

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-010791

05/12/2021

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
C. Ladden
Deputy

MARDY C TOEPKE, et al.

MITCHELL W FLEISCHMANN

v.

PIONEER CONDOMINIUM ASSOCIATION OF SUN CITY WEST LAUREN A VIE

THOMAS P BURKE II
JUDGE WARNER

MINUTE ENTRY

Before the Court and fully briefed is Plaintiff's Motion for Enforcement of Judgment. This lawsuit arose after Defendant condominium association recorded an amended and restated Declaration. Plaintiff challenged two provisions of the new Declaration: Section 2 and Section 15. The Court granted summary judgment for Plaintiff, finding that those two sections were not approved by the requisite number of property owners. The judgment subsequently entered directed Defendant to "record with the Maricopa County Recorder's Office a version of the Amended Declaration that removes Sections 2 and 15 in their entirety."

The March 19, 2021 version of the Declaration that Defendant recorded does that—Section 2 and Section 15 are no longer in the Declaration. Defendant therefore complied with the Judgment.

The basis for Plaintiff's Motion is that, while removing Section 15, Defendant added back language from the original declaration, which states: "No occupant of the premises shall be less than eighteen (18) years of age, and at least one occupant of the premises must be fifty (50)

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years of age or older.” Plaintiff objects to this language as not authorized by the Court’s judgment.

The Judgment entered in this matter neither prohibited nor authorized adding back language from the original declaration. That issue was not before the Court, so the judgment did not address it.

Whether Defendant had the authority to add back language from the original declaration is an issue the Court cannot decide on this record. It is not an issue in the case and, even if it were, has not been sufficiently briefed to permit a meaningful decision. If the parties, in the interest of judicial economy, wish to adjudicate this new issue, they should file a stipulation to reopen the case. But on the present record, the only issue is whether Defendant has complied with the judgment, and it has.

IT IS ORDERED denying the Motion.