

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



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FILED: 12/11/2012
RUTH A. WILLINGHAM,
CLERK
BY: mjt

RANCHO DEL SOL, L.L.C., an)	
Arizona limited liability)	
company,)	1 CA-SA 12-0246
)	
Petitioner,)	Yuma County
)	Superior Court
v.)	No. S1400CV0200500396
)	
THE HONORABLE LAWRENCE C.)	DEPARTMENT E
KENWORTHY, Judge of the SUPERIOR)	
COURT OF THE STATE OF ARIZONA,)	DECISION ORDER
in and for the County of YUMA,)	
)	
Respondent Judge,)	
)	
MICHAEL J. PERRY and MARY LOU)	
PERRY, husband and wife; JON M.)	
PERRY, a single man; GERALD W.)	
BRACK, II and VANESSA L. BRACK,)	
husband and wife; MICHAEL)	
GARDNER, a single man; FRANCIS)	
X. IRR and MAUREEN A. IRR,)	
husband and wife,)	
)	
Real Parties in Interest.)	
)	

This special action came on regularly for conference on the 26th day of November, 2012, before Presiding Judge Diane M. Johnsen, and Judges Jon W. Thompson and Lawrence F. Winthrop.

IT IS ORDERED that the Court of Appeals, in the exercise of its discretion, accepts jurisdiction of this special action. Special action jurisdiction is appropriate. Ariz. R. Spec. Act. 1(a) (special action is available when there is no other equally plain, speedy or adequate remedy by appeal).

IT IS FURTHER ORDERED granting petitioner relief because the Court of Appeal's prior ruling that the attorneys' fees in the underlying matter were paid is final, conclusive and not subject to reopening.

At the time the specific performance judgment became final, buyers were relieved of part of their then-present obligation to tender performance. See, e.g., *United California Bank v. Prudential Ins. Co.*, 140 Ariz. 238, 289, 681 P.2d 390, 437 (App. 1983); *McFadden v. Wilder*, 6 Ariz. App. 60, 63-64, 429 P.2d 694, 697-98 (1967) (before either party can sue on a purchase/sale contract he must first put the other party in default by tendering or offering to tender performance). The fees component of the 2009 judgment was satisfied when the buyers were permitted to satisfy their obligation on specific performance by depositing a reduced amount for the purchase price into escrow.

A final judgment can be modified only where there are "extraordinary circumstances of hardship or injustice." *Panzino v. City of Phoenix*, 196 Ariz. 442, 445, ¶ 6, 999 P.2d 198, 201 (2000) (internal citation and quotation marks omitted). No such circumstances exist here. Further under "the law of the case doctrine, an appellate court's decision is controlling in both the lower courts and in subsequent appeals in the same case, so long as the facts and law remain substantially the same." *Copper Hills Enters., Ltd. v. Ariz. Dep't of Revenue*, 214 Ariz.

386, 390-91, ¶ 15, 153 P.3d 407, 411-12 (App. 2007). The matter is closed and further litigation is foreclosed by issue preclusion. See *Chaney Bldg. Co. v. City of Tucson*, 148 Ariz. 571, 573, 716 P.2d 28, 30 (1986).

For the above stated reasons, the trial court erred in re-opening this matter and adding post-judgment interest on the previously satisfied attorneys' fees award and that determination is vacated.

IT IS FURTHER ORDERED vacating the stay entered by this court on November 1, 2012.

/s/

JON W. THOMPSON, Judge