

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2006-013316

05/26/2009

HONORABLE A. CRAIG BLAKEY II

CLERK OF THE COURT  
J. Rutledge  
Deputy

WARNER RANCH ASSOCIATION

JOHNNY J SORENSON

v.

DANIEL E SHOOK, et al.

HOWARD R GAINES

RULING

This matter has been under advisement following the parties' trial to the bench. Plaintiff seeks the Court's declaration that the Defendants are responsible for the repair and maintenance of a wall that borders the Defendants' property and the land behind it on Knox Road in Tempe, Arizona. Defendants respond that Plaintiff is responsible for the masonry fence because it is a boundary wall built by Plaintiff's predecessor in interest, the developer UDC Homes. Having considered the testimony of the witnesses, the evidence admitted, and the oral arguments presented by counsel, the Court makes the following ruling.

The Court finds that the wall sits entirely on property owned by Defendants.

The Court further finds that the City of Tempe owns the property between Knox Road and the subject wall.

The Court further finds that the wall bulges toward Knox Road in an area approximately eighty feet in width. This bulging is caused by a surcharge due to a build-up of soil on the Defendants' side of the wall and/or hydrostatic pressure from that side.

The Court further finds that the wall is unsightly, structurally compromised, and poses a safety risk to pedestrians on the Knox side of the wall.

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The Court finds that this boundary wall does not border a common area subject to the control and maintenance by the Plaintiff.

The Court further finds that damage to the wall, or any additions to it, all occurred after the Developer transferred the property outside the wall to the City of Tempe.

In light of the foregoing,

The Court finds that the Defendants are responsible for the repair and maintenance of said wall. Accordingly,

IT IS ORDERED granting judgment in favor of Plaintiff and against the Defendants. Plaintiff shall lodge a proposed form of judgment, an application for an award of attorney's fees and costs, as well as the appropriate affidavit in support of same.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>