

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2004-005254

05/13/2004

HONORABLE PETER C. REINSTEIN

CLERK OF THE COURT  
M. Sahli  
Deputy

FILED: 05/14/2004

TROY KRAFT

JAMES L TANNER

v.

GRACE A PALAIA, et al.

MICHAEL K KENNEDY

SCOTT CARPENTER

MINUTE ENTRY

The Court has reviewed Defendant Grayhawk's Motion to Dismiss for Failure to State a Claim and Request for Sanctions, Plaintiff's Response, and the Reply. The Court finds that because of the comprehensive briefs filed in conjunction with the Motion, oral argument is not required.

The Plaintiff's claims that Grayhawk has failed to enforce certain CC & R provisions against Defendant Palaia, who, according to Plaintiff, maintains a pool pump motor that is a nuisance because of the noise that it emits.

Grayhawk maintains that it has no contractual or legal obligation to initiate an enforcement action against the nuisance which Plaintiff has alleged.

The Court finds that pursuant to Article III § 3.5 of the CC & R's, Grayhawk is given the power to decide whether a nuisance exists. In the present case, Grayhawk's Architectural Committee made the determination that the pool pump motor did not constitute a nuisance. Further, there has been no allegation that the procedures used by said Committee to arrive at its determination were improper. Plaintiff has filed a cause of action against Ms. Palaia, the owner of the pool pump. Grayhawk is not a proper defendant in this matter.

Accordingly, the Court finds that Plaintiff has failed to state a claim against Grayhawk and therefore,

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**IT IS ORDERED** granting the Motion to Dismiss pursuant to Rule 12(b)6 Ariz. R. Civ. Proc.

Finally,

**IT IS ORDERED** that each party shall bear its own costs and fees.