

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2018-007274

03/18/2019

HON. PAMELA GATES

CLERK OF THE COURT  
K. Ballard  
Deputy

SANDRA SAXION

JONATHAN A DESSAULES

v.

SILVERTON I I HOMEOWNERS  
ASSOCIATION INC, et al.

NICHOLAS C NOGAMI

MICHAEL THOMAS POULTON

STAY OF PROCEEDING

The court received Defendant Silverton II Homeowners Association's December 13, 2018 Motion for Judgment on the Pleadings or in the Alternative Motion to Compel Arbitration and Stay Proceedings; Defendants Schroeders' December 13, 2018 Joinder in Motion for Judgment on the Pleadings (which in content constituted a joinder in Defendant Silverton II Homeowners Association's Motion for Judgment on the Pleadings and Motion to Compel Arbitration and Stay Proceedings); Plaintiffs' January 2, 2019 Response to Defendants' Motion for Judgment on the Pleadings or in the Alternative Motion to Compel Arbitration and Stay Proceedings; Schroeder Defendants' January 25, 2019 Reply to Plaintiff's Response to Defendants' Motion for Judgment on the Pleadings or in the Alternative Motion to Compel Arbitration and Stay Proceedings; and Silverton II Homeowners Association's February 8, 2019 Reply in Support of Defendant Silverton's Motion for Judgment on the Pleadings or in the Alternative Motion to Compel Arbitration and Stay Proceedings. The court does not find oral argument is necessary to decide this matter.

Arizona Revised Statutes §12-1502(A) provides that "[o]n application of a party showing an agreement described in §12-1501, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2018-007274

03/18/2019

agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party.” Subsection D of Section 12-1502 states that “[a]ny action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section.” Section 12-1501 provides that “[a] written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.”

Defendant Silverton II Homeowners Association, Inc., Plaintiff, and Defendant Schroeders are bound by the terms of the Declaration of Homeowner Benefits and Covenants, Conditions, and Restrictions for Silverton II (CC&Rs). *See* Complaint ¶¶1-6. The CC&Rs contain a “Dispute Resolution Agreement,” which states that all Bound ADP Parties covenant and agree “that all Covered Claims . . . between one or more Bound ADR Party must be resolved using the dispute resolution procedure . . . in lieu of filing a lawsuit or initiating administrative proceedings.” *See* Defendant Silverton II Homeowners Association’s Motion for Judgment on the Pleadings or in the Alternative Motion to Compel Arbitration and Stay Proceedings Exhibit 1. The parties and claims in Plaintiff’s Complaint fall within the definitions of “Bound ADR Parties” and “Covered Claims.” *Id.*

The court does not find that any argument asserted by Plaintiff in her Response prevents enforcement of the parties’ agreement to arbitrate. Therefore,

**IT IS ORDERED** denying Defendants’ request for judgment on the pleadings but granting Defendants’ request to compel arbitration and stay the proceedings.

**IT IS ORDERED** staying the proceedings until **July 16, 2019**. The case is set for dismissal on **July 16, 2019** absent an agreement or request to continue the stay or further court order.

**IT IS FURTHER ORDERED** granting, pursuant A.R.S. §12-349(A)(3), Defendants their reasonable attorneys’ fees and costs associated with the Motion for Judgment on the Pleadings or in the Alternative Motion to Compel Arbitration and Stay the Proceedings. Defendants must submit an application for attorneys’ fees and costs on or before **April 8, 2019**. Thereafter, Plaintiff may file an objection.