

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-023119

07/02/2004

HONORABLE PETER C. REINSTEIN

CLERK OF THE COURT
M. Sahli
Deputy

FILED: 07/07/2004

PATSY JEAN HARUFF

JERALD C THOMPSON

v.

SUNLAND VILLAGE COMMUNITY
ASSOCIATION

JAMES L TANNER

MINUTE ENTRY

The Court has reviewed Plaintiff's (Ms. Haruff) Motion for Summary Judgment, the Defendant's (the "Association) Response, and the Reply. The Court has also heard arguments of counsel. Based upon the Court's review, the Court makes the following findings and rulings.

On December 5, 2003, Ms. Haruff filed a verified Complaint for Injunctive Relief supported by her Declaration. Thereafter, the Association filed an answer to the Complaint and an evidentiary hearing was held on December 22, 2003.

Subsequent to the evidentiary hearing, the Court issued a preliminary injunction enjoining the Association from enforcing provisions of Resolution 03-1 which removed Ms. Haruff from the Board of Directors of the Association. In addition, the injunction directed the Association to allow Ms. Haruff to participate as a member of the Board of Directors of the Association. The preliminary injunction is in effect as of this date.

Ms. Haruff now seeks summary judgment on her complaint based upon her allegation that there no longer exists any genuine issue as to any material fact and there is no question of law.

The Association contends the summary judgment is improper at this stage of the proceedings. The Association argues that Ms. Haruff's Complaint for Injunctive Relief did not request a judgment but only a request for the injunctive relief as stated above. The Association

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further argues that summary judgment would be improper given that there are additional parties named as defendants.

The Court finds that Rule 56 (c) 1 mandates that judgment be granted if the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In the case at bar, given the evidence presented at the hearing re the preliminary injunction, and the fact that the Association failed to present any controverting evidence, the Court finds that there exists no genuine issues as to any material facts. Therefore, Ms. Haruff is entitled to judgment as a matter of law against the Association. While this may be construed as a partial summary judgment, given the circumstances of the case, it would seem to be dispositive of the entire matter. Accordingly,

IT IS ORDERED that Plaintiff is granted summary judgment against the Defendant Association.

Finally, the Court finds that this matter does fall within the parameters of A.R. S. § 12-341.01 in that the Association's by-laws constitute a contract between Ms. Haruff and the Association. Accordingly,

IT IS ORDERED that Ms. Haruff is awarded reasonable attorneys' fees and costs consistent with this ruling. Counsel for Ms. Haruff shall submit the appropriate affidavits to the Court.