

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-052755

05/07/2008

HON. PAUL A KATZ

CLERK OF THE COURT
W. Bobrowski
Deputy

CARPEDIEM INVESTMENTS L L C

CHAD ROBERT KAFFER

v.

DESERT MOUNTAIN MASTER
ASSOCIATION, THE, et al.

ANGELA L POTTS

SCOTT M DRUCKER
MARIO F ESCUDERO
10421 E SCOPA TRAIL
SCOTTSDALE AZ 85262
GRACE T ESCUDERO
10421 E SCOPA TRAIL
SCOTTSDALE AZ 85262

UNDER ADVISEMENT RULING

The Court having taken Plaintiff's Motion for Summary Judgment against Defendant Desert Mountain Re: Unenforceability of Lot Assemblage and Defendants' Cross-Motion for Summary Judgment on the Enforceability of the Association's Documents under advisement; having reviewed the memoranda of the parties and legal authorities cited therein; and good cause appearing,

IT IS ORDERED granting Plaintiff's Motion for Summary Judgment against Defendant Desert Mountain Re: Unenforceability of Lot Assemblage, this Court finding that the Association does not have standing or contractual rights to compel Plaintiff to maintain and develop its Property as a single unit. Therefore the permission of the Association or 100% of the adjacent landowners is not required as long as the City of Scottsdale consents to the dissolution

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of the Covenant and Agreement to Hold as One Parcel, and the development of Lots 363 and 364, are consistent with current City zoning, the final plat map, and the subdivision's restrictive covenants. Defendant has the authority to enforce the restrictive covenants on the behalf of the Association; however Defendant is not in privity of contract with the City of Scottsdale and the Plaintiff's predecessor, nor is the Association a third-party beneficiary of said Agreement. All purchasers of lots who are also members of the Association took their lots pursuant to the CC&R's and the final plat map as approved of by the City. As such, each homeowner's prospective construction plans are subject to approval by the Association, which said approval can not be unreasonably withheld. Neither the Association nor individual homeowners had any right to assume that Lots 363 and 364 would necessarily be built upon as a single home on a combined lot. The building envelope for each home would necessarily have to be developed in accord with the individual house plans after appropriate engineering, grading and plan approval by the Association. The decision to now build upon a single combined lot or upon two separate lots as per the City approved and recorded final plat map is left to the sound discretion of the land owner, subject to the Association's reasonable approval of Plaintiff's construction plans.

IT IS FURTHER ORDERED denying Defendants' Cross-Motion for Summary Judgment on the Enforceability of the Association's Documents.