

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-005111

07/13/2016

HONORABLE JOSHUA D. ROGERS

CLERK OF THE COURT
S. Ortega
Deputy

CANYON TRAILS UNIT 4 SOUTH
HOMEOWNERS ASSOCIATION

RODNEY GALARZA

v.

TAYLOR MORRISON / ARIZONA INC, et al.

JOHN DOUGLAS WILENCHIK

RULING

The Court has received and considered Taylor Morrison's Opposition to Award. The Court notes that oral argument has been requested. Pursuant to Ariz. R. Civ. P. 7.1(c)(2), the Court determines that, in order to expedite its business, this matter shall be decided without oral argument. The Court is fully informed of the issues.

Respondent Taylor Morrison/Arizona, Inc. ("Taylor Morrison") filed its objection pursuant to A.R.S. § 12-1512 on the grounds that Arbitrator Lawrence Fleischman (the "Arbitrator") exceeded his authority under the terms of the subject Arbitration Agreement. More specifically, Taylor Morrison asserts that the Arbitrator was precluded from awarding consequential damages under the terms of the Arbitration Agreement and that at least \$178,009.88 of the \$209,550.88 award was for consequential damages. The Court disagrees.

The damages awarded by the Arbitrator in this case are cost of repair damages and were expressly designated as such. "Generally, the measure of damages for a breach by a builder of a construction contract is the cost of repair." *Fairway Builders, Inc. v. Malouf Towers Rental Co.*, 124 Ariz. 242, 253, 603 P.2d 513, 524 (App. 1979). Thus, cost of repair damages are the compensatory damages awarded for purposes of a construction defect action. Consistent with this fact, the Arizona courts have consistently differentiated between cost of repair damages and consequential damages. *See Id.* at 253-56, 603 P.2d at 524-27; *Flagstaff Affordable Hous. Ltd.*

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P'ship v. Design All., Inc., 223 Ariz. 320, 323, ¶ 11, 223 P.3d 664, 667 (2010) (Differentiating between cost of repair damages and consequential damages for purposes of the economic loss doctrine); *Sullivan v. Pulte Home Corp.*, 232 Ariz. 344, 346, ¶ 8, 306 P.3d 1, 3 (2013) (same). Only “where an award based on this measure of damages would result in ‘economic waste,’ ... [would] the proper measure of damages would be the difference in value” as Respondent suggests. *Fairway Builders, Inc.*, 124 Ariz. at 253, 603 P.2d at 524. In sum, because the damages awarded are compensatory in nature and not consequential, the arbitrator did not exceed his authority under the applicable Arbitration Agreement.

Finally, Taylor Morrison also objects to this Court awarding interest as part of any judgment entered on the subject arbitration award. This objection is misplaced. Interest has only been requested from the date of entry of the award itself. Under Arizona law the general rule is that, in the absence of statutory provisions requiring a different result, interest accrues from the date the arbitration award is entered. *Creative Builders, Inc. v. Ave. Developments, Inc.*, 148 Ariz. 452, 457-58, 715 P.2d 308, 313-14 (App. 1986). The Court therefore finds that an award of interest from the date the arbitration award was entered on April 1, 2016 is appropriate in this case.

Therefore,

IT IS ORDERED denying Taylor Morrison’s Opposition to Award.