILED: Appellants' Notice of Status Report; Certificate of Service of Appellants' Notice of Status Report; Exhibit 1; Exhibit 2 (Appellant)
24.	2-Apr-2024	ORDERED: Rule 6 Motion for Procedural Order to Extend Deadline for Filing of Opening Brief (Appellant) = GRANTED. Due date EXTENDED from Monday, 04-08-2024 to Wednesday, 05-08-2024. If brief is not timely filed, the court will dismiss this appeal. Melina Brill ProTem Judge - Author
25.	30-Apr-2024	FILED: Supplemented Superior Court e-Record with Revised Index of Record (includes notice of cross-appeal)

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| 26. | 6-May-2024  | ORDERED: Amending the caption and docket in this appeal by adding the designations of "cross-appellants" and "cross-appellees." The caption shown on this order shall be used on all future documents filed in this appeal. FURTHER ORDERED: Appellees/cross-appellants' additional \$140.00 filing fee, payable to the clerk of the court, is due by 05/16/2024. FURTHER ORDERED: The cross-appeal case management statement is due by 05/20/2024. Melina Brill ProTem Judge - Author              |
| 27. | 16-May-2024 | FILED: Notice of Payment of Appellees/Cross-Appellants' Additional Filing Fee; Untitled (Certificate of Service) (Appellee/Cross-Appellant)   |
| 28. | 20-May-2024 | FILED: Case Management Statement (Appellee/Cross-Appellant)   |
| 29. | 21-May-2024 | ORDERED: Dismissing Intervenor's appeal. FURTHER ORDERED: Deeming the cross-appeal the primary appeal. FURTHER ORDERED: Amending the caption and docket in this appeal by designating Plaintiffs as appellants and Intervenor as appellees. The above caption shall be used on all future documents filed in this appeal. FURTHER ORDERED: Plaintiffs' opening brief is due by 07/01/2024. If the brief is not timely filed, the court will dismiss this appeal. Melina Brill ProTem Judge - Author |
| 30. | 22-May-2024 | RECEIPT No.: 2024-00501 ; \$140.00, Authorization: #43004462871, Applied to: CAVE CREEK RE LLC - Class A Upgrade Fee (A-B) (\$140.00) Paid for: Gammage & Burnham PLC - By nCourt LLC   |
| 31. | 28-Jun-2024 | FILED: Motion for Voluntary Dismissal of Appeal; Untitled (Certificate of Service) (Appellant)  |
| 32. | 28-Jun-2024 | ORDERED: Motion for voluntary dismissal of appeal = DISMISSED. Melina Brill ProTem Judge - Author   |
| 33. | 28-Jun-2024 | FILED: Letter, 06/28/24, Certified Copy of Order dismissing appeal. No physical record to be returned to clerk, Maricopa County Superior Court.   |