

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-001666

01/18/2019

HON. ROSA MROZ

CLERK OF THE COURT
D. Charbagi
Deputy

ESTATES AT SIERRA VISTA COMMUNITY
ASSOCIATION

CHANDLER W TRAVIS

v.

STEVE H VIGIL JR., et al.

STEVE H VIGIL JR.
3116 W DESERT LN
LAVEEN AZ 85339

MICHELE N VIGIL
3116 W DESERT LN
LAVEEN AZ 85339
JUDGE MROZ

MINUTE ENTRY

This lawsuit is between the Estates at Sierra Vista Community Association (“Association”) and Steve and Michele Vigil (“the Vigils”). The Vigils own a home located at 3116 West Desert Lane, Laveen, Arizona, otherwise known as Lot 29 of the Estates at Sierra Vista. In January 2017, the Vigils submitted a Design Review Application to the Association to install front yard landscaping with three-foot fences, RV gates and a grass crete driveway. After some back and forth, on July 20, 2017, the Architectural Review Committee (“Association”) approved parts of the Vigils’ revised design review application. Among the parts approved is as follows:

Item 1 - New CMU Curb - **CURBING/EDGING is NOT to exceed a maximum of 8 inches in height from the existing wall down the property line to the sidewalk on both East and West property lines. The 24-inch wall is**

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disapproved. 07/20/17 - The rebar is allowed for the installation of the curbing NOT to exceed a maximum of 8 inches in height as stated above.

(Emphasis in original).

The Association alleges that the Vigils violated Article 7, Section 7.8 and Article 3, Sections 3.1.1, 3.1.2 and 3.1.3 of the Declaration, in connection with the installation of CMU wall/curb in the front yard of the Lot 29.

I. Did the Vigils install a CMU wall/curb that exceeded 8 inches in height, or will exceed 8 inches in height?

The Association's position is that the Vigils have installed curbing that exceeds 8 inches in height, which is in direct violation of the approval granted. The Vigils' position is that the curbing is or will be in compliance with the approval set forth in the Association's July 20, 2017 letter after the landscaping is completed. The landscaping on the Property has not been completed because of the cease and desist letter issued by Plaintiff's attorney.

The evidence supports that the installed CMU curb is greater than eight inches in height. The curb is anywhere from 8 inches in height to 17.5 inches in height, depending on which portion of the stepped curb was being measured, and from what vantage point. Steve Vigil acknowledged that some portions of the stepped CMU curb are currently greater than 8 inches in height because of the exposed footing. However, he also testified that by the time the landscaping is completed on Lot 29, from the vantage point of Lot 29 only, the CMU curb will be eight inches in height all around. He also testified that the curb is and will be greater than eight inches in height viewed from the vantage point of Lot 28 and Lot 30. From the photos, the Court also saw that from the vantage point of the sidewalk in front of Lot 29, the curb is greater than 8 inches in height.

The Court rejects the Vigils' argument that they only have to be concerned about the height of the curb from the vantage point of Lot 29. The Association approved a curb that is not to exceed a maximum of 8 inches in height. It is plain to the Court that the approval is for a curb that shall not exceed a maximum of 8 inches in height from any vantage point, not just Lot 29.

THE COURT FINDS that the Vigils installed a CMU curb that exceeded 8 inches in height, and the curb will exceed 8 inches in height even after the landscaping is completed. The Court finds for the Association on this issue.

II. Did the Vigils change the grade/elevation of the front yard of Lot 29 without prior written approval of the Association?

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The Association asserts that the Vigils have changed the grade of Lot 29. The Vigils admitted that before they submitted their first design review application in January 2017, they excavated and graded Lot 29. The Vigils further admitted that they did not seek prior written approval from the Architectural Review Committee as required by Article 3, Section 3.1.1 of the Declaration, which states: "No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Review Committee."

The Vigils testified that the Association retroactively approved the excavation/grading to Lot 29 done prior to January 2017. The Vigils testified that there has not been any further excavation or grading done since that time. The Association does not dispute the Vigils' testimony.

THE COURT FINDS that the Vigils did change the grade/elevation of the front yard of their Property without prior written approval of the Association. However, the Association retroactively approved the change in the grade/elevation, and there has been no further changes in the grade/elevation since then.

Steve Vigil testified during the trial that he will have to do further excavation and grading work to finish the landscaping. Steve Vigil does not believe that he has to seek approval from the Architectural Review Committee because it is common sense that you have dig and re-grade to plant trees, lay sod, and/or to pour concrete.

The Association requests that the Court order the Vigils to comply with Article 3, Section 3.1.1 of the Declaration. The Declaration says what it says. If the Vigils want to do further excavation or otherwise change the grade/elevation of Lot 29 to finish their landscaping, the Vigils will need to seek prior written approval from the Architectural Review Committee.

Based on the above,

IT IS ORDERED that the Vigils shall remove any curb which exceeds the approved 8-inch maximum height requirement in the front yard of Lot 29 from any vantage point, not just from the vantage point of Lot 29.

IT IS FURTHER ORDERED that the Vigils shall not change the grade/elevation of the front yard of Lot 29 without the prior written approval of the Architectural Review Committee. If the Vigils are going to seek approval to excavate or change the grade/elevation of the front yard of Lot 29, they shall do so within thirty (30) days from the date of the signing of the Judgment.

IT IS FURTHER ORDERED that the Vigils shall complete the installation of the front yard landscaping and hardscaping of Lot 29, pursuant to the Association's approval letter dated

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July 20, 2017, within sixty (60) days from the date of the signing of the Judgment, or sixty (60) days from the date the Architectural Review Committee issues a written approval to the Vigils' request to excavate or change the grade/elevation of the front yard of Lot 29, whichever is later.

The Association also requests that the Court award the Association attorney fees and costs pursuant to A.R.S. §12-341, §12-341.01, the Declaration and case law.

Article 9, section 9.1 of the Declaration states, in relevant part: "If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Project Documents or in any other manner arising out of or relating to the Project Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action."

The Court finds that the Association is the prevailing party in this lawsuit.

The Court also finds that this an action arising out of a contract, which entitles the Association to apply for an award of attorney's fees and costs. A.R.S. §12-341 and A.R.S. § 12-341.01.

IT IS ORDERED that the Association may, within 20 calendar days of the filing of this order, submit an application for an award of attorney's fees and statement of costs pursuant to A.R.S. § 12-341. If an application is submitted that the Vigils want to oppose, a response must be filed not later than 20 calendar days after service of the application. The Association is not permitted to file a reply unless requested to do so by the Court.

Before submitting an application for attorneys' fees or a statement of costs, the Association must undertake good faith efforts to negotiate a stipulation with the Vigils regarding the amounts to be awarded. If agreement is reached, the Stipulation will NOT preclude the Vigils from raising any issue or asserting any argument on appeal other than the reasonableness of the amounts awarded.

IT IS FURTHER ORDERED that not later than 20 days after the filing of this order, the Association must also submit a proposed form of Judgment, leaving blank spaces for attorney's fees and taxable costs. That form of judgment may incorporate by reference what is said here but otherwise should be confined to the amounts being awarded along with Rule 54(c) language.