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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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RICHARD VICARI, an individual d/b/a )  
COLOR ARTS LANDSCAPING; and )  
COLOR ARTS LANDSCAPING, a sole )  
proprietorship, )

No. CV-07-8066-PCT-SMM

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**ORDER**

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Plaintiff,

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v.

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WESTERN MUNICIPAL )  
CONSTRUCTION, INC., a Montana )  
corporation, )

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Defendant. )

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Currently before the Court is the Notice of Suggestion of Non-Removability (Doc. 4) filed by Defendant Western Municipal Corporation, apprising the Court that at the time the Notice of Removal was filed, this Court did not have original jurisdiction over the suit.

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This lawsuit was originally filed in the Mohave County Superior Court on or about May 8, 2007. At the time of filing, Plaintiff, an Arizona resident, sued Lake Havasu City, an Arizona municipal corporation, and Western Municipal Corporation, a Montana corporation. Thus, at the time, there was no diversity of citizenship, and this case was not removable. According to this Notice of Suggestion, Western Municipal thereafter received a Notice of Dismissal of Lake Havasu City from Plaintiff, and believing that Lake Havasu City had been removed from the litigation, Western Municipal filed a Notice of Removal. Subsequently, however, Western Municipal's counsel received a Minute Entry from the Mohave County

1 Superior Court dated July 31, 2007, that alerted Western Municipal that on or about June 20,  
2 2007, Lake Havasu City had filed a Motion to Dismiss, and the Mohave County Superior  
3 Court has decided to treat the Motion to Dismiss as a Motion for Summary Judgment.  
4 Moreover, the Superior Court has concluded that Lake Havasu City had appeared in the  
5 litigation and that pursuant to Rule 41(a)(2), ARCP, Plaintiff's Notice of Dismissal was  
6 ineffective absent the consent of Lake Havasu City. The Court then declined to accept the  
7 dismissal of Lake Havasu City filed by Plaintiff, leaving Lake Havasu City as a party to the  
8 litigation. Consequently, until such time that Mohave County Superior Court accepts the  
9 dismissal of Lake Havasu City and diversity of citizenship exists, thereby conferring original  
10 jurisdiction on this court, removal will not be proper.

11 Accordingly,

12 **IT IS HEREBY ORDERED** that this case is **REMANDED** to Mohave County  
13 Superior Court.

14 DATED this 10<sup>th</sup> day of August, 2007.

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19 Stephen M. McNamee  
20 United States District Judge  
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