

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-026289

01/17/2011

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT  
A. Melchert  
Deputy

DONALD R GATTS, et al.

MATTHEW ALLEN KLOPP

v.

DREAMLAND VILLA COMMUNITY CLUB  
INC

ANDREW F MARSHALL

**RULING**

The Court has received and considered Defendant's *Motion To Dismiss First Amended Complaint*, Plaintiffs' responsive pleading and the reply, sur-reply submitted by Defendant.

In the interest of expediting its business the Court does, pursuant to Ariz. R. Civ. P., Rule 7.1[c][2], waive oral arguments. The parties have provided the Court with adequate briefing on the issues presented for its consideration.

Plaintiffs are homeowners, all of whom have filed this action seeking remedies of quiet title, fraudulent recording, unjust enrichment and declaratory/injunctive relief. The history of the underlying litigation involving some of these parties is well documented in a recent appellate decision.<sup>1</sup> This Court will not duplicate that history here. Briefly stated, the appellate court held that the homeowner's association enactment of the Second Amended Declaration was invalid. That is, that the Second Amended Declaration was itself, invalid and unenforceable. The matter was mandated back to the trial court for execution of a judgment consistent with the opinion. The mandated judgment has been formally entered in that action.

In the context of this action, these Plaintiffs are all property owners in the same homeowner's subdivision who allege that their respective property titles are clouded and wrongfully encumbered by the same Second Amended Declaration, which was the subject of the

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<sup>1</sup> Dreamland Villa Community Club, Inc. v. Raimey, et al., 224 Ariz. 42, 226 P.3d 411 [App. 2010].  
Docket Code 019

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above referenced appellate decision. The same CC&R's which were addressed by the appellate court are at issue in this case.

A number of these Plaintiffs actually live in the subdivision sections which were the subject of the appellate decision. Some live in subdivision sections not expressly considered by the opinion but over which the Second Amended Declaration is applicable. The language of the Second Amended Declaration in those subdivisions is virtually identical to the language considered by the appellate court.

For the reasons stated in Plaintiffs' pleadings, this Court does find that these Plaintiffs have asserted cognizable claims for quiet title, fraudulent recording, declaratory and injunctive relief and unjust enrichment. There are existing facts which establish a colorable controversy.

The Court does find that Plaintiffs' claims are permitted by A.R.S. §33-420 and further that the allegations in Plaintiffs' Amended Complaint are not barred by the statute of limitation. As for Plaintiffs Jones and Wirtz, the Court further finds that these parties are not precluded from maintaining this action. The prior litigation filed by these parties were dissimilar to the narrow issues raised in this action.

As for Plaintiff Rogers, Defendant asserts an alleged error regarding his ownership of the property. Briefly stated, Defendant alleges that the only Rogers identified on the title is "unmarried" and the current party Rogers is "a married man". The Court will grant leave of this Plaintiff to amend his pleading to address this issue. Further, the Court will, at this time, deny Defendants' Motion to Dismiss as it pertains to this party but grant Defendant leave to re-file this motion should this party fail to make the necessary amendments.

**IT IS ORDERED** denying Defendant's *Motion to Dismiss First Amended Complaint*.

**IT IS FURTHER ORDERED**, allowing Plaintiff Rogers to amend his pleading, and granting leave to Defendants to re-file its motion to dismiss as to this party.

**IT IS FURTHER ORDERED**, that Defendant shall file a formal answer within 20 days of this minute entry or by **February 7, 2011**.

Dated: 1/21/2011

/ s / HONORABLE J. RICHARD GAMA

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JUDICIAL OFFICER OF THE SUPERIOR COURT