

**Arizona Supreme Court**  
**Civil Petition for Review - Appeal**

**CV-24-0252-PR**

**GALLERY v K HOVNANIAN et al**

**Appellate Case Information**

Case Filed: 23-Oct-2024  
Case Closed:

**Dept/Composition**

**En Banc**

Hon. Ann A. Scott Timmer  
Hon. John R Lopez  
Hon. Clint Bolick  
Hon. James P Beene  
Hon. William G Montgomery  
Hon. Kathryn H. King  
Hon. John Pelander

**Side 1. GALLERY COMMUNITY ASSOCIATION, Plaintiff/Appellant**

(Litigant Group) GALLERY COMMUNITY ASSOCIATION

- Gallery Community Association

**Attorneys for: Plaintiff/Appellant**

Robert G Schaffer, Esq. (AZ Bar No. 17475)  
Craig S Nuss, Esq. (OH Bar No. 33839)

**Side 2. K HOVNANIAN AT GALLERY, LLC, et al., Defendant/Appellee**

(Litigant Group) K HOVNANIAN AT GALLERY, LLC, et al.

- K Hovnanian at Gallery LLC
- K Hovnanian Arizona Operations LLC
- K Hovnanian Developments of Arizona Inc
- K Hovnanian Companies of Arizona LLC

**Attorneys for: Defendant/Appellee**

Dennis I Wilenchik, Esq. (AZ Bar No. 5350)  
Louis W Horowitz, Esq. (AZ Bar No. 20842)  
Garo Moughalian, Esq. (AZ Bar No. 38315)

(Litigant Group) LE BLANC BUILDING CO, INC.

- Le Blanc Building Co Inc

**Attorneys for: Defendant/Appellee**

Michael A Ludwig, Esq. (AZ Bar No. 15481)

(Litigant Group) LIBERTY CONSTRUCTORS

- Liberty Constructors

**Attorneys for: Defendant/Appellee**

Thomas J Shorall, Jr, Esq. (AZ Bar No. 10456)  
Jason J Boblick, Esq. (AZ Bar No. 26507)

(Litigant Group) RENCO ROOFING AND DESERT VISTA, INC.

- Renco Roofing and Desert Vista Inc

**Attorneys for: Defendant/Appellee**

Rina K Rai, Esq. (AZ Bar No. 18886)  
Mohamad H Tokko, Esq. (AZ Bar No. 33015)

(Litigant Group) SARGON MASONRY CONSTRUCTION, LLC

- Sargon Masonry Construction LLC

**Attorneys for: Defendant/Appellee**

Leonard T Fink, Esq. (AZ Bar No. 16489)  
David S Schopick, Esq. (AZ Bar No. 22016)

**Side 3. AIRE ON MCDOWELL COMMUNITY ASSOCIATION, Amicus Curiae**

(Litigant Group) AIRE ON MCDOWELL COMMUNITY ASSOCIATION

- Aire on McDowell Community Association

**Attorneys for: Amicus Curiae**

Thomas L Hudson, Esq. (AZ Bar No. 14485)  
John S. Bullock, Esq. (AZ Bar No. 34950)

**Side 4. HOME BUILDERS ASSOCIATION OF CENTRAL ARIZONA AND SOUTHERN ARIZONA HOME BUILDERS ASSOCIATION, Amicus Curiae**

(Litigant Group) HOME BUILDERS ASSOCIATION OF CENTRAL ARIZONA AND SOUTHERN ARIZONA HOME BUILDERS ASSOCIATION

- Home Builders Association of Central Arizona
- Southern Arizona Home Builders Association

**Attorneys for: Amicus Curiae**

Mark A Fuller, Esq. (AZ Bar No. 12149)

**Side 5. LEADING BUILDERS OF AMERICA; THE NATIONAL ASSOCIATION OF HOME BUILDERS, Amicus Curiae**

(Litigant Group) LEADING BUILDERS OF AMERICA; THE NATIONAL ASSOCIATION OF HOME BUILDERS

- Leading Builders of America
- National Association of Home Builders

**Attorneys for: Amicus Curiae**

Andrew W. Gould, Esq. (AZ Bar No. 13234)  
Emily Gould, Esq. (AZ Bar No. 36184)  
Erica Leavitt, Esq. (AZ Bar No. 32738)

**CASE STATUS**

Apr 22, 2025.....Submitted

Mar 4, 2025.....At Issue

**Arizona Supreme Court**  
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**CASE STATUS**

Mar 4, 2025.....Oral Argument Granted	Jan 31, 2025.....Continued
Oct 23, 2024.....Pending	

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
1 CA 1 CA-CV 23-0375					
↳ MAR CV2020-008714	Negligence		Katherine Cooper, Authoring Judge of Order Comments: (none)		

**33 PROCEEDING ENTRIES**

1. 23-Oct-2024 FILED: Petition for Review; Certificate of Service; Certificate of Compliance; Opinion (Appellees K Hovnanian, et al.)
2. 23-Oct-2024 FILED: Appendix; Certificate of Service (Appellees K Hovnanian, et al.)
3. 25-Oct-2024 FILED: Record from CofA: Electronic Record
4. 31-Oct-2024 RECEIPT No.: 2024-00298 ; \$280.00, Authorization: 8213028860721999, Applied to: K HOVNANIAN AT GALLERY, LLC, et al. - Class A Filing Fee (\$280.00) Paid for: K HOVNANIAN AT GALLERY, LLC, et al. - By nCourt LLC
5. 5-Nov-2024 FILED: Motion for Procedural Order re Extension of Time to File Response to Petition for Review; Certificate of Service (Appellant Gallery)
6. 6-Nov-2024 A "Motion for Procedural Order re Extension of Time to File Response to Petition for Review" (Appellant Gallery) having been filed on November 5, 2024,  
  
IT IS ORDERED granting a first extension of time to file the response to petition for review on or before December 10, 2024. No further extensions of time shall be granted absent extraordinary circumstances. (Tracie K. Lindeman, Clerk)
7. 6-Dec-2024 FILED: Brief of Amici Curiae Home Builders Association of Central Arizona and Southern Arizona Home Builders Association in Support of Petition for Review; Certificate of Service; Certificate of Compliance (Amici Home Builders, et al.)
8. 6-Dec-2024 FILED: Consent of all Parties (Amici Home Builders, et al.)
9. 10-Dec-2024 FILED: Response to Petition for Review; Certificate of Service; Certificate of Compliance (Appellant Gallery)
10. 18-Dec-2024 RECEIPT No.: 2024-00340 ; \$140.00, Authorization: 8741135924011977, Applied to: GALLERY COMMUNITY ASSOCIATION - Class B Filing Fee (\$140.00) Paid for: GALLERY COMMUNITY ASSOCIATION - By nCourt LLC
11. 31-Jan-2025 ORDERED: Petition for Review = CONTINUED.  
  
FURTHER ORDERED: Request for Attorneys' Fees (Appellees K Hovnanian, et al.) = CONTINUED.  
  
Justice King did not participate in the determination of this matter.
12. 31-Jan-2025 FILED: Notice of Disassociation of Counsel; Certificate of Service (Appellees K Hovnanian, et al.)
13. 3-Feb-2025 FILED: Application for Substitution of Counsel With Client Consent; Certificate of Service (Appellant Gallery)
14. 4-Mar-2025 ORDERED: Petition for Review = GRANTED.  
  
FURTHER ORDERED: The case shall be set for oral argument.  
  
FURTHER ORDERED: The parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than March 24, 2025. Any amicus briefs are due on or before April 7, 2025 and any responses to amicus briefs are due on or before April 18, 2025. Any amicus briefs or responses may not exceed 20 pages in length.  
  
FURTHER ORDERED: Request for Attorneys' Fees (Appellees K Hovnanian, et al.) = CONTINUED.  
  
Justice Cruz did not participate in the determination of this matter.
15. 6-Mar-2025 NOTICE OF ORAL ARGUMENT: Set for Tuesday, April 22, 2025, at 10:15 A.M. (twenty [20] minutes per side)

**Arizona Supreme Court**  
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**33 PROCEEDING ENTRIES**

16. 6-Mar-2025 FILED: Notice of Acknowledgment of Oral Argument (Dennis I. Wilenchik will argue); Certificate of Service (Appellees K Hovnanian, et al.)
17. 6-Mar-2025 FILED: Record From CofA: Entire Electronic Record
18. 7-Mar-2025 On February 3, 2025, Appellant Gallery Community Association filed an "Application for Substitution of Counsel With Client Consent," requesting that Roger E. Brodman and Holden Willits PLC be withdrawn as counsel of record in this matter. Therefore, IT IS ORDERED granting the application and substituting Robert G. Schaffer as counsel of record for Appellant. (Hon. Ann A. Scott Timmer)
19. 11-Mar-2025 SENT: Letter to Counsel From Justice King
20. 12-Mar-2025 RECEIVED: Letter in Response to Justice King's Letter to Counsel (Appellees K Hovnanian, et al.)
21. 14-Mar-2025 RECEIVED: Letter in Response to Justice King's Letter to Counsel (Appellee Renco Roofing)
22. 17-Mar-2025 SENT: Supplemental Letter to Counsel From Justice King
23. 18-Mar-2025 RECEIVED: Letter in Response to Justice King's Supplemental Letter to Counsel (Appellees K Hovnanian, et al.)
24. 24-Mar-2025 FILED: Gallery Community Association's Supplemental Brief; Certificate of Service; Certificate of Compliance (Appellant Gallery)
25. 28-Mar-2025 Justice Cruz is recused and will not participate in the above captioned matter. Therefore, pursuant to Article 6, Section 3 of the Arizona Constitution,  
  
IT IS ORDERED that the Honorable John Pelander, Justice (Retired) of the Arizona Supreme Court, is designated to sit on the case until it is finally determined. (Hon. Ann A. Scott Timmer)
26. 7-Apr-2025 FILED: Notice of Acknowledgment of Oral Argument (Robert Schaffer will argue) (Appellant Gallery)
27. 7-Apr-2025 FILED: Brief of Amici Curiae Leading Builders of America and The National Association of Home Builders; Certificate of Service; Certificate of Compliance (Amici Leading Builders, et al.)
28. 7-Apr-2025 FILED: Consent of all Parties (Amici Leading Builders, et al.)
29. 8-Apr-2025 FILED: Motion for Leave to File Amended Response to Petition for Review to Give Notice of Intent to Claim Attorneys' Fees on Petition for Review; Certificate of Service; Amended Response to Petition for Review; Declaration of Counsel (Appellant Gallery)
30. 10-Apr-2025 FILED: Petitioners' Response to Respondents' Motion for Leave; Certificate of Service (Appellees K Hovnanian, et al.)
31. 14-Apr-2025 On April 8, 2025, Plaintiff/Appellant filed a "Motion for Leave to File Amended Response to Petition for Review to Give Notice of Intent to Claim Attorneys' Fees on Petition for Review." On April 10, 2025, Defendants/Appellees filed a response to the motion.  
  
Rule 21(a)(1) of the Arizona Rules of Civil Appellate Procedure states that a party claiming attorney fees "must do so in the petition or cross-petition or in the response to a petition or cross-petition." (Emphasis added.) This Court has not specifically addressed whether a party can amend a response to include an attorney fees request. However, the Court has consistently denied requests for attorney fees that are presented for the first time in a supplemental brief, finding such requests to be untimely. See *Turken v. Gordon*, 223 Ariz. 342, 352 n.7 (2010); *First Am. Title Ins. Co. v. Action Acquisitions, LLC*, 218 Ariz. 394, 401 ¶ 38 (2008); *Roubos v. Miller*, 214 Ariz. 416, 420 ¶ 21 (2007); *Powell v. Washburn*, 211 Ariz. 553, 560 ¶ 29 (2006); *Andrews v. Blake*, 205 Ariz. 236, 251 ¶ 54 (2003). Granting Plaintiff/Appellant's motion would be an end-run around these rulings. Based on the foregoing, upon review by the entire Court,  
  
IT IS ORDERED denying the "Motion for Leave to File Amended Response to Petition for Review to Give Notice of Intent to Claim Attorneys' Fees on Petition for Review." (Hon. Ann A. Scott Timmer)
32. 17-Apr-2025 FILED: Gallery Community Association's Response to Brief of Amici Leading Builders of America and the National Association of Home Builders; Certificate of Service; Certificate of Compliance (Appellant Gallery)
33. 22-Apr-2025 ORAL ARGUMENT - Submitted for decision en banc (Attorneys who argued: Dennis I. Wilenchik, Robert G. Schaffer)