

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-051857

06/12/2017

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT  
W. Tenoever  
Deputy

RENE BISHOP

JEFFREY MILLER

v.

SUNLAND VILLAGE COMMUNITY  
ASSOCIATION, et al.

AUGUSTUS H SHAW IV

**UNDER ADVISEMENT RULING**

The Court has had under advisement the parties' cross-motions for summary judgment. The Court has considered all of the written filings, the in-court arguments of counsel and the record in this case.

**RELEVANT UNDISPUTED FACTS**

Defendant Sunland Village Homeowners' Association ("the HOA") formerly allocated its annual assessment among its members by a formula that was based in part on the number of residents in a given unit. The plaintiff, Ms. Bishop, was one of the HOA members who benefitted from this formula. Her share of the common expenses was less than what some of her neighbors paid.

In late 2014, the HOA, through its Board, decided to change the allocation of the annual assessment so that each residential unit paid the same amount regardless of the number of occupants. The Board adopted a resolution placing on the annual HOA ballot an amendment to the community's CC&Rs to that effect. The HOA advised its members of the effect of the amendment through, among other things, a "ballot document" that included an estimate of each

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-051857

06/12/2017

member's annual assessment payment if the resolution was adopted. The key passage of the ballot document said:

If this proposed amendment was already in our CC&Rs and using our current 2015 Budget passed by the Board, a calculation of an assessment for a single residential unit would be \$414. Aforesaid equates to the single occupant paying \$86.00 dollars more annually, or \$7.00 per month more and a two occupant residential unit paying \$59.00 less annually.

A copy of the ballot document was sent to all members who requested an early ballot and placed in each voting booth on the day of the election.

The resolution was approved by majority vote of the HOA members in January 2015. A year later, in January 2016, the HOA asked the members to pay the reallocated assessment for the first time. Based on the HOA's 2016 budget, Ms. Bishop's payment increased by about thirty percent, from \$328 to \$425.

THE PLAINTIFF'S CLAIMS

Ms. Bishop alleges in this lawsuit that the HOA breached the agreement embodied in the CC&Rs and the related duty of good faith and fair dealing, and violated Arizona law, by increasing her annual payment by more than ten percent without following the proper procedures. She relies on Article XI, Section 3 of the Sunland Village CC&Rs, the relevant portion of which says:

By December 31st of each year the Board shall establish the regular annual assessment per residential unit for the next calendar year that shall be payable prior to the following January 31st, unless the Board designates otherwise. If the Board establishes a regular annual assessment per residential unit with respect to any year that exceeds the regular annual assessment and dues per residential unit of the preceding year by more than ten percent (10%), then and in that event such regular annual assessment per residential unit so fixed by the Board shall be referred by the Board to a vote of the voting members of the Association to be taken during January of the year to which the assessment applies.

The analogous statute, A.R.S. section 33-1803(A), says in pertinent part:

Unless limitations in the community documents would result in a lower limit for the assessment, the association shall not impose a regular assessment that is more than twenty percent greater than the immediately preceding fiscal year's

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-051857

06/12/2017

assessment without the approval of the majority of the members of the association.

According to Ms. Bishop, these rules required the Board to determine the specific amount of her payment before referring the issue for a vote, to put the specific amount on the ballot, and to put the increase into effect immediately upon approval. Because the Board did not do these things, she says, the 2016 and 2017 assessments are invalid to the extent that she and others in her position paid more than in 2015.

Ms. Bishop's arguments are not persuasive. Assuming for the sake of discussion that section 33-1803(A) and Article XI, section III of the CC&Rs apply here,<sup>1</sup> the 2015 resolution was sufficient to satisfy the requirements of those provisions.

THE STATUTORY CLAIM

A statute's language is the best and most reliable index of a statute's meaning. When the language is clear, the court must apply it without resorting to other methods of statutory interpretation. North Valley Emergency Specialists, L.L.C. v. Santana, 208 Ariz. 301, 93 P.3d 501, ¶ 9 (2004).

The plain language of section 33-1803(A) requires a homeowners' association to secure the "the approval of the majority of the members of the association." The HOA here did that when its members adopted the 2015 resolution equalizing the allocation of the annual assessment. Nothing more was required.

The plaintiff complains about the timing of the members' approval in relation to the effective date of the reallocated assessment, and about the ballot language, and about the fact that the Board did not expressly approve the "ballot document." Section 33-1803(A) says nothing about any of those details. The plaintiff would read those requirements into the statute. The statute's terms provide no basis for that.

The plaintiff implied in her written presentation, and her attorney argued directly at oral argument, that the manner in which the HOA presented and enacted the 2015 resolution did not comply with Arizona election law. But the plaintiff has cited nothing in election law that

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<sup>1</sup> The HOA argues that section 33-1803(A) does not apply because the Board did not "impose a regular assessment . . . more than twenty percent greater than . . ." the previous year's assessment but rather merely reallocated the existing assessment, and similarly that Article XI, section III of the CC&Rs does not apply because the aggregate "annual assessment" did not increase by more than ten percent. The Court has not addressed those arguments because it is unnecessary on the facts presented.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-051857

06/12/2017

mandates the steps she says should have been taken. She likewise has not brought to the Court's attention any provision concerning governance of homeowners' associations or even condominiums, in Title 33, that might support her argument.

For these reasons, the HOA is entitled to summary judgment on the plaintiff's statutory claim.

THE BREACH OF CONTRACT CLAIM

In order to prevail on a claim for breach of contract, the plaintiff must show that the alleged breach or breaches of the contract were material. A material breach occurs when a party fails to do something required by the contract which is so important to the contract that the breach defeats the very purpose of the contract. Ry-Tan Const., Inc. v. Washington Elem. Sch. Dist. No. 6, 208 Ariz. 379, 401, 93 P.3d 1095, 1117 (Ct. App. 2004), vacated on other grounds, 210 Ariz. 419, 111 P.3d 1019 (2005). Factors in determining materiality include, among others, the extent to which the injured party will be deprived of the benefit which he reasonably expected and the extent to which the party failing to perform or to offer to perform will suffer forfeiture. Foundation Development Corp. v. Loehmann's, Inc., 163 Ariz. 438, 447-448, 788 P.2d 1189, 1197-1198 (1990) (citing Restatement (Second) of Contracts § 241).

Ms. Bishop has not explained why the differences between what she says the CC&Rs required the Board to do and what the Board actually did, in connection with the reallocation of the assessment, were significant enough to defeat the purpose of section XI, Article III of the CC&Rs and thus to relieve her of the responsibility for paying her share of the assessment. In other words, there is no evidence from which a jury could find that the alleged breaches were material. Her breach of contract claim therefore fails as a matter of law.

The reasonable expectation of the plaintiff in this case, based on Article XI, Section 3 of the Sunland Village CC&Rs, would have been that the HOA would submit any substantial assessment increase to a fair vote of adequately-informed members. That occurred when the Board adopted and the members ratified the uniform assessment allocation. There is no evidence that what appeared on the ballot, or what resulted from the vote, was not what the Board intended. None of the information in the ballot document was incorrect or materially misleading. The ballot document carefully explained how the resolution would affect members' assessments. Though the plaintiff questions whether the HOA members knew the resolution would lead to a significant assessment increase for some units, she offers no evidence from which a jury could reasonably find that the ballot document did not in fact inform the members of that. None of alleged irregularities fundamentally compromised the fairness of the election.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-051857

06/12/2017

The plaintiff emphasizes the fact that her increased assessment payment did not take effect in 2015, immediately following the Board's action, but rather in 2016. What she has never made clear, even when pressed during oral argument, is why the delay made any difference to her. If anything it benefitted her, by sparing her the increased assessment for a year.

It also matters, for purposes of assessing materiality, that the plaintiff seeks a refund of the amounts she has paid in excess of what she paid in 2015. As a matter of contract law that remedy follows from the rule that a material breach relieves the other party of the duty of performance. But the result in practice would be to force the HOA to disgorge revenues that it has received and spent since 2015. Because the 2015 resolution merely reallocated the total annual assessment, without increasing it, the HOA would wind up poorer than it would have been had the 2015 resolution never been enacted. If everyone in the plaintiff's position got the refund, the impoverishment would be substantial. That outcome would be tantamount to a forfeiture from the HOA's point of view.

For all of those reasons, the defendant HOA is entitled to summary judgment on the plaintiff's claim for breach of contract as well as the claim for breach of the duty of good faith and fair dealing.

ORDERS

IT IS ORDERED the defendant's Motion for Summary Judgment is granted.

IT IS FURTHER ORDERED Plaintiff's Cross-Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED the plaintiff's Motion to Certify as a Class Action is denied as moot.

IT IS FURTHER ORDERED the defendant shall lodge a proposed form of judgment, and any application for attorneys' fees or costs that may be appropriate, not more than 20 days from the date on which the Clerk issues this order. The plaintiff shall have ten days in which to object and/or respond. The defendant shall have five days to submit replies.