

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2019-006893

03/25/2020

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT  
S. Motzer  
Deputy

MARY BEHAR

DOUGLAS IMPERI JR.

v.

MONTANA DEL SOL CONDOMINIUM  
ASSOCIATION

JONATHAN D EBERTSHAUSER

JUDGE KILEY

MINUTE ENTRY

Plaintiff Mary Behar, individually and on behalf of The Behar Revocable Trust, (the “Plaintiff”), filed the complaint in this case challenging the validity of a purported amendment (the “Proposed Third Amendment”) to the governing Condominium Declaration for Montana Del Sol Condominium (the “Declaration”). The Proposed Third Amendment purported to prohibit property owners within the condominium complex from leasing their units for terms of less than thirty days, or from using their units for vacation rental or timeshare purposes. By Minute Entry of January 2, 2020, the Court ruled that the Proposed Third Amendment is void because it was not adopted by the requisite unanimous vote of the property owners in the complex. Minute Entry of January 2, 2020, at p. 6.

Defendant Montana Del Sol Condominium Association (the “Association”) seeks reconsideration of the Court’s ruling, asserting that the Court erred in “completely invalidat[ing]” the Proposed Third Amendment. Motion for Reconsideration at p. 1. In support of its position, the Association asserts that “the vast majority” of the Proposed Third Amendment “sets forth the process and procedures requiring Owners to register their tenants,” and that a unanimous vote of the unit owners was not necessary to adopt these registration requirements. *Id.* at pp. 1-2. Noting that the Declaration contains a “severability” clause, the Association argues that, even though the lack of unanimous support dooms the Proposed Third Amendment’s

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2019-006893

03/25/2020

prohibition on short-term rentals, the registration provisions of the Proposed Third Amendment were validly enacted because this portion of the Proposed Third Amendment did not require unanimous support and so. *Id.* at p. 3.

As the Plaintiff correctly points out, the Proposed Third Amendment contained no severability clause. *See generally* Verified Complaint, Exhibit 3. The Court therefore sees no basis on which it could find that one part of the Proposed Third Amendment became effective even though the rest of the Proposed Third Amendment did not. Although the Declaration itself contains a severability clause, Verified Complaint, Exhibit 1 at ¶ 12.2, that fact is not enough to save the Proposed Third Amendment. The Declaration's severability clause provides, in its entirety, that the "[i]nvalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect." *See id.* By its terms, the Declaration's severability clause thus applies only to covenants or restrictions that are already part of the Declaration. Because the Proposed Third Amendment was not adopted by the requisite unanimous vote, it never became part of the Declaration, and so none of its provisions ever came within the scope of the Declaration's severability clause.

No good cause appearing,

**IT IS ORDERED** denying the Defendant's Motion for Reconsideration.