

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2019-000176

01/21/2020

HONORABLE CONNIE CONTES

CLERK OF THE COURT  
S. Perez  
Deputy

SCOTTSDALE VALLEY REAL ESTATE L L C    JONATHAN A DESSAULES

v.

MONTANA DEL SOL CONDOMINIUM  
ASSOCIATION

JONATHAN D EBERTSHAUSER

JUDGE CONTES

**RULING**

At the conclusion of oral argument on November 22, 2019, the court took under advisement the ruling on the parties' competing motions for summary judgment. Following oral argument, the parties briefed at the court's request a supplement to oral argument. Recently, each party submitted a notice of supplemental authority providing this court with non-binding authority in the form of rulings from her judicial colleagues in similar cases. The court has considered the briefing on the parties' competing motions for summary judgment, the briefing on plaintiff's supplement to oral argument, applicable law, and the non-binding rulings of judicial colleagues.

The parties agree that the issues presented are purely legal determinations for the court's ruling that do not implicate genuine disputes of material fact.

Based upon the applicable law, the governing Condominium Declaration, and the reasons set forth in plaintiff's filings, the court finds as follows:

1. Plaintiff Scottsdale Valley Real Estate LLC purchased in 2017 two condominium units (Units 102 and 133) in the Montana Del Sol Condominium community managed by defendant Montana Del Sol Condominium Association. Warranty Deeds, attached as Exhibits A and B to plaintiff's Statement of Facts.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2019-000176

01/21/2020

2. The governing Declaration in force and effect when plaintiff purchased the two condominium units authorized use of condominium units as rentals without restrictions as to lease terms or length. Condominium Declaration, attached as Exhibit C to plaintiff's Statement of Facts.
3. Arizona statutory law states: "Except to the extent expressly permitted or required by other provisions of this chapter, an amendment shall not . . . change the boundaries of any unit, the allocated interests of a unit or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners. A.R.S. § 33-1227(D).
4. Likewise, the governing Declaration provides in pertinent part: "Except to the extent expressly permitted or required by the Condominium Act, an amendment to the Declaration shall not . . . change the boundaries of any Unit, the allocated Interest of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners." Condominium Declaration at § 12.5.2, attached as Exhibit C to plaintiff's Statement of Facts.
5. In mid-2018, the Board of Directors of the Association issued to owners a proposed amendment to the Condominium Declaration to restrict and prohibit the rights of property owners from leasing their units for terms of less than thirty days or using their units for vacation rental or timeshare purposes. By the end of 2018, the amendment was passed with 70 votes in favor of the amendment and 25 votes against the amendment, but not unanimously. Restriction on Rentals, entitled Third Amendment to Condominium Declaration for Montana Del Sol Condominium, attached as Exhibits D, E and G to plaintiff's Statement of Facts ("Restrictions on Rentals").
6. The Restrictions on Rentals is invalid, void and unenforceable as a post-purchase property use restriction that could be (and was not) validly adopted only by the unanimous consent of unit owners.

Accordingly,

IT IS ORDERED granting plaintiff Scottsdale Valley Real Estate LLC's Motion for Summary Judgment (filed June 27, 2019).

IT IS ORDERED denying defendant Montana Del Sol Condominium Association's Motion for Summary Judgment (filed September 20, 2019).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2019-000176

01/21/2020

IT IS FURTHER ORDERED deeming moot plaintiff's Motion for Leave to File Amended Complaint (filed September 13, 2019).

The court finds that this civil action arises out of a contract. Therefore, plaintiff may submit an application for its reasonable attorneys' fees and a verified Statement of Costs no later than twenty (20) days after the filing date of this minute entry ruling, in accordance with Rule 54(h), Arizona Rules of Civil Procedure. At the same time, plaintiff also may lodge a form of judgment, leaving blank spaces for reasonable attorneys' fees and costs.