

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-016976

05/10/2013

HONORABLE GEORGE H. FOSTER, JR.

CLERK OF THE COURT
J. Polanco
Deputy

MICHAEL MERLIE, et al.

STEVEN W CHEIFETZ

v.

VAL VISTA LAKES COMMUNITY
ASSOCIATION, THE, et al.

SCOTT CARPENTER

ROBERT A FOLLMER
1349 E SEA GULL DR
GILBERT AZ 85234-2611
LOIS M FOLLMER
1349 E SEA GULL DR
GILBERT AZ 85234-2611

UNDER ADVISEMENT RULING

The Court took under advisement the matter of the Plaintiffs' Motion for Summary Judgment for Injunctive relief against Defendants Follmer. The Court has considered the motion, the response, the reply and the arguments of the parties.

Based on the matters presented, the Court finds that the Plaintiffs are entitled to injunctive relief against the Defendants Follmer. The Court finds there is no issue of material fact and the Plaintiffs are entitled to judgment as a matter of law.

The properties owed by the Plaintiffs and the Defendants are within a subdivision subject to certain covenants conditions and restrictions ("CCRs") or deed restrictions. The deed restrictions contain provisions that prohibit the accumulation of debris, trash, garbage so as to render any property unsanitary or unsightly or offensive. It also provides that no garbage or trash shall be placed or kept on any lot or parcel except in covered containers of a type, size and style which are approved by the Architectural Committee. Further, it provides that all rubbish, trash, or garbage shall be removed from the lots and shall not be allowed to accumulate thereon.

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The evidence is uncontroverted that the Defendants have violated the foregoing provisions of the CCRs. The Court further finds that the conditions on the property of the Defendants Follmer are unsightly and offensive to a reasonable person. The evidence in this case is overwhelming and the Defendants offer no controverting evidence.

IT IS ORDERED, granting Plaintiffs' Motion for Partial Summary Judgment.

The Court has also considered the Cross Motion for Summary Judgment filed by the Defendants Follmer. The Court finds the motion is not supported by the facts and the law and is accordingly, **DENIED**.

The Court has considered the matter of the Plaintiffs' Motion for Partial Summary Judgment on Count One of their First Amended Complaint against the Val Vista Lakes Community Association (the "Association"). The essence of the motion seeks to have the Court find that the Association failed to enforce the terms of the CCRs against the Follmers. Based on the matters presented, the Court finds the Plaintiffs are not entitled to summary judgment as a matter of law as there are issues of material fact. The record indicates that the Association took several actions in an effort to enforce the deed restrictions. Whether the actions of the Association were reasonable is a question for the trier of fact, not the judge.

IT IS ORDERED, denying the Motion for Partial Summary Judgment against the Association.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.