

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-010588

01/04/2016

HONORABLE DOUGLAS GERLACH

CLERK OF THE COURT
S. LaFontaine/A. Quintana
Deputy

SUN GROVES HOMEOWNERS
ASSOCIATION, THE

LINDSEY O STEARNS

v.

MICHAEL ROBERTS

ERIN SELENE IUNGERICH

RULING

A motion for partial summary judgment was filed on behalf of defendant Michael Roberts. The motion seeks the denial of injunctive relief, which plaintiff The Sun Groves Homeowners Association has requested. The court has considered the motion, the Sun Groves' response, Roberts' reply, and the statements of fact accompanying the motion and response.

The motion maintains that the request for injunctive relief is moot because the conduct that would be enjoined (street parking) is no longer occurring. The motion does not dispute the occurrence of that conduct once upon a time.

"It is settled that an action for an injunction does not become moot merely because the conduct complained of has terminated, if there is a possibility of recurrence." *Allee v. Medrano*, 416 U.S. 802, 810 (1974); *State ex rel. Babbitt v. Goodyear Tire & Rubber Co.*, 128 Ariz. 483, 486, 626 P.2d 1115, 1118 (App. 1981) (same). Otherwise, "the defendant is free to return to his old ways." *United States v. W.T. Grant*, 345 U.S. 629, 632 (1953).

The court assumes for purposes of the motion that Roberts has a long history of engaging in conduct that was sufficient to warrant the requested injunctive relief. *E.g., Esplendido*

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Apartments v. Olsson, 144 Ariz. 355, 361, 697 P.2d 1105, 1111 (App. 1985) (stating that, on summary judgment, the court must “view the facts in the light most favorable to [the party opposing summary judgment],” and must “assume the truth of [that party’s] allegations”). Whether such conduct can be reasonably expected to recur is, on the record here, a genuinely disputed issue of material fact.

IT IS ORDERED denying the motion for partial summary judgment that was filed on behalf of defendant Michael Roberts.