

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-055942

07/05/2018

HONORABLE CYNTHIA J. BAILEY

CLERK OF THE COURT
A. Wood
Deputy

GENE D WATSON, et al.

FREDERICK E DAVIDSON

v.

LEISURE WORLD COMMUNITY
ASSOCIATION

KATHERINE J MEROLO

MINUTE ENTRY

On July 5, 2018 parties presented oral argument on Plaintiff's Motion for Summary Judgment filed March 2, 2018. The Court has read and reviewed the Response and Reply to the Motion and the attached documents, including each party's Statement of Facts and Exhibits as well as Plaintiff's and Defendant's Controverting Statements of Fact and the oral argument heard today.

On May 11, 2018, the Court previously denied Defendant's Motion for Summary Judgment on many of the same issues raised today, without hearing oral argument.

The parties' conflict is described in their Joint Report,

Plaintiffs' claims that Defendant improperly recorded two alleged amendments to the Declaration of Covenants, Conditions and Restrictions ("CC&Rs"), one in 2013 and one in 2014, in Plaintiffs' master planned community Leisure World. Plaintiffs allege that:

- 1) both instruments constitute amendments to the CC&Rs, and therefore negative easements against Plaintiffs' title

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-055942

07/05/2018

- 2) neither amendment was properly adopted
- 3) both of the instruments include revisions which constitute unforeseeable and material changes to the character of the community
- 4) both instruments create negative easements that constitute clouds on the Plaintiffs' title to their residence.

Plaintiffs seek to quiet title to their property and to collect damages.

Defendant denies that the 2013 instrument constitutes an amendment to the CC&Rs and affirmatively alleges that it restates the previously existing restrictions. Defendant further alleges that the 2014 instrument was properly adopted; that neither of the instruments were unforeseeable, nor cause a material change to the character of the community; and, that neither of the instruments constitute a cloud against Plaintiffs' title to their property.

On summary judgment, the Court must view the evidence and all reasonable inferences that such evidence will permit in the way that is most favorable to the party opposing summary judgment and must assume the truth of that party's allegations. *Esplendido Apartments v. Olsson*, 144 Ariz. 355, 361, 697 P.2d 1105, 1111 (App. 1985); *Airfreight Express Ltd v. Evergreen Air Center, Inc.*, 215 Ariz. 103, 106, ¶2, 158 P.3d 232, 235 (App. 2008). Determining credibility, weighing the evidence, and drawing legitimate inferences from the facts are functions for a jury, not the judge. *Allstate Indem. Co. v. Ridgely*, 214 Ariz. 440, 444 (App. 2007) (citations omitted).

THE COURT FINDS that there are genuine issues of material facts that preclude the granting of the motion for summary judgment. Factual disputes include, but are not limited to,

1. Whether the 2013 Consolidation Declaration is an "amendment"
2. Whether the 2013 Consolidation Declaration was required to be adopted by the association members prior to being recorded
3. Whether the 2014 amendment imposed an "unforeseeable" impact on Plaintiff and therefore required unanimous consent
4. Whether the consent forms utilized by Defendant were sufficient in form and number to affirm the 2014 amendment
5. Whether the 2013 and 2014 declaration/amendments should have been recorded
6. Whether the amendments, if allowed to stand, constitute a cloud on Plaintiff's title

As material factual issues remain,

IT IS THEREFORE ORDERED denying Plaintiff's Motion for Summary Judgment filed on March 2, 2018.