

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-051550

04/01/2022

HONORABLE SARA J. AGNE

CLERK OF THE COURT
C. Lett
Deputy

COTTONFIELDS COMMUNITY
ASSOCIATION

TROY B STRATMAN

v.

R C P SOUTHERN RIDGE L L P

ASHA SEBASTIAN

JUDGE AGNE

UNDER ADVISEMENT RULING

This matter is under advisement after the submission of written closing arguments following an evidentiary hearing held regarding Plaintiff's Application for Order to Show Cause and Motion for Sanctions, filed August 17, 2021 ("Application"), which was also the subject of prehearing briefs. Based on the evidence presented by Plaintiff and Defendant RCP Southern Ridge, LLP, the Court makes the following findings, conclusions, and orders.

FINDINGS OF FACT

1. This case has a long and detailed history, but for purposes of the Application, the operative facts begin on August 3, 2021, when this Court's Judgment (Pltf's Exh. 1), based on a Final Arbitration Award (Pltf's Exh. 2), was filed. Both the Judgment and the Final Arbitration Award set forth Defendant's breach of a Reciprocal Easement and Maintenance Agreement. (Pltf's Exh. 6.)

2. The Reciprocal Easement and Maintenance Agreement ("REMA") sets forth restrictions and obligations with respect to the proper use, operation and enjoyment of the Golf Course Property owned and operated by Defendant for the purpose of enhancing and protecting

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the value, desirability, and attractiveness of the 450 homes within Plaintiff Cottonfields Community Association and the adjacent Golf Course Property itself. (See Pltf's Exh. 1, at 1–2.)

3. The Judgment is specific and definite in its terms that a permanent and continuing injunction requires Defendant to (i) bring the Golf Course Property into compliance with the REMA no later than December 31, 2020; (ii) cease violating Section 5.1 of the REMA by desisting from operating other businesses on the Golf Course Property; (iii) regularly irrigate the Golf Course Property; (iv) maintain the Golf Course Property in good condition and to the Maintenance Standard required by Section 5.2 of the REMA; and (v) maintain the related lakes in good condition as required by Section 3.1 of the REMA. (Pltf's Exh. 1, at 2.)

4. Testimony and evidence are largely unequivocal that Defendant is in violation of the Judgment and injunction; Plaintiff met its burden to prove the same by clear and convincing evidence, and Defendant's principal admitted the condition of the Golf Course Property is not what he would like, though he said he has tried to do what he could. He credibly testified that proper maintenance of the Golf Course Property used to cost him \$115,000 to \$120,000 per year when he was engaged in it.

5. Defendant's actual defenses include impossibility based on its lack of finances and that the judgment is insufficiently specific and definite enough to be enforced through contempt-of-court proceedings. As explained below, these defenses are unavailing, and Defendant's principal's testimony that he was unaware of the Judgment's specific terms based on the Final Arbitration Award was not credible. He also testified to having two golf courses prior, as investment properties; Defendant, through its principal, Mr. White, understands the applicable terms of the Judgment and how to comply with them.

6. No evidence was elicited regarding the individual partners of Defendant sufficient to allow the Court to hold them personally liable for any sanctions order or on the Judgment. Similarly, no evidence was adduced sufficient to allow the Court to ascertain Defendant's finances or alleged lack thereof.

7. Finally, no evidence was adduced that Defendant misunderstood or could not understand this Court's judgment or the specific provisions of the REMA necessary to comply.

CONCLUSIONS OF LAW

1. As an initial matter, **IT IS ORDERED granting in part** Defendant's motion to strike Plaintiff's Closing Argument, which motion was contained within Defendant's Closing Argument, filed January 19, 2022, at 3, for attaching exhibits disallowed during the Evidentiary

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Hearing, in that the Court will strike and not consider all exhibits to Plaintiff's Closing Argument, filed December 29, 2021.

2. However, **IT IS FURTHER ORDERED denying** Defendant's requests that the Court further sanction Plaintiff. Most of the exhibits stricken are either duplicate copies of items in evidence or authorities cited for persuasive value that were attached as courtesy copies for the Court but that the Court can view on its own via Westlaw or docketed sources, and the Court finds no prejudice occurred to Defendant from Plaintiff's, now-stricken, exhibits.

3. This Court has the inherent power to enforce its own Judgment. *See Daley v. Earven*, 166 Ariz. 461, 463 (App. 1990). Ariz. R. Civ. P. 70(e) also provides the power of the contempt findings regarding the disobedient Party to the Court, here. Civil contempt uses coercion—as opposed to punishment—to secure compliance. *See Korman v. Strick*, 133 Ariz. 471, 474 (1982).

4. The Court cannot impose monetary sanctions on a party that does not have the ability to pay them, but the party asserting impossibility as a defense bears the burden of production. *See United States v. Rylander*, 460 U.S. 752, 757 (1983). Here, Defendant produced no evidence of its financials showing any inability to pay appropriate monetary sanctions designed to coerce compliance. Instead, its principle, Mr. White, testified that Defendant has a nominal income, and he did not know the amount. This does not meet the burden of production on an impossibility defense.

5. And, Defendant's principal having owned golf courses before, there was no apparent confusion about the specific and definite terms of the Judgment or how to comply with them. *See BMO Harris Bank Nat'l Ass'n v. Bluff*, 229 Ariz. 511, 513 (App. 2012).

The Court having made these findings and conclusions,

IT IS FURTHER ORDERED granting in part the relief sought by the Application.

IT IS FURTHER ORDERED that Defendant must comply with the Judgment and bring the Golf Course Property into full compliance with the REMA **prior to June 1, 2022**, and must e-file via Notice of Filing a written, midpoint progress report to Plaintiff and the Court as to its completed and any still-to-be-completed efforts to comply with this Order **no later than May 1, 2022**. Should Defendant miss either of the above deadlines, it must pay a monetary sanction of **\$60,000** to the Clerk of the Superior Court to be held as bond for future maintenance of the Golf Course Property **no later than June 15, 2022**.

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Should Defendant continue to fail to comply with the Judgment and the REMA, another monetary sanction of **\$60,000** is due to be paid to the Clerk of the Superior Court no later than **December 15, 2022**. Plaintiff shall notify the Court timely of non-compliance necessitating the second monetary sanction no later than **November 15, 2022**, to allow the Court to issue further orders as appropriate.

IT IS FURTHER ORDERED granting Plaintiff an easement in its favor to access the Golf Course Property when necessary to perform emergency repairs that, if not otherwise performed, would impact adjacent homeowners within Plaintiff's Community Association.

IT IS FURTHER ORDERED pursuant to the terms of the REMA, that these Orders run with the land, and they shall apply with full force and effect to the owner/operator of the Golf Course Property, whether that be Defendant or another person or entity obtaining title to it. (*See* Pltf's Exh. 6, at 2.)

IT IS FURTHER ORDERED denying any other relief sought by Plaintiff not specifically granted above, particularly as a \$10,000 per occurrence prospective sanction on Defendant for operating businesses in violation of the Judgment and REMA would require additional evidentiary hearing proceedings for due process reasons before it could be assessed and enforced. *See BMO Harris Bank Nat'l Ass'n v. Bluff*, 229 Ariz. at 514 (disapproving anticipatory contempt orders). Additionally,

IT IS FURTHER ORDERED denying Plaintiff's requests that this Court pierce the veil of the Defendant entity to hold its individual partners personally liable on these Order and on the Judgment. As noted above, no evidence was adduced sufficient to allow the Court to do so. (*See also* Deft's Closing Argument, at 2.)

IT IS FURTHER ORDERED denying Plaintiff's request for attorney's fees and costs in connection with this proceeding and enforcement of the Judgment. A claim for attorney's fees must be made in the pleadings, and one was not, here. Ariz. R. Civ. P. 54(g)(1).