

## **APPENDIX**

**APPENDIX****TABLE OF CONTENTS**

Appendix 1	Settlement Agreement (April 27, 2017) . . . . .	1a
Appendix 2	Memorandum Decision in the Arizona Court of Appeals Division One (April 4, 2019) . . . . .	3a
Appendix 3	Order in the Arizona Supreme Court (September 23, 2019) . . . . .	14a
Appendix 4	Under Advisement Ruling in the Superior Court of the State of Arizona, in and for the County of Yavapai (February 19, 2020) . . . . .	16a
Appendix 5	Order Re Motion to Recall Mandate and Stay Issuance of Mandate in the Arizona Court of Appeals Division One (February 3, 2022) . . . . .	22a
Appendix 6	Writ of Restitution in the Superior Court of the State Arizona, in and for the County of Yavapai (February 14, 2022) . . . . .	25a
Appendix 7	Notice of Service in the Superior Court of the State of Arizona, in and for the County of Yavapai (February 23, 2022) . . . . .	28a

---

## APPENDIX 1

---

### SETTLEMENT AGREEMENT

The parties to this agreement are Dakota Territory Tours, A.C.C. (“**Dakota**”) and Sedona-Oak Creek Airport Authority (“**Sedona**”). The parties to this agreement are involved in litigation, Case No. V1300CV201480422, Yavapai County Superior Court, State of Arizona (“**Litigation**”) and hereby confirm that as of April 17, 2017, they settled the litigation on the following terms.

1. Dakota has already filed a Notice of Settlement with the Court.
2. Dakota and Sedona have agreed to stipulate for dismissal of the above-mentioned litigation with prejudice, both parties to bear their own attorneys’ fees and costs, and no party admitting any fault.
3. Sedona has agreed, and hereby confirms that it has agreed to continue leasing the existing property pursuant to the existing lease on a month-to-month basis until an RFP issues. In the event Dakota is the successful bidder, then a new lease will issue to Dakota and its use of the premises will not be interrupted. In the event Dakota is not the successful bidder, Dakota must vacate the premises no later than thirty (30) days after receipt of the (30) day notice provided by Paragraph 1.14 of the

existing lease which Sedona may provide at any time on or after the date of the award by email notification to Dakota and its legal counsel advising of the date of the award and that Dakota must vacate the premises within thirty (30) days. No other notice of termination shall be required from Sedona.

4. In the event a dispute regarding this agreement should arise between the parties, the non-breaching party shall be entitled to recover any and all attorneys' fees and costs (statutorily awardable or otherwise) from the breaching party.

This settlement agreement shall be governed by Arizona law.

DATED this 27<sup>th</sup> day of April, 2017.

DAKOTA TERRITORY TOURS, A.C.C.

By: /s/ [illegible]  
Its: [illegible]/CEO

SEDONA-OAK CREEK AIRPORT AUTHORITY

By: /s/ [illegible]  
Its: Vice President

---

## APPENDIX 2

---

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(C),  
THIS DECISION IS NOT PRECEDENTIAL AND MAY BE  
CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
ARIZONA COURT OF APPEALS  
DIVISION ONE

**No. 1 CA-CV 17-0767**

**[Filed: April 4, 2019]**

---

DAKOTA TERRITORY TOURS AAC,	)
<i>Plaintiff/Appellant,</i>	)
	)
	)
<i>v.</i>	)
	)
SEDONA-OAK CREEK AIRPORT	)
AUTHORITY INC., <i>Defendant/Appellee.</i>	)
	)

---

Appeal from the Superior Court in Yavapai County  
No. V1300CV201780201  
The Honorable John David Napper, Judge

**AFFIRMED**

**COUNSEL**

Davis Miles McGuire Gardner PLLC, Tempe  
By Bradley D. Weech, Marshall R. Hunt  
*Counsel for Plaintiff/Appellant*

Henze Cook Murphy PLLC, Phoenix  
By Kiersten A. Murphy

Law Office of Tony S. Cullum PC, Flagstaff  
By Tony S. Cullum

O'Connor & Campbell PC, Tempe  
By J. Daniel Campbell, Ellen B. Davis  
*Co-Counsel for Defendant/Appellee*

**DAKOTA v. SEDONA-OAK**  
**Decision of the Court**

**MEMORANDUM DECISION**

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge James B. Morse Jr. and Judge Jon W. Thompson joined.

**S W A N N**, Judge:

**¶1** This appeal concerns the dissolution of a conditional preliminary injunction that allowed appellant to continue business operations during litigation over a bid protest. The superior court concluded that the condition justifying the injunction no longer existed. For reasons that follow, we affirm.

**FACTS AND PROCEDURAL HISTORY**

**¶2** Dakota Territory Tours AAC (“Dakota”) conducts a helicopter and airplane tour business out of the

Sedona Airport under a lease agreement with Sedona-Oak Creek Airport Authority Inc. (“SOCAA”), which manages the airport’s operations. Dakota’s lease with SOCAA gave it exclusive access to a commercial building, public parking, and aircraft parking.

¶3 The parties began litigating a lease dispute in 2014 but reached a settlement in April 2017, the same month that the lease was set to expire. Under the settlement agreement, Dakota could continue leasing the existing property on a month-to-month basis until SOCAA issued a Request for Proposals (“RFP”) for a potential replacement tenant. The agreement provided that if Dakota was the successful proponent, its use of the premises would continue uninterrupted, but if Dakota was not the successful proponent, it would have to vacate the premises with 30 days’ notice.

¶4 SOCAA issued an RFP in May 2017. The RFP provided that “[t]he ‘best responsible proponent’ shall be that proponent which [SOCAA] and Yavapai County may determine,” that “[t]he Yavapai County Board of Supervisors will consider the proposals on or before June, 2017,” and that “[a]ny proposal will be subject to Federal Aviation Administration review and approval prior to commencement of any lease.”

¶5 A SOCAA committee evaluated the various proposals (including Dakota’s) on a point-based system and selected Guidance Aviation (another air-tour business based out of the Sedona Airport) as the best proponent. SOCAA did not consult either the Yavapai County Board of Supervisors (“Board”) or the Federal Aviation Administration (“FAA”) before deciding the best proponent. SOCAA notified Dakota that its

proposal was not chosen and that its lease was terminated.

**¶6** Before vacating the premises, Dakota filed a complaint in Yavapai County Superior Court requesting a temporary restraining order. Dakota alleged, among other things, that SOCAA breached the settlement agreement because the Board and the FAA had not participated in the proposal selection, as was required under Dakota's interpretation of the RFP. The court granted the temporary restraining order, enjoining SOCAA from evicting Dakota pending a preliminary injunction hearing.

**¶7** After a three-day evidentiary hearing, the court concluded that the RFP required the Board to have the "opportunity to consider" the proposals, but not that it "act on them." The court found that the Board did not have such an opportunity, and therefore that Dakota would likely succeed on its breach of contract claim "until the [Board] has the opportunity to consider these matters." The court further found that the possibility of irreparable harm "cut[s] in the favor of [Dakota]" because, despite most of the harm being financial, Dakota would lose employees and does not have another place to store its materials. And, noting that "the testimony has been very clear that the FAA has no interest in this lease," the court ruled that the RFP's FAA provision was "surplusage," and that SOCAA was not required to get approval from the FAA.

**¶8** In September 2017, the court granted Dakota's preliminary injunction as to its breach of contract claim, but allowed SOCAA "to file a motion to lift the injunction once [the Board] has had the opportunity to

review and consider the proposals.” The court explained that once that condition had been met, there was little left to keep the injunction in place, and made clear that “the limitation on [the potential hearing] will be whether or not [the Board] was given the opportunity to exercise its discretion.”

**¶9** One month later, SOCAA filed a motion to dissolve the injunction, explaining that it had given the Board the opportunity to consider the proposals, but the Board declined to participate. Attached to the motion were several pieces of correspondence between SOCAA and two County officials, who stated that the selection of an RFP proponent is not within the Board’s duties, and that the Board “will not act upon the RFP submitted by [SOCAA].” In its response to the motion to dissolve, Dakota again argued that, contrary to the court’s interpretation, the RFP required the Board to “participate with SOCAA in choosing the best proponent.” Dakota further argued that SOCAA’s correspondence did not establish that the Board “even had an opportunity to consider the proposals.” In support of its arguments, Dakota attached three of the Board’s public meeting agendas indicating that it had not considered the proposals in open session.

**¶10** The court held argument on SOCAA’s motion. The court reiterated that Dakota’s likelihood of success due to the Board’s lack of participation in the proposal process “was the basis for . . . continuing the injunction,” and explained that it would not “rebalance all of the equities” regarding the basis for the injunction. The court then found that SOCAA

established that the Board was given the requisite opportunity, and dissolved the injunction.

**¶11** Dakota appeals from the order dissolving the preliminary injunction. We stayed the dissolution order pending this appeal.

## DISCUSSION

**¶12** In its appeal from the superior court's order dissolving the preliminary injunction, Dakota argues that the court erred by (1) ruling on SOCAA's dissolution motion before SOCAA had filed an answer and without holding an evidentiary hearing, (2) improperly balancing the parties' potential harms, (3) improperly weighing Dakota's likelihood of success on various issues, and (4) interpreting the RFP to require that the Board have the "opportunity to consider" the proposals and that the FAA need not participate in the proposal process at all. Dakota further argues that, even if the court's interpretation of the RFP was correct, the court erred by finding that SOCAA had established that the Board actually had an opportunity to consider the proposals.

**¶13** Several of Dakota's arguments, however, are outside the scope of our review on appeal from this intermediate order. The superior court based the September 2017 preliminary injunction on its interpretation of the RFP and its weighing of the traditional injunction considerations (i.e., balance of harms and likelihood of success), and conditioned the injunction on the Board having an opportunity to consider the proposals. But the dissolution order was

more narrow—it simply applied the condition contained in the original order.

**¶14** While Dakota seeks to challenge several aspects of the preliminary injunction (i.e., its interpretation of the RFP and its weighing of the injunction considerations), Dakota did not appeal that order. The time to appeal the September 2017 preliminary injunction had passed by the time Dakota filed its notice of appeal. *See A.R.S. § 12-2101(A)(5)* (separate right to appeal the *grant* of an injunction); *see also* ARCAP 9(a) (“To appeal a judgment, a party must file a notice of appeal under Rule 8 no later than 30 days after entry of the judgment from which the appeal is taken.”). There is no final judgment in this case, and our jurisdiction extends only to Dakota’s appeal of the November 2017 order dissolving the injunction. Accordingly, we will only consider those issues addressed in the court’s dissolution order, including (1) whether the court erred by ruling on SOCAA’s dissolution motion before SOCAA filed an answer and without holding an evidentiary hearing, (2) whether SOCAA’s evidence established that the County had an opportunity to consider the proposals, and (3) whether the court’s dissolution of the injunction was appropriate.

**¶15** We review the court’s decision to dissolve an injunction for abuse of discretion, *Town of Tortolita v. Napolitano*, 199 Ariz. 556, 559–60, ¶ 10 (App. 2001), and we review the court’s legal conclusions de novo, *Gnatkiv v. Machkuri*, 239 Ariz. 486, 489, ¶ 9 (App. 2016).

I. DAKOTA WAIVED ITS ARGUMENTS REGARDING PROCEDURAL DEFECTS BY NOT RAISING THEM IN SUPERIOR COURT.

¶16 Dakota contends that the court erred under Ariz. R. Civ. P. (“Rule”) 65. But Dakota did not raise either of these procedural arguments before the superior court, and has therefore waived them on appeal. *See Lunney v. State*, 244 Ariz. 170, 181, ¶ 40 (App. 2017) (“Issues not raised before the superior court are waived on appeal.”).

II. THE COURT DID NOT ERR BY CONCLUDING THAT SOCAA’S EXHIBITS ESTABLISHED THAT THE BOARD HAD AN OPPORTUNITY TO CONSIDER THE PROPOSALS.

¶17 SOCAA attached several exhibits to its motion to dissolve, showing that it submitted the proposals to the Assistant County Administrator and requested that the Board review them per the court’s order. The exhibits also show correspondence between SOCAA and the Deputy County Attorney, who explained that the “Master Lease” between the County and SOCAA (under which SOCAA maintains control of the County-owned airport) does not require, “or even authorize[,] the County to participate in the RFP process or select the best responsible proponent.” The Deputy County Attorney, as counsel to the Board, further stated that the Board “has not and will not act upon the RFP submitted by [SOCAA].” The Deputy County Attorney clarified that the Master Lease requires the Board to review sublease agreements, but not to select which applicant is best for the sublease.

¶18 Dakota responded to SOCAA's motion by arguing that the administrator and Deputy County Attorney's emails refusing to participate in the RFP process do not establish that the *Board* had the opportunity to consider the proposals. Instead, Dakota argued, the Board *itself* must have considered (or refused to consider) the proposals during a public meeting. Dakota attached three of the Board's public meeting agendas, indicating that the Board had not considered the proposals during a public meeting. Based on the exhibits presented, the court dissolved the injunction.

¶19 We agree with the superior court that the Deputy County Attorney's representation that the Board declined to participate in the RFP process constituted an "opportunity" for the Board to consider the proposals. The Board had an opportunity to participate, but through its counsel, declined it. Moreover, even if the RFP explicitly required the Board's review during open session, such a requirement would not be enforceable because SOCAA lacked authority to bind the Board to perform under the RFP, to which the Board was not a party. *See Able Distrib. Co. v. James Lampe, Gen. Contractor*, 160 Ariz. 399, 410 (App. 1989) (noting the principle that parties to a contract cannot control a non-party to the contract).

¶20 Dakota also argues that the Board violated Arizona's open meeting laws by declining to participate over email instead of during an open session, but we will not address this argument because Yavapai County is not a party to this appeal. Moreover, this

issue, like those discussed above, is subject to litigation in the superior court.

### III. REASONABLE EVIDENCE SUPPORTS THE COURT'S WEIGHING OF THE PRELIMINARY-INJUNCTION CONSIDERATIONS.

**¶21** A preliminary injunction may be dissolved under Rule 65(a) when there are insufficient grounds for the injunction because of changed circumstances or changes in the law. *See Nu-Tred Tire Co. v. Dunlop Tire & Rubber Corp.*, 118 Ariz. 417, 419–20 (App. 1978). On a motion to dissolve an injunction, the court will not reexamine the factual bases of the injunction. *Id.* at 418; *see Town of Tortolita*, 199 Ariz. at 560, ¶ 16.

**¶22** At the three-day evidentiary hearing, the court explained the grounds for its preliminary injunction. The court found that the balance of harms “cut in favor of [Dakota],” and that Dakota had some likelihood of success on its breach of contract claim, but noted that once SOCAA had given the Board an opportunity to review the proposals, there was not much “to keep the injunction in place.” The conditional nature of the injunction was never appealed. After considering the parties’ exhibits and hearing argument on SOCAA’s motion to dissolve, the court found that Dakota no longer had a likelihood of success. The court declined to rebalance the other considerations.

**¶23** We will not rebalance the equities that justified the court’s preliminary injunction, in which it found that the balance of harms did not weigh greatly in either party’s favor and therefore that the injunction was largely based on Dakota’s likelihood of success. *See*

*Nu-Tred Tire Co.*, 118 Ariz. at 420. Dakota's likelihood of success was largely conditioned on SOCAA giving the Board an opportunity to consider the proposals. Once SOCAA satisfied that condition, Dakota was no longer likely to succeed and there was little left to justify the injunction. Accordingly, the court did not err by dissolving the injunction.

## **CONCLUSION**

**¶24** For the foregoing reasons, we affirm. We therefore lift this court's February 12, 2018, stay of the dissolution order.

[SEAL]

AMY M. WOOD • Clerk of the Court

---

**APPENDIX 3**

---

**[SEAL]**

**SUPREME COURT  
STATE OF ARIZONA**

**ROBERT BRUTINEL  
Chief Justice**

**ARIZONA STATE COURTS BUILDING  
501 WEST WASHINGTON STREET, SUITE 402  
PHOENIX, ARIZONA 85007  
TELEPHONE: (602) 452-3396**

**JANET JOHNSON  
Clerk of the Court**

September 23, 2019

**RE: DAKOTA TERRITORY TOURS v SEDONA-OAK CREEK AIRPORT**  
Arizona Supreme Court No. CV-19-0133-PR  
Court of Appeals, Division One  
No. 1 CA-CV 17-0767  
Yavapai County Superior Court  
No. V1300CV201780201

**GREETINGS:**

The following action was taken by the Supreme Court of the State of Arizona on September 23, 2019, in regard to the above-referenced cause:

**ORDERED: Appellant's Petition for Review = DENIED.**

**FURTHER ORDERED: Request for Attorneys' Fees (Appellant Dakota Territory Tours ACC) = DENIED.**

**FURTHER ORDERED: Request for Attorneys' Fees (Appellee Sedona-Oak Creek Airport Authority Inc) = GRANTED.**

Janet Johnson, Clerk

TO:

Bradley D Weech  
Marshall R Hunt  
Kiersten A Murphy  
Tony S Cullum  
Ellen B Davis  
J Daniel Campbell  
Amy M Wood  
adc

---

**APPENDIX 4**

---

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

**Case No. V1300CV201780201**

**[Filed: February 19, 2020]**

---

DAKOTA TERRITORY TOURS ACC,	)
	)
Plaintiff,	)
	)
-vs-	)
	)
SEDONA-OAK CREEK AIRPORT	)
AUTHORITY, INC., an Arizona non-profit	)
corporation; AMANDA SHANKLAND and	)
JOHN DOE SHANKLAND, husband and	)
wife,	)
	)
Defendants.	)
	)

---

**HONORABLE KRISTA M. CARMAN**

**DIVISION 4**

**BY:** Jennifer Kuns, Judicial Assistant

**DATE:** February 19, 2020

**UNDER ADVISEMENT RULING**

Before the Court is Sedona-Oak Creek Airport Authority's (SOCAA's) Motion for Partial Summary Judgment Re Specific Performance. The Court has reviewed the Motion, Response, Reply as well as the accompanying Statement of Facts, Controverting Statement of Facts and Consolidated Statement of Facts. Oral Argument was held on February 14, 2020.

At Oral Argument, Dakota raised an objection regarding the exhibits filed by Sedona along with its Reply. The Court has not considered the new exhibits in reaching its decision as it was able to reach a decision without the exhibits. The objection nonetheless is sustained.

SOCAA seeks summary judgment, rejecting the relief of "specific performance" by Dakota Territory Tours ACC (Dakota). Dakota has requested specific performance in this matter directing SOCAA to issue a "valid RFP," including an RFP for the same premises as Dakota currently occupies and Dakota seeks to remain on the SOCAA premises until such an RFP issues. SOCAA argues that it has complied with the contract in full and it cannot be ordered to specifically perform as the contract has been performed in full.

***Factual Background***

The facts of this case are well known to the Court and the parties. There are material undisputed facts that the Court has considered in reaching this decision. Dakota's lease with SOCAA was set to expire on April 30, 2017 but pursuant to a settlement agreement between the parties, the lease continued on a month to

month basis. Because of a 2014 lawsuit, the parties entered into a settlement agreement and the parties agree that the language of the settlement agreement is controlling. Part of the settlement agreement was that SOCAA was to issue an RFP in which Dakota could participate.

The portion of the settlement agreement at issue is paragraph three (3). In the settlement agreement Sedona agreed to continue leasing the existing property pursuant to the existing lease on a month-to-month basis until an RFP issues. The agreement further states that in the event Dakota is the successful bidder, then a new lease will issue to Dakota and its use of the premises will not be interrupted. Finally, if Dakota is not the successful bidder Dakota must vacate the premises no later than thirty (30) days after receipt of the thirty (30) day notice.

An RFP was issued, Dakota did participate and the RFP was awarded to Guidance Aviation and not Dakota. SOCAA sent Dakota a notice to vacate on June 26, 2017 within 30 days or on or before July 26, 2017. On July 21, 2017, Dakota filed the Complaint herein as well as an Application for Preliminary Injunction. Judge Napper granted the Preliminary Injunction. Specifically, Judge Napper stated that SOCAA was required to submit the RFP to the County for its consideration. A transcript of the hearing that addressed lifting the injunction indicates that Judge Napper found that SOCAA had completed the RFP process as it submitted the RFP to the County for participation and it declined to participate. Subsequently, Judge Napper lifted the injunction.

Following the lifting of the injunction, SOCAA sent a second notice to vacate by the end of the year to Dakota on November 29, 2017. The Court of Appeals affirmed the lifting of the injunction on April 4, 2019. On April 12, 2019, SOCAA sent Dakota a third notice to vacate. Dakota filed a Petition for Review with the Arizona Supreme Court which was denied. The Court of Appeals issued its mandate returning jurisdiction to this Court on October 18, 2019. Dakota has been on the airport more than 30 months after it first received notice to vacate.

### ***Legal Analysis***

#### **Specific Performance**

“Specific Performance or an injunction will not be granted unless the terms of a contract are sufficiently certain to provide a basis for an appropriate order.” Restatement (Second) Contracts § 362. “Specific performance requires a valid and binding contract, definite and certain in its terms, mutuality of obligations and remedy, freedom from fraud and overreaching, and lack remedy at law. *Shreve v. Greer*, 65 Ariz, 35 at 39, 173 P.2d 641, 644 (1946). The comments to the Restatement (Second) Contracts § 362 are helpful. “Degree of certainty required. If specific performance or an injunction is to be granted, it is important that the terms of the contract are sufficiently certain ...”

Here, the contract is the Settlement Agreement. The Settlement Agreement is a simple, one page agreement. At oral argument, the main issue raised by Dakota was the term “premises” located in paragraph

three (3) of the settlement agreement. Dakota argues that premises means the current buildings in which it runs its business. Dakota reached this conclusion because the agreement reads: “In the event Dakota is the successful bidder, then a new lease will issue to Dakota and ***its use of the premises will not be interrupted.***” Emphasis added. Because the sentence reads that the use won’t be interrupted, Dakota claims this must mean the current premises because moving to a different building would naturally interrupt the business. However, Sedona argues that 1) premises is not defined and the parties agreed at the time of the settlement agreement that premises referred to the airport and 2) Dakota previously testified in the injunction matter that at the time the agreement was reached the meaning of premises was not a consideration as it was more focused on getting a new lease.

Dakota argued that if “premises” is not clear then the jury would determine what that term means in the contract and then the court can order specific performance in conformity with that meaning. However, the law for specific performance is contrary to this argument. “Specific Performance or an injunction will not be granted unless the terms of a contract are sufficiently certain to provide a basis for an appropriate order.” Restatement (Second) Contracts § 362. Here, the term “premises” is not sufficiently certain to provide a basis for specific performance.

Additionally, it is significant to note that Dakota was not the successful bidder so the question of what “premises” means is not at issue. The provision

discussing the premises without interruption is only applicable if Dakota prevailed in the RFP and it did not.

**THE COURT FINDS** that specific performance is not an appropriate remedy given the undefined term “premises.”

**IT IS THEREFORE ORDERED** granting Sedona-Oak Creek Airport Authority’s Motion for Partial Summary Judgment Re: Specific Performance.

/s/Krista M. Carman  
eSigned by CARMAN, KRISTA M  
02/19/2020 09:56:23 gjh59sYI  
**Honorable Krista M. Carman**

cc: Bradley D. Weech/Marshall R. Hunt- Davis  
Miles McGuire Gardner, PLLC (e)  
J. Daniel Campbell/Ellen B. Davis- Perry  
Childers Hanlon & Hudson (e)  
Kiersten A. Murphy- Henze Cook Murphy,  
PLLC (e)  
Tony S. Cullum- Law Office of Tony S. Cullum,  
PLLC (e)

---

**APPENDIX 5**

---

IN THE  
COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

**No. 1 CA-CV 20-0158**

**[Filed: February 3, 2022]**

---

SEDONA-OAK CREEK AIRPORT	)
AUTHORITY INC.,	)
	)
Plaintiff/Appellee,	)
	)
v.	)
	)
DAKOTA TERRITORY TOURS ACC,	)
	)
Defendant/Appellant.	)
	)

---

Yavapai County  
Superior Court  
No. V1300CV201980119

**ORDER RE MOTION TO RECALL MANDATE  
AND STAY ISSUANCE OF MANDATE**

The court, Presiding Judge James B. Morse Jr., Judge Maria Elena Cruz, and Judge Paul J. McMurdie, has received Appellant's New Motion to Stay Issuance of Mandate Pending Application to United States

Supreme Court for a Writ of Certiorari, as well as Appellant's Motion to Recall Mandate.

Appellant seeks to recall and stay the issuance of the mandate so that it may raise federal constitutional issues via a writ of certiorari to the United States Supreme Court. To merit a stay, Appellant must show a strong likelihood of success and irreparable injury absent a stay. *Nken v. Holder*, 556 U.S. 418, 434 (2009); *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410, ¶ 10 (2006). Even if we assume that Appellant preserved its federal constitutional issues before the Arizona courts, *but see* *Illinois v. Gates*, 462 U.S. 213, 220-24 (1983) (declining to address federal questions "not pressed or passed upon" before the state court); *Englert v. Carondelet Health Network*, 199 Ariz. 21, ¶ 13 (App. 2000) ("[W]e generally do not consider issues, even constitutional issues, raised for the first time on appeal."), Appellant has not shown any likelihood of success, *see, e.g.* *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 327 n.8 (2007) (noting summary judgment does not violate the Seventh Amendment); *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 336 (1979) (same).

After consideration,

**IT IS ORDERED** denying Appellant's motions.

---

/s/

James B. Morse Jr., Presiding Judge

24a

A copy of the foregoing  
was sent to:

Kiersten A Murphy  
Tony S Cullum  
David L Abney

---

## APPENDIX 6

---

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

**Case No. V1300CV201980119**

**[Filed: February 14, 2022]**

---

SEDONA-OAK CREEK AIRPORT	)
AUTHORITY, INC., an Arizona	)
non-profit corporation,	)
	)
Plaintiff,	)
	)
vs.	)
	)
DAKOTA TERRITORY TOURS, ACC,	)
RED LIMITED LIABILITY COMPANIES	)
I-X, BLACK CORPORATIONS I-X, and	)
WHITE PARTNERSHIPS I-X,	)
	)
Defendants.	)
	)

---

**Writ of Restitution**

(Eviction Action)

(The Honorable Judge John Napper)

STATE OF ARIZONA

To the SHERIFF of YAVAPAI COUNTY, ARIZONA

Whereas, on March 6, 2020, Sedona-Oak Creek Airport (“SOCAA”), Plaintiff in this case recovered judgment against Dakota Territory Tours, ACC (“Dakota”), the above-named Defendant for the recovery and restitution of certain premises located at 1225 Airport Road, Sedona, Arizona 86336, consisting of:

- 1) A dark red prefabricated Modular Office Building with the street address of 1225 Airport Road with a sign reading Sedona Air Tours;
- 2) Parking and access areas contiguous to that modular office building;
- 3) Land contiguous to and located adjacent to the modular office building containing a white double door shed and picnic tables belong to Dakota; and
- 4) Two helicopter tie downs, numbers #1 and #2, located on the West ramp;

NOW, THEREFORE, YOU ARE COMMANDED TO deliver the possession of the above described premises to SOCAA, and make return of this WRIT within ten (10) days of the receipt thereof, together with a description of what you have done endorsed thereon.

NOTICE is hereby given that if the Defendant who is lawfully served with a Writ of Restitution remains or returns to the premises without the express permission of the owner of the property is guilty of criminal

trespass in the third degree pursuant to A.R.S. § 13-1502

GIVEN UNDER MY HAND and the Seal of this Court

DATED:                   /s/ John Napper  
eSigned by Napper,John  
02/14/2022 09:19:33 fJpvk0TL  
The Honorable John Napper  
Presiding Judge of the  
Yavapai Superior Court

cc:     Kiersten A. Murphy/Ellen B. Davis-Henze Cook  
Murphy, PLLC (e)  
Tony S. Cullum-Law Office of Tony S. Cullum,  
PLLC (e)  
David Abney-Ahwatukee Legal Office, P.C., P.O.  
Box 50351, Phoenix, AZ 85076  
Anthony P. Cali/Clarissa C. Brady-Stinson LLP,  
1850 N. Central Ave., Ste. 2100 Phoenix, AZ  
85004-4584

---

## APPENDIX 7

---

Kiersten A. Murphy (Bar No. 022612)  
Ellen B. Davis (Bar No. 013806)  
**HENZE COOK MURPHY, PLLC**  
722 East Osborn Road, Ste. 120  
Phoenix, Arizona 85014  
Tel: (602) 956-1730  
Fax: (602) 956-1220  
E-mail: [kiersten@henzecookmurphy.com](mailto:kiersten@henzecookmurphy.com)

Tony S. Cullum (Bar No. 4160)  
**LAW OFFICE OF TONY S. CULLUM, PLLC**  
14 East Dale Avenue  
Flagstaff, Arizona 86001  
Tel: (928) 774-2565  
E-mail: [tony@tonycullumlaw.com](mailto:tony@tonycullumlaw.com)  
*Attorneys for Plaintiff*

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

**Case No. V1300-CV2019-80119**

**[Filed: February 23, 2022]**

---

SEDONA-OAK CREEK AIRPORT )  
AUTHORITY, INC., an Arizona )  
non-profit corporation, )  
Plaintiff, )

vs. )  
 )  
DAKOTA TERRITORY TOURS, ACC, )  
RED LIMITED LIABILITY COMPANIES I-X, )  
BLACK CORPORATIONS I-X, and WHITE )  
PARTNERSHIPS I-X, )  
 )  
Defendants. )  
 )

---

**NOTICE OF SERVICE**

(Assigned to Hon. John Napper)

SEDONA-OAK CREEK AIRPORT AUTHORITY, INC. (“SOCAA”) hereby gives notice that the Writ of Restitution issued by this Court in this case was served by the Yavapai County Sheriff today, Wednesday November 23<sup>rd</sup> at 11:55 a.m. on DAKOTA TERRITORY TOURS, INC (“Dakota”) at 1225 Airport Drive, Sedona Arizona.

RESPECTFULLY SUBMITTED this 23rd day of February 2022.

**HENZE COOK MURPHY, PLLC**

By: /s/ Ellen B. Davis  
Kiersten A. Murphy  
Ellen Davis  
722 East Osborn, Ste. 120  
Phoenix, Arizona 85018

**LAW OFFICE OF TONY S. CULLUM,  
PLLC**

By: /s/ Tony S. Cullum  
Tony S. Cullum  
14 East Dale Avenue  
Flagstaff, Arizona 86001

FILED this 23nd day of February 2022  
Via Arizona TurboCourt

E-MAILED this 23nd day of February 2022 to

Yavapai Superior Court  
Division 5  
Judge John Napper

David L. Abney, Esq.  
AHWATUKEE LEGAL OFFICE, P.C.  
Post Office Box 50351  
Phoenix, Arizona 85076  
(480) 734-8652  
[abneymaturin@aol.com](mailto:abneymaturin@aol.com)

Anthony P. Cali, Esq.  
Clarissa C. Brady, Esq.  
STINSON LLP  
1850 N. Central Avenue, Suite 2100  
Phoenix, Arizona 85004-4584  
Tel: (602) 279-1600  
Fax: (602) 240-6925  
[anthony.cali@stinson.com](mailto:anthony.cali@stinson.com)  
[clarissa.brady@stinson.com](mailto:clarissa.brady@stinson.com)  
Counsel for Dakota in U.S. Bankruptcy Court

Law Offices of  
**MICHAEL W. CARMEL, LTD.**  
80 East Columbus Avenue  
Phoenix, Arizona 85012-2334  
Telephone: (602) 264-4965  
Facsimile: (602) 277-0144  
E-mail: [Michael@mcarmellaw.com](mailto:Michael@mcarmellaw.com)  
*Subchapter V Trustee*  
U.S. Bankruptcy Court

Tony S. Cullum, Esq.,  
**LAW OFFICE OF TONY S. CULLUM, PLLC, 1**  
4 E. Dale Ave.  
Flagstaff, Arizona 86001,  
[tony@tonycullumlaw.com](mailto:tony@tonycullumlaw.com)  
*Attorneys for Plaintiff SOCAA*

By */s/ Jackie Beavers*