

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

2009 MAR 23 PM 3:41

JEANNE HICKS, CLERK  
Heather Figueroa

BY: \_\_\_\_\_

1 Jeffrey R. Adams, #018959  
2 **ADAMS & MULL, PLLC**  
3 211 East Sheldon Street  
4 Prescott, Arizona 86301  
5 (928) 445-0003

6 Attorneys for Defendants

7 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF YAVAPAI**

9 JOHN B. CUNDIFF and BARBARA C. )  
10 CUNDIFF, husband and wife; ELIZABETH )  
11 NASH, a married woman dealing with her )  
12 separate property; KENNETH PAGE and )  
13 KATHRYN PAGE, as Trustee of the Kenneth )  
14 Page and Catherine Page Trust, )

15 Plaintiffs, )

16 v. )

17 DONALD COX and CATHERINE COX, )  
18 husband and wife, )

19 Defendants. )  
20 )  
21 )  
22 )  
23 )  
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25 )  
26 )  
27 )

CASE NO. CV 2003-0399

DIVISION 1

**DEFENDANTS' MOTION FOR LIFT OF  
STAY OF PROCEEDINGS AND  
REQUEST FOR ODER RE: JOINDER**

(Oral Argument Requested)

(Assigned to the Hon. David L. Mackey)

21 Defendants Donald and Catherine Cox, by and through undersigned counsel, hereby request  
22 that this Court (i) lift the stays of proceedings entered on December 2, 2008, and on January 6, 2009,  
23 to accommodate Plaintiffs' Special Actions filed with the Court of Appeals and Petitions for Review  
24 filed with the Supreme Court, all of which were denied, and (ii) order Plaintiffs to timely comply with  
25 their obligation to join all of the Coyote Springs Ranch subdivision property owners subject to the  
26 June 13, 1974, Declaration of Restrictions. This Motion is supported by the accompanying  
27

Memorandum of Points and Authorities and the record on file, which shall be incorporated by reference.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. Procedural History Of This Case Upon Which This Motion Is Premised.

On August 22, 2008, the Court gave Plaintiffs 90 days to join all Coyote Springs Ranch subdivision property owners subject to the June 13, 1974, Declaration of Restrictions (“Absent Owners”) lest this case be dismissed. See Exhibit “1” attached hereto. Accordingly, Plaintiffs had until November 23, 2008, to join the Absent Owners.

On September 23, 2008, Plaintiffs filed their Motion for Stay of Proceedings on Judgment Pending Petition for Special Action (“**First Motion for Stay**”) in which they sought to stay the August 22, 2008, order that Plaintiffs join the Absent Owners within 90 days on the basis that they intended to file a Petition for Special Action with the Court of Appeals. On September 30, 2008, and November 3, 2008, the Court granted the First Motion for Stay. See Exhibit “2” attached hereto.

On September 26, 2008, and 35 days into their 90 day time limit for joinder, Plaintiffs filed their Petition for Review on the denial of their request for a change of judge. On October 28, 2008, the Court of Appeals denied that Petition for Review. See Exhibit “3” attached hereto. On October 9, 2008, Plaintiffs filed their Petition for Special Action on the issue of joinder. On November 5, 2008, that Petition for Review was denied. See Exhibit “4” attached hereto.

On December 2, 2008, Plaintiffs filed their Motion for Stay of Proceedings on Judgment Pending Petitions for Review re: Change of Judge and Joinder in which they sought to stay the August 22, 2008, order that Plaintiffs join the Absent Owners within 90 days on the basis that they intended to file Petitions for Review with the Supreme Court on the Court of Appeals’ denials of the Petitions

1 for Special Action (“**Second Motion for Stay**”). On January 5, 2009, this Court granted the Second  
2 Motion for Stay. See Exhibit “5” attached hereto.

3 On November 19, 2008, Plaintiffs filed their Petition for Review with the Supreme Court on  
4 the issue of Plaintiffs’ request for a change of judge and on December 9, 2009, Plaintiffs filed their  
5 Petition for Review with the Supreme Court on the issue of joinder. On March 17, 2009, the Supreme  
6 Court denied both of Plaintiffs’ Petitions for Review. See Exhibit “6” attached hereto.

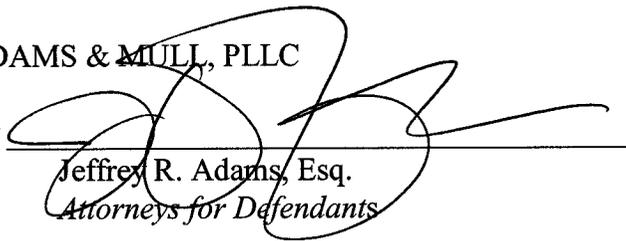
7 **II. Legal Argument.**

8 Plaintiffs have exhausted their State court appellate rights with respect to this Court’s order  
9 regarding joinder. Accordingly, there is no good cause to continue the stay relief previously granted  
10 on September 30, 2008, and January 5, 2009. The stays, therefore, should be lifted. Further, the Court  
11 should order Plaintiffs to complete joinder of the Absent Owners by May 12, 2009, which is 55 days<sup>1</sup>  
12 accruing from March 17, 2009, the date of the Supreme Court’s denial of Plaintiffs’ Petitions for  
13 Review, and in the event they fail to do so, this case should be dismissed. Plaintiffs have delayed  
14 joinder for far too long and have had plenty of time to arrange for and effectuate service on all of the  
15 Absent Owners. A form of Order consistent with the foregoing is filed contemporaneous herewith.

16  
17  
18 DATED this 23 day of March, 2009.

19  
20 ADAMS & MULL, PLLC

21 By

  
22 Jeffrey R. Adams, Esq.  
23 *Attorneys for Defendants*

24  
25 <sup>1</sup>The number of days is based upon the expiration of 35 days of Plaintiffs’ 90 day time limit  
26 for joinder prior to Plaintiffs’ filing of their first Petition for Special Action and does not include any  
27 of the intervening days between the Court of Appeals’ denials of Plaintiffs’ Petitions for Special  
Action and the Supreme Court’s denials of Plaintiffs’ Petitions for Review, which is extremely  
generous given Plaintiffs’ efforts to delay joinder up to this point.

A copy of the foregoing was  
hand-delivered this 13 day of  
March, 2009 to:

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The Honorable David L. Mackey  
Yavapai County Superior Court  
Division 1  
Yavapai County Courthouse  
Prescott, Arizona

David K. Wilhelmsen  
Marguerite M. Kirk  
FAVOUR, MOORE & WILHELMSSEN, P.A.  
Post Office Box 1391  
Prescott, Arizona 86302-1391  
Attorneys for Plaintiffs

*Shaw Kirk*

**SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI**

<p>JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; BECKY NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE, as Trustee of the Kenneth Page and Catherine Page Trust,</p> <p align="right">Plaintiff,</p> <p align="center">-vs-</p> <p>DONALD COX and CATHERINE COX, husband and wife,</p> <p align="right">Defendant.</p>	<p><b>Case No.</b> CV2003-0399</p> <p><b>RULING</b></p>	<p align="center"><b>FILED</b> AUG 25 2008</p> <p>DATE: _____ 12 O'Clock P.M.</p> <p align="center">JEANNE HICKS, CLERK</p> <p>BY: SHEETAL PATEL Deputy</p>
--	---	---

<p><b>HONORABLE DAVID L. MACKEY</b></p> <p><b>DIVISION 1</b></p>	<p><b>BY:</b> Cheryl Wagster Judicial Assistant</p> <p><b>DATE:</b> August 22, 2008</p>
--	---

After reviewing the Mandate and Memorandum Decision from the Court of Appeals, this Court Ordered that the Plaintiffs shall "file a legal memorandum setting forth their position that joinder is not feasible and that the Court should proceed with this action based upon the factors set forth in Rule 19(b), *Ariz.R.Civ.P.*" After briefing was completed, the Court held oral argument on March 10, 2008. After hearing argument, the Court Ordered that "the Plaintiff[s] shall join all landowners subject to the Declaration of Restrictions dated June 12, 1974." The Court Ordered that Plaintiffs file a notice with the Court including "a map of the properties subject to the Declaration of Restrictions as well as a list designating the parcel numbers as well as names and address of each property owner." The Court also Ordered that "the Plaintiff[s] shall also file a plan for joinder of all the property owners subject to the Declaration of Restrictions." The Court told the parties that it was keeping open whether the matter should proceed as a class action or whether the additional parties should be joined as Plaintiffs or Defendants.

The Plaintiffs complied with the Court Order to file a notice. In Plaintiffs' Plan For Joinder of Property Owners Subject To Restrictive Covenants, the Plaintiffs included a list of the property owners, their addresses and their parcel numbers as well as a map of the property subject to the Declaration of Restrictions. While the Defendants complain that not every owner for every parcel was listed, the Court finds that deficiency meaningless in light of the position taken by the Plaintiffs.

The Court notes that oral argument was requested by the Plaintiffs and Defendants. The Court pursuant to Rule 7.1(c)(2), *Ariz.R.Civ.P.* has determined that oral argument will not assist the Court in the determination of this motion.

AUG 22 2008

AFTER 2 P.M.

Although the Court had Ordered that Plaintiffs were responsible for the joinder of necessary parties, the plan they submitted for joinder was not a plan at all. The Plaintiffs continue to suggest that joinder is not feasible and argue over whether they should be responsible for joinder. Without saying it specifically, the Plaintiffs suggest that they are NOT going to join all the property owners but that the case should not be dismissed because of the factors set forth in Rule 19(b), *Ariz.R.Civ.P.* The Plaintiffs argue that “there are currently 273 non-party property owners . . . spread over 12 states (including Arizona) from California to New York.” Nothing in the information presented to the Court regarding the property owners causes the Court to even respectfully question the Court of Appeals ruling that they are all necessary parties pursuant to Rule 19(a), *Ariz.R.Civ.P.* Furthermore, there is nothing in the information provided to suggest that the other property owners cannot be joined other than the suggestion that the expense is prohibitive.

The Court finds that assertion unpersuasive. Out of State owners could be served by mail pursuant to Rule 4.2(c), *Ariz.R.Civ.P.* Service on in State owners could be attempted by mailing a waiver of service pursuant to Rule 4.1(c), *Ariz.R.Civ.P.* In addition, the Plaintiffs could request an order for alternative service by mail pursuant to Rule 4.1(m), *Ariz.R.Civ.P.* Their argument regarding the expense of service is best made towards the “impracticable” requirement of that rule. The Court finds that Plaintiffs have not established that the other property owners “cannot be made a party” as that phrase is used in Rule 19(b), *Ariz.R.Civ.P.* The Plaintiffs continued assertion that they should not be required to join the other property owners does not support a finding that the necessary parties cannot be joined.

While the Court believes that such a finding should resolve the matter and lead to the dismissal of the action due to Plaintiffs’ refusal to even attempt to join necessary parties over a year after being directed to do so by this Court, the Court of Appeals directed this Court to consider whether the property owners are indispensable pursuant to Rule 19(b), *Ariz.R.Civ.P.* so this Court will do so.

Rule 19(b), *Ariz.R.Civ.P.* provides:

“If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measure, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.”

The Court first considers “to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties.” The Court of Appeals Memorandum Decision already addresses the first part of that question. At ¶ 32, the Court of Appeals stated:

“A ruling in this case that the restrictions have been abandoned and are no longer enforceable against the Coxes’ property would affect the property rights of all other owners subject to the Declaration.”

The Court finds that the failure to join the other property owners would prejudice their property rights.

The second part of that first factor requires the Court to consider the prejudice to the parties. The Court finds that both the Plaintiffs and the Defendants may be subject to multiple litigation if the other property owners are not joined. As the Plaintiffs have noted, there are other property owners who are not yet parties that may align with either side in this lawsuit. Although unlikely, even if the Plaintiffs prevail in avoiding a finding of abandonment, a property owner who agrees with the Defendants’ position regarding abandonment of the Declaration of Restrictions could file another declaratory action and name the Plaintiffs as parties in the lawsuit. Without their joinder, the Plaintiffs could not claim the ruling in this case is binding upon such a property owner. More likely, if Defendants prevail, any other property owner who is not a party to this suit could file the same action against the Defendants as is currently pending. The Defendants will not be able to claim their victory in this case is binding upon other property owners unless they are joined. The Court finds that facing multiple litigation on the same issue is prejudicial to all the parties.

There is certainly a reason most modern declarations of restrictions name an association as the appropriate party to bring an enforcement action on behalf of all property owners. While the failure of the Declaration of Conditions to designate one entity to bring an action on behalf of all property owners is not the fault of either side in this case, neither side should be prejudiced by facing multiple litigation due to the terms of the Declaration.

Next, the Court considers “the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measure, the prejudice can be lessened or avoided.” The Plaintiffs argue that the Court should require the Defendants to join other property owners to lessen or avoid the prejudice. Other than that, the Plaintiffs offer no other suggestions for the Court to lessen or avoid the prejudice. The Plaintiffs’ argument ignores the fact that this Court has previously ruled that it is Plaintiffs who brought this action and if costs are to be incurred to get to a final resolution, it is Plaintiffs who will incur those costs initially. The Plaintiffs are reminded that, if they prevail, they can request a judgment

Cundiff v. Cox  
CV2003-0399  
Page Four  
August 22, 2008

against the Defendants for those costs at the conclusion of the case. Absent any other suggestion, the Court can think of no protective provision, terms of relief or other measures to lessen or avoid the prejudice when the issue sought to be resolved is the complete abandonment of the Declaration of Conditions.

Next, the Court considers “whether a judgment rendered in the person's absence will be adequate.” Although the Plaintiffs argue that a judgment from this Court would be adequate as between the parties, the Court does not agree. Certainly, if the Plaintiffs prevail they will consider an order from this Court prohibiting the Defendants from growing trees on their property to be adequate. However, the word adequate means more than that. If this were a case in which only a monetary judgment was sought, the Court might agree that a resolution of the matter between only these parties would be adequate even if other parties could claim monetary damages against either party for similar conduct. However, as noted by the Court of Appeals, the resolution of this case impacts the property rights of everyone covered by the Declaration of Conditions. Under those circumstances, “adequate” takes on a broader meaning. The resolution of this case will not resolve the broader question of whether the Declaration of Conditions continues to apply to all property owners whose property is covered by them or whether a term or terms have been abandoned by the other property uses in the area covered. The Court finds that a judgment rendered in the absence of all property owners subject to the Declaration of Conditions would not be adequate.

Next, the Court considers “whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.” Although the Plaintiffs may not like the result, the fact is that upon a dismissal of this case for nonjoinder, the Plaintiffs will have the same remedy they have at this time. They can file an action that joins all property owners subject to the Declaration of Conditions and seek to enforce the terms against the Defendants. A dismissal of this case at this time due to the failure to join indispensable parties will not deprive the Plaintiffs of their right to seek relief in the appropriate way.

The Court finds based upon the factors set forth above that “in equity and good conscience the action . . . should be dismissed” since all property owners subject to the Declaration of Conditions are necessary and indispensable parties. The Plaintiffs have delayed this matter long enough. However, the Court will give the Plaintiffs one final chance to comply with the Court’s orders for joinder.

**IT IS ORDERED** that in the event the Plaintiffs do not take substantial steps to join all necessary and indispensable parties within the next **ninety (90) days**, this matter will be dismissed.

cc: David K. Wilhelmsen/Marguerite Kirk – Favour Moore & Wilhelmsen, P.O. Box 1391,  
Prescott, AZ 86302  
Jeffrey Adams – Adams & Mull, P.O. Box 1031, Prescott, AZ 86302

FILED A  
OCT 01 2008 ✓  
S. Shaemake  
Deputy

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Post Office Box 1391  
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3 Fax: 928/771-0450  
David K. Wilhelmsen, 007112  
4 Marguerite A. Kirk, 018054

5 Attorneys for Plaintiffs

6 IN THE SUPERIOR COURT OF ARIZONA  
7 COUNTY OF YAVAPAI

8 JOHN B. CUNDIFF and BARBARA C. )  
CUNDIFF, husband and wife; BECKY J. )  
9 NASH, a married woman dealing with her )  
separate property; KENNETH PAGE and )  
10 KATHRYN PAGE, as Trustee of the Kenneth )  
Page and Catherine Page Trust,

11 Plaintiffs,

12 vs.

13 DONALD COX and CATHERINE COX, )  
14 husband and wife,

15 Defendants.

No. CV 2003-0399

Division 1

ORDER FOR STAY OF  
PROCEEDINGS ON JUDGMENT  
PENDING PETITION FOR SPECIAL  
ACTION

17 Upon motion to this Court and good cause appearing therefor.,

18 IT IS ORDERED granting Plaintiffs' Motion for Stay of Proceedings on Judgment  
19 Pending Petition for Special Action. All proceedings are stayed until such time as the court of appeals  
20 has made its determination concerning Plaintiffs' special action.

21 DONE IN OPEN COURT this 30 day of September, 2008.

22 *David L. Mackey*  
23 David L. Mackey  
24 JUDGE OF THE SUPERIOR COURT

25 ORIGINAL and one copy of the foregoing  
Order for Stay of Proceedings on Judgment  
26 Pending Special Action hand delivered this  
30<sup>th</sup> day of September, 2008, to:

- (✓) Plfs/Atty *Favour, Moore* ) Arb w/file
- (✓) Def/Atty *Adams & Mull* TOTAL 2
- ( ) \_\_\_\_\_ ( ) Arbitr \_\_\_\_\_
- ( ) Dispo Clk \_\_\_\_\_ ( ) Ctr: \_\_\_\_\_  
w/file

OCT 01 2008

1 Hon. David L. Mackey, Div. 1  
2 Judge of the Superior Court of Arizona  
3 Yavapai County  
4 120 S. Cortez Street  
5 Prescott, AZ 86301

6 and COPY mailed this  
7 30<sup>th</sup> day of September,  
8 2008, to:

9 Jeffrey Adams  
10 ADAMS & MULL  
11 Post Office box 1031  
12 Prescott, Arizona 86302-1031  
13 Attorneys for DEFENDANTS COX

14 By:   
15 David K. Wilhelmsen

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8 FILED  
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NOV 06 2008

JEANNE HICKS, Clerk  
BY S. Shamake  
Deputy

1 FAVOUR MOORE & WILHELMSSEN, P.A.  
2 Post Office Box 1391  
3 Prescott, AZ 86302-1391  
4 Phone: 928/445-2444  
5 Fax: 928/771-0450  
6 David K. Wilhelmsen, 007112  
7 Marguerite A. Kirk, 018054

8 Attorneys for Plaintiffs

9 IN THE SUPERIOR COURT OF ARIZONA

10 COUNTY OF YAVAPAI

11 JOHN B. CUNDIFF and BARBARA C. )  
12 CUNDIFF, husband and wife; BECKY J. )  
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17 Plaintiffs,

18 vs.

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20 husband and wife,

21 Defendants.

No. CV 2003-0399

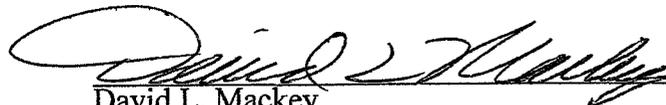
Division 1

**ORDER FOR STAY OF  
PROCEEDINGS ON JUDGMENT  
PENDING PETITION FOR SPECIAL  
ACTION RE: JOINDER**

22 Upon motion to this Court and good cause appearing therefor.,

23 IT IS ORDERED granting Plaintiffs' Motion for Stay of Proceedings on Judgment  
24 Pending Petition for Special Action Re: Joinder. All proceedings are stayed until such time as the  
25 court of appeals has made its determination concerning Plaintiffs' special action in

26 1 CA-SA 08-0241  
DONE IN OPEN COURT this 3<sup>rd</sup> day of Nov., 2008.

  
David L. Mackey  
JUDGE OF THE SUPERIOR COURT

27 ORIGINAL and one copy of the foregoing  
28 Order for Stay of Proceedings on Judgment  
29 Pending Special Action hand delivered this  
30 day of October, 2008, to:

Plts/Attv. Favour, Moore ( ) Arb w/file

Dett/Attv. Adams + Muel TOTAL 2

( ) ( ) Arbitr \_\_\_\_\_

( ) Dispo Clk \_\_\_\_\_ ( ) Other \_\_\_\_\_  
w/file

NOV 03 2008

AFTER 2 P.M.

1 Hon. David L. Mackey, Div. 1  
2 Judge of the Superior Court of Arizona  
3 Yavapai County  
4 120 S. Cortez Street  
5 Prescott, AZ 86301

6 and COPY mailed this  
7 \_\_\_\_\_ day of October,  
8 2008, to:

9 Jeffrey Adams  
10 ADAMS & MULL  
11 Post Office box 1031  
12 Prescott, Arizona 86302-1031  
13 Attorneys for DEFENDANTS COX

14 By: \_\_\_\_\_  
15 David K. Wilhelmsen

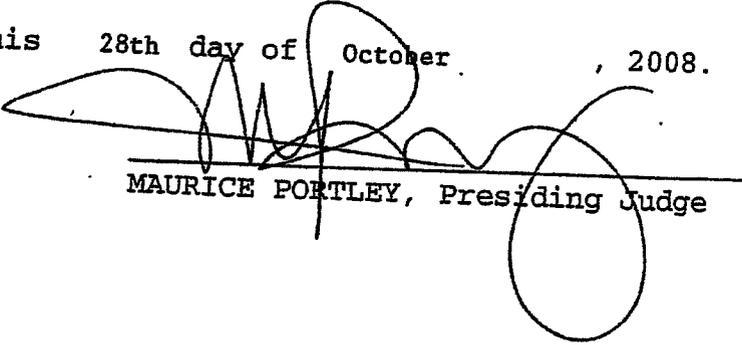
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640, 645, ¶ 11, 74 P.2d 952, 957 (App. 2003) (citations omitted).

**IT IS FURTHER ORDERED** denying relief because Ariz. R. Civ. P. 42(f)(1)(E) is inapplicable. In our memorandum decision in *Cundiff v. Cox*, 1 CA-CV 06-0165 (Ariz. App. May 24, 2007), we did not remand for a new trial on one or more issues because the issues have yet to be tried. Instead, we reversed the grant of summary judgment to Cox because his use of the property did violate the restrictive covenant. We also remanded the matter to allow the superior court to determine whether the absent Coyote Spring Ranch subdivision property owners were indispensable under Ariz. R. Civ. P. 19(a). Consequently, the superior court did not abuse its jurisdiction in denying the petitioner's peremptory notice of change of judge.

DATED this 28th day of October, 2008.

  
MAURICE PORTLEY, Presiding Judge

Page 3

1 CA-SA 08-0231

Yavapai County Superior Court  
CV 2003-0399

A true copy of the foregoing  
was mailed October 28, 2008 to:

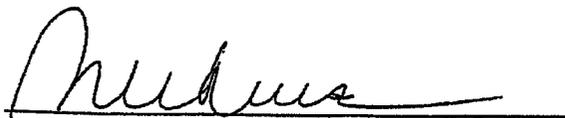
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Attorneys for: Petitioners

Jeffrey R Adams  
Adams & Mull PLLC  
211 East Sheldon Street  
Prescott AZ 86301  
Attorneys for: Real Parties in Interest

Hon David L Mackey  
Judge, Civil Presiding Judge  
Yavapai County Superior Court  
Yavapai County Courthouse  
120 S Cortez St No 300  
Prescott AZ 86303 USA

Philip G Urry, Clerk  
By

  
Deputy Clerk

**CERTIFICATE OF SERVICE**

The undersigned filed by depositing with Federal Express for hand delivery, prepaid, on this 19<sup>th</sup> day of November, 2008, the original and four copies of this Petition for Review of a Special Action Decision of the Court of Appeals addressed to:

Mr. Philip G. Urry  
Clerk of the Court of Appeals  
Division One, Room 203  
1501 W. Washington  
Phoenix, AZ 85007-3329

and, on this same date, two copies each of the foregoing Petition for Review of a Special Action Decision of the Court of Appeals were hand delivered, as addressed, to:

Honorable David L. Mackey, Div. 1  
Superior Court of Arizona, Yavapai County  
120 S. Cortez Street  
Prescott, AZ 86301  
Respondent Judge

Mr. Jeffrey Adams  
ADAMS & MULL  
211 E. Sheldon Street  
Prescott, AZ 86301  
Attorneys for Real Parties in Interest COX



Page 2

1 CA-SA 08-0241

Yavapai County Superior Court  
CV 2003-0399

A true copy of the foregoing  
was mailed November 6, 2008 to:

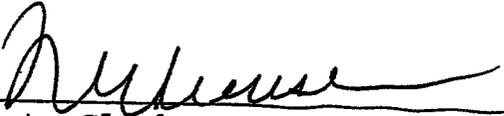
David K Wilhelmsen  
Favour Moore & Wilhelmsen PA  
1580 Plaza West  
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Prescott AZ 86302-1391

Marguerite A Kirk  
Favour Moore & Wilhelmsen PA  
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PO Box 1391  
Prescott AZ 86302-1391  
Attorneys for: Petitioners

Jeffrey R Adams  
Adams & Mull PLLC  
211 East Sheldon Street  
Prescott AZ 86301  
Attorney for: Real Parties in Interest

Hon David L Mackey  
Judge, Civil Presiding Judge  
Yavapai County Superior Court  
Yavapai County Courthouse  
120 S Cortez St No 300  
Prescott AZ 86303 USA

Philip G Urry, Clerk  
By

  
Deputy Clerk

ORIGINAL FILED THIS \_\_\_\_\_  
DAY OF JAN 06 2008  
JEANETTE HARRIS  
Clerk Superior Court  
By S. Shoemaker  
Deputy

1 FAVOUR MOORE & WILHELMSSEN, P.A.  
Post Office Box 1391  
2 Prescott, AZ 86302-1391  
Phone: 928/445-2444  
3 Fax: 928/771-0450  
David K. Wilhelmsen, 007112  
4 Marguerite A. Kirk, 018054

5 Attorneys for Plaintiffs

6 IN THE SUPERIOR COURT OF ARIZONA  
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12 vs.

13 **DONALD COX** and **CATHERINE COX,** )  
14 husband and wife, )

15 Defendants.

No. CV 2003-0399

Division 1

**ORDER FOR STAY OF  
PROCEEDINGS ON JUDGMENT  
PENDING PETITIONS FOR REVIEW  
RE: CHANGE OF JUDGE AND  
JOINDER**

17 Upon motion to this Court and good cause appearing therefor.,

18 IT IS ORDERED granting Plaintiffs' Motion for Stay of Proceedings on Judgment  
19 Pending Petitions for Review Re: Change of Judge and Joinder. All proceedings are stayed until such  
20 time as the Supreme Court has made its determination concerning Plaintiffs' Petitions for Review Re:  
21 change of Judge and Joinder.

22 DONE IN OPEN COURT this \_\_\_\_\_ day of JAN 05 2009, ~~2008~~.

24 DAVID L. MACKEY  
25 David L. Mackey  
JUDGE OF THE SUPERIOR COURT

26 ---



# Supreme Court

STATE OF ARIZONA

402 ARIZONA STATE COURTS BUILDING  
1501 WEST WASHINGTON STREET  
PHOENIX, ARIZONA 85007-3231  
TELEPHONE: (602) 452-3396

RACHELLE M. RESNICK  
CLERK OF THE COURT

SUZANNE D. BUNNIN  
CHIEF DEPUTY CLERK

March 17, 2009

**RE: CUNDIFF/NASH/PAGE v HON. MACKEY/COX**  
Arizona Supreme Court No. CV-08-0384-PR  
Court of Appeals Division One No. 1 CA-SA 08-0231  
Yavapai County Superior Court No. CV 2003-0399

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on March 17, 2009, in regard to the above-referenced cause:

**ORDERED: Petition for Review of a Special Action Decision of the Court of Appeals = DENIED.**

**FURTHER ORDERED: Request for Attorneys' Fees [Real Parties Cox] = DENIED.**

Record returned to the Court of Appeals, Division One, Phoenix, this 17th day of March, 2009.

Rachelle M. Resnick, Clerk

TO:

David K Wilhelmsen, Favour Moore & Wilhelmsen PA  
Jeffrey R Adams, Adams & Mull PLLC  
David L Mackey, Civil Presiding Judge, Yavapai County Superior Court  
West Publishing Company  
Lexis Nexis  
Philip G. Urry, Clerk, Court of Appeals, Division One, Phoenix  
adc



# Supreme Court

STATE OF ARIZONA

RACHELLE M. RESNICK  
CLERK OF THE COURT

402 ARIZONA STATE COURTS BUILDING  
1501 WEST WASHINGTON STREET  
PHOENIX, ARIZONA 85007-3231  
TELEPHONE: (602) 452-3396

SUZANNE D. BUNNIN  
CHIEF DEPUTY CLERK

March 17, 2009

**RE: CUNDIFF et al v HON. MACKEY/COX**  
Arizona Supreme Court No. CV-08-0399-PR  
Court of Appeals Division One No. 1 CA-SA 08-0241  
Yavapai County Superior Court No. CV 2003-0399

**GREETINGS:**

The following action was taken by the Supreme Court of the State of Arizona on March 17, 2009, in regard to the above-referenced cause:

**ORDERED: Motion Re [One-Day] Extension of Time [To File Petition for Review Nunc Pro Tunc on 12/9/2008] = GRANTED.**

**FURTHER ORDERED: Motion to Dismiss Petition = DENIED.**

**FURTHER ORDERED: Petition for Review of a Special Action Decision of the Court of Appeals = DENIED.**

Record returned to the Court of Appeals, Division One, Phoenix, this 17th day of March, 2009.

Rachelle M. Resnick, Clerk

TO:

David K Wilhelmsen, Favour Moore & Wilhelmsen PA  
Jeffrey R Adams, Adams & Mull PLLC  
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