

1 **WO**

2 NOT FOR PUBLICATION

3

4

5

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8

9 DAVID K. EVERSON and PATRICIA M.)
10 EVERSON,)

No. CV-08-1980-PHX-GMS

11 Plaintiffs,)

ORDER

12

vs.)

13

14 DAVID D. EVERSON, Individually and)
15 as President and Director of Mandalay)
16 Homes, Inc.,)

17

AND,)

18

19 KRISTY EVERSON, aka KRISTY)
20 DRYJA, wife of DAVID D. EVERSON,)

21

AND,)

22

MANDALAY HOMES, INC., et al.,)

23

AND,)

24

25 THE ESTATE OF LOUIS B.)
26 SCHAEFFER, GENE SCHAEFFER, wife,)
27 RUSSELL SCHAEFFER, son,))
28 ADMINISTRATORS,)

Defendants.)

_____)

_____)

25

On July 30, 2009, the Court received a Motion for Summary Judgement on behalf of
26 the Estate of Louis B. Schaeffer. (Dkt. # 34.) The Motion, however, was not brought by the

27


28

1 Estate's personal representative. Instead, the Schaeffer family¹ retained counsel to file the
2 Motion. (Dkt # 34.) Arizona law makes it clear, however, that familial ties, alone, are not
3 sufficient to confer either liability or standing to act on behalf of a decedent's estate. *See*
4 Arizona Revised Statutes ("A.R.S.") § 14-3110 (2005).² Instead, only the personal
5 representative has authority to raise a claim or make a defense. A.R.S. § 14-3103 (2005)
6 ("[T]o acquire the powers and undertake the duties and liabilities of a personal representative
7 of a decedent, a person shall be appointed . . ."). As far as the Court is aware, no personal
8 representative has been appointed, and members of the Schaeffer family are unwilling to
9 accept the position. (Dkt. # 33.)

10 **IT IS THEREFORE ORDERED** that Timothy J. Thomason and Nicole S.
11 Hawkesworth provide the basis for their authority to represent the Estate of Louis B.
12 Schaeffer—inasmuch as no personal representative with power to defend the Estate has been
13 appointed.

14 **IT IS FURTHER ORDERED** that Mr. Thomason and Ms. Hawkesworth file a
15 memorandum with the requested information on or before **September 30, 2009**, if they do
16 not otherwise move to withdraw the Motion for Summary Judgment.

17 DATED this 23rd day of September, 2009.

18
19 
20 G. Murray Snow
United States District Judge

21
22 ¹In an Order issued on March 3, 2009, the Court dismissed Russell Schaeffer and
23 Gene Schaeffer, as individuals, from this action. (Dkt. # 19.)

24 ²Section 14-3110 provides that a "cause of action . . . shall survive the death of the
25 person entitled thereto or liable therefor, and may be asserted by or against the personal
26 representative of such person"). In *Lacer v. Navajo County*, the Arizona Court of Appeals
27 interpreted this provision to mean that "only the personal representative" has standing "to
28 bring [or defend] an action" under Arizona law. *See* 141 Ariz. 396, 404, 687 P.2d 404, 412
(Ct. App. 1983); *see also* A.R.S. § 14-3104 (2005) ("No proceeding to enforce a claim
against the estate of a decedent or his successors may be revived or commenced before the
appointment of a personal representative.").