

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-012489

04/13/2026

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
J. Zinkowich
Deputy

SAFARI DRIVE CONDOMINIUM
ASSOCIATION

KYLE BANFIELD

v.

WUZUP HOMES L L C, et al.

ISAAC M GABRIEL

JACOB A MASKOVICH
JUDGE WARNER

MINUTE ENTRY

This is a dispute between a condominium association and an owner/member over past-due assessments and disability accommodations. Four motions are under advisement following argument:

1. Plaintiff/Counter-Defendant's November 14, 2025 Motion For Partial Summary Judgment.
2. Defendant/Counterclaimant Wuzup Homes, LLC's November 14, 2025 Motion For Summary Judgment.
3. Plaintiff/Counter-Defendant's February 18, 2026 Daubert Motion To Exclude The Testimony Of Susan Moe.
4. Plaintiff/Counter-Defendant's March 9, 2026 Motion To Strike Objection To Controverting Statement Of Facts.

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1. Background.

Plaintiff Safari Drive Condominium Association is the owner's association for the Safari Drive Condominiums, a residential condominium on North Scottsdale Road in Scottsdale. Defendant Wuzup Homes, LLC owns a unit in the Safari Drive Condominiums, which it rents out as an investment property.

The Association says Wuzup was behind on its monthly assessments and fees as far back as 2020, which Wuzup disputes. That year, the monthly assessment increased to \$755.46, but Wuzup kept paying \$750 per month. The parties dispute whether Wuzup got notice of the increase. But regardless, the Association began charging Wuzup a \$75.55 late fee—10% of the entire payment—each month Wuzup underpaid by \$5.55.

As of March 16, 2022, the Association's ledger showed \$7,901.23 in past due assessments, late charges, and penalties.

By the time the Association filed this lawsuit in August 2023, it claimed Wuzup owed \$25,000 in past due assessments and fees. Wuzup countersued, claiming (among other things) that the Association engaged in housing discrimination by not providing reasonable accommodations in its communications with Wuzup's owner, Timothy Wright.

Nearly three years of litigation have followed. During that time, the balance the Association claims has ballooned due to a standoff between the parties.

At some point, the Association told Wuzup it could no longer accept monthly assessment payments directly or through its electronic portal. Rather, because the matter was in collections, its policy is that payment must be made to counsel. Despite this, Wuzup has continued trying to make monthly payments directly to the Association, which the Association has rejected due to its policy. And while the Association insists monthly assessment payments be made to counsel, Wuzup refuses to do this.

The pending motions raise several issues.

2. Fair Housing.

Mr. Wright, who owns Wuzup, is legally blind. He requested the Association provide him two accommodations: (1) sending critical communications to him in large font, and (2) communicating the contents of written notices to him over the phone. He claims the Association violated the Federal and State Fair Housing Acts by failing to provide him those reasonable accommodations.

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The Federal Fair Housing Act defines discrimination to include “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C.A. § 3604(f)(3)(B). The Arizona Fair Housing Act contains the same definition. A.R.S. § 41-1491.19(E)(2).

Wuzup’s fair housing claim fails as a matter of law. First, there is no evidence the Association discriminated against Wuzup by treating it differently from other owners because of Mr. Wright’s disability. Rather, the evidence shows the Association did not provide Wuzup the accommodations it requested on account of Mr. Wright’s disability. But that failure was not a fair housing violation because the accommodations were not necessary to afford Mr. Wright the equal opportunity to use and enjoy a dwelling. They were related to business communications, not Mr. Wright’s or Wuzup’s use or enjoyment of the dwelling.

Summary judgment is granted on Wuzup’s fair housing counterclaims.

3. Assessments And Lien Foreclosure.

Both sides seek summary judgment on whether Wuzup owes the Association for unpaid assessments and, therefore, whether the Association may foreclose its lien. The conflicting evidence in the record does not permit summary judgment on this issue. Among the fact issues are:

- When and whether certain payments were made.
- Whether Wuzup received adequate notice of monthly assessment increases and other charges.
- Whether certain charges (“late fees,” “Self-Help” fee, and “re-bill” fees) were justified.
- Whether the Association “exercise[d] reasonable efforts to communicate with the member and offer a reasonable payment plan before filing a foreclosure action.” A.R.S. § 33-1807(A).

In two respects, however, partial summary judgment is granted. First, Wuzup owes past due monthly assessments, despite claiming to have tendered them to the Association. The Association may have violated the implied duty of good faith and fair dealing by refusing to accept Wuzup’s monthly payments except through counsel. Accordingly, fees and interests

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charged on those rejected payment may be improper. But as a matter of law, Wuzup cannot avoid its duty to pay monthly assessments by (1) continuing to transmit payments in a manner it knows will be rejected, and (2) refusing to transmit payments in a manner it knows will be accepted.

Second, at least some of the Association's late fees are unlawful penalties. A.R.S. § 33-1242(11) permits the association to "[i]mpose charges for late payment of assessments after the association has provided notice that the assessment is overdue or provided notice that the assessment is considered overdue after a certain date." Accordingly, the Association charges a 10% fee on late payments.

Here, however, the Association in some instances charged a full 10% late fee on payments that were not late, but rather five dollars short. A 10% fee on a late payment is not an unlawful penalty. It satisfies the requirements of liquidated damages under Arizona law, and therefore is appropriate under A.R.S. § 33-1242(11). *See Dobson Bay Club II DD, LLC v. La Sonrisa de Siena, LLC*, 242 Ariz. 108, 115 (2017) (where damages may be difficult to determine, an amount charged for breach of contract that is reasonable in relation to anticipated or actual loss is proper liquidated damages; if not, it is an unlawful penalty).

But when, as here, a member continues to pay the old assessment instead of an increased assessment, the payment is not late, it is short. And a \$75 fee on a \$5 shortfall is not a reasonable approximation of either anticipated damages or actual damages.

4. Implied Duty of Good Faith and Fair Dealing.

Wuzup claims the Association breached the implied covenant of good faith and fair dealing in several respects. To the extent this claim is based on the Association's failure to provide disability accommodations to Mr. Wright, summary judgment is granted. The implied covenant of good faith and fair dealing does not impose a duty on the Association to accommodate disabilities greater than the duty imposed by statute.

To the extent the good faith and fair dealing claim is based on the Association's communications with Wuzup, its assessment of certain fees, or its refusal to allow direct payments once the matter was in litigation, the evidence could (but does not necessarily) support this contract claim.

5. Negligence.

In addition to its fair housing claim, Wuzup claims the Association negligently damaged its property. The evidence does not permit deciding this claim on summary judgment.

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6. **Wrongful Lien Claim.**

Wuzup also pursues a wrongful lien claim under A.R.S. § 33-420. As discussed above, Wuzup at the very least owes the Association for past due assessments. The Association's lien is therefore proper. But due to disputes about many of the Association's charges, the Court cannot determine as a matter of law that the lien does not contain a material misstatement or false claim.

7. **Daubert Motion.**

The Association moves to exclude the testimony of Wuzup's expert, Susan Moe. Ms. Moe is an architect who opines that the accommodations Mr. Wright requested were reasonable and that the Association was obligated to grant them.

The Motion is granted because Ms. Moe has no specialized training or expertise that would help the jury decide whether the accommodations Mr. Wright sought were reasonable. Whether it is reasonable to require the Association to grant Mr. Wright's requested accommodations is a question for the jury. And while the reasonableness of things like structural changes may be within the expertise of an architect, nothing in Ms. Moe's reports suggests she has greater expertise than jurors on the reasonableness of communication accommodations.

8. **Motion to Strike.**

The Association moves to strike Wuzup's February 13, 2026 Evidentiary Objections To Safari Drive Condominium Association's Controverting Statement Of Facts. The Motion is granted because the "Evidentiary Objections" violate Rules 7.1(f)(3), 56(c)(3)(C), and 56(c)(4).

9. **Orders.**

IT IS ORDERED granting in part Plaintiff/Counter-Defendant's November 14, 2025 Motion For Partial Summary Judgment. Summary judgment is granted on Wuzup's fair housing claim, and as to the fact that there are past due assessments (though not the amount), and is denied in all other respects.

IT IS FURTHER ORDERED granting in part Defendant/Counterclaimant Wuzup Homes, LLC's November 14, 2025 Motion For Summary Judgment. Summary judgment is granted as to certain late fees, and denied in all other respects.

IT IS FURTHER ORDERED granting Plaintiff/Counter-Defendant's February 18, 2026 Daubert Motion To Exclude The Testimony Of Susan Moe.

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IT IS FURTHER ORDERED granting Plaintiff/Counter-Defendant's March 9, 2026 Motion To Strike Objection To Controverting Statement Of Facts.