Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-011927 01/23/2012

HONORABLE KATHERINE COOPER

CLERK OF THE COURT
J. Polanco
Deputy

DAVID B VANYO, et al. JEFFREY D GROSS

v.

CAREFREE FOOTHILLS HOMEOWNERS ASSOCIATION, et al. KURT M ZITZER

UNDER ADVISEMENT RULING

The Court has considered Plaintiff David Vanyo's Motion for Partial Summary Judgment, Defendant Carefree Foothills Homeowners' Association's (HOA) Response, Plaintiff's Reply, together with the parties' Statements of Fact, exhibits, oral argument, and the June 16, 2011 opinion of the Court of Appeals.

The Court finds:

Genuine issues of material fact exist on the claim of private condemnation of the HOA's CC&R prohibiting all but single-family residential use. Plaintiff's knowledge of access to Mamie Maude when he bought the property is a fact issue the jury may consider.

The Court of Appeals has already determined the absence of an implied way of necessity for Mamie Maude as a matter of law based on the lack of evidence in the record establishing that Mamie Maude was landlocked in 1912 when severance occurred. (Opinion at para. 31.) Therefore, implied way of necessity is not an issue for trial, either as a claim or defense.

As a matter of law, resulting access by way of private condemnation of the CC&R includes the right to use the property for utility access.

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IT IS HEREBY ORDERED granting in part Plaintiff's Motion for Partial Summary Judgment regarding access for underground utilities.

IT IS HEREBY ORDERED denying Plaintiff's Motion on the claim of private condemnation.

IT IS FURTHER ORDERED that 1) implied way of necessity has already been determined and will not be re-tried; and 2) the jury may consider admissible evidence of Plaintiff's knowledge at time of purchase.

IT IS FURTHER ORDERED signing this minute entry as the formal Order of this Court.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.