

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-091102

01/12/2016

HON. DAVID K. UDALL

CLERK OF THE COURT

K. Tiero

Deputy

RICHARD J MURTLAND, et al.

ERIN SELENE IUNGERICH

v.

ASTRAGAL CONDOMINIUM UNIT OWNERS J GARY LINDER
ASSOCIATION

J ROGER WOOD

UNDER ADVISEMENT RULING

The Court took this matter under advisement after Oral Argument was held on January 8, 2016 on Plaintiffs' Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment. The Court has considered the arguments of the parties and the pleadings. The Court makes the following findings and enters the following orders.

THE COURT FINDS that neither party disputes the significant facts in this case. The Court further finds that both Plaintiffs are owners of condominiums in the Scottsdale Astragal Condominium Unit Owners Association. The Court further finds the Declaration under which the Association operates includes a provision that says 67% of the Association Owners can vote to change the governing Declaration. The Court further finds that Astragal Condominium Unit Owners Association did in fact change its Declaration to impose a six-month minimum rental on all of its residences when they lease or rent out their units to third parties. It is the Plaintiffs' position that they have been damaged because they cannot generate income through short-term rentals.

The Court will now consider ARS 33-1227(D) which states as follows: "Except to the extent expressly permitted or required by other provisions of this chapter, an amendment shall

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not create or increase special declarant rights, increase the numbers of units, or change the boundaries of any unit, the allocated interest of the unit or the use to which any unit is restricted, in the absence of unanimous consent of the unit owners.”

The Court notes that ARS 33-1260.01(A) states: “A unit owner may use the unit owner’s unit as a rental property unless prohibited in the Declaration and shall use it in accordance with the Declaration’s rental time period restrictions.”

THE COURT FINDS the rental restriction stated above is not subject to the unanimous consent requirement of ARS 33-1227(D). The Court further finds it is subject to the 67% rule in ARS 33-1227(A) as adopted by the Astragal Condominium Unit Owners Association Declaration.

It is also Plaintiffs’ contention that *Dreamland Villa Community Club Inc. vs. Raimey* 224 AZ 42, 226 P.3rd 411, (App. 2010) applies in this case.

THE COURT FINDS a distinction between the Dreamland case and this case at bar. In the Dreamland case, the Community required, by using a majority vote, non-members of the homeowners’ association to become members of the association and to be subject to their CCR’s, fees and assessments. The Court further finds in this case the Plaintiffs were previous members of the Astragal Condominium Unit Owners Association and knew full well their Declaration potentially could be amended by a 67% majority vote at some point in the future. As a result, the Court further finds the Dreamland holding does not apply in this case.

THE COURT FURTHER FINDS the six-month leasing restriction on the short term leases is not unreasonable, and it has potential benefits for the community at large. The Court further finds the Plaintiffs’ due process rights have not been violated and that they had ample notice of a potential change in the short-term lease restrictions at the time they purchased their properties.

IT IS THEREFORE ORDERED denying Plaintiffs’ Motion for Summary Judgment.

IT IS FURTHER ORDERED granting Judgment in favor of the Defendant, Astragal Condominium Unit Owners Association, on their Cross-Motion for Summary Judgment.

IT IS FURTHER ORDERED dismissing this case with prejudice.

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Dated this 12th day of January, 2016

/ s / HONORABLE DAVID K. UDALL

HONORABLE DAVID K. UDALL
JUDICIAL OFFICER OF THE SUPERIOR COURT