

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-094018

08/21/2006

HON. MARK F. ACETO

CLERK OF THE COURT
M. Brady
Deputy

GOLDEN EAGLE ESTATES HOMEOWNERS
ASSOCIATION INC

CHARLES E MAXWELL

v.

DUSAN MILIC, et al.

DONALD A LOOSE

ALTERNATIVE DISPUTE
RESOLUTION - CCC

MINUTE ENTRY

On June 1, 2006, Defendants filed a Motion for Summary Judgment. On June 6, 2006, Plaintiff filed a Motion for Summary Judgment. The Court has reviewed the pleadings. Pursuant to Rule 7.1, the Court declines to schedule oral argument.

PORT-A-JOHN

Section C2 of the CC&Rs requires approval of the Committee of Architecture regarding construction of structures and additions or modifications to such construction. Defendants allowed a port-a-john to be temporarily placed on their property for use by construction workers. Plaintiff claims that the port-a-john constitutes construction for purposes of the CC&R's. As a matter of law, the Court concludes that Plaintiff is wrong. Therefore, on the port-a-john claim,

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IT IS ORDERED granting Defendants' motion for summary judgment and denying Plaintiff's motion for summary judgment.

TIMELY LANDSCAPING

Pursuant to the Golden Eagle Estates Architectural Guidelines & Standards (the "Standards"), home construction "should" begin within six months of architectural committee approval and be completed within one year of the first construction disturbance of the property. Standard 4.6. However, the standards make it clear that the deadline for completion of landscaping is not tied to the recommendations regarding when home construction "should" be completed. Rather, the standards repeatedly specify that the landscaping must be installed within two months/sixty days of actual completion of the home. Standards 1.0(step 10), 4.7 and 5.0. The landscaping in question was completed before the home was completed. Therefore, as to the timeliness of landscaping claim,

IT IS ORDERED granting Defendants' summary judgment motion and denying Plaintiff's summary judgment motion.

LANDSCAPING CHANGES

Plaintiff asserts claims regarding landscaping changes apparently not approved of by the architectural committee. It appears that landscaping changes which alter the exterior appearance of any residence shall not be done without the prior written approval of the architectural committee. Standards, p. 4. However, neither party has established that it is entitled to judgment as a matter of law regarding the landscaping change claims. Under the circumstances, with respect to these claims,

IT IS ORDERED denying the motions for summary judgment of both Plaintiff and Defendants.

SETTLEMENT CONFERENCE

The parties shall participate in a mandatory settlement conference. This case is referred to the court's Alternative Dispute Resolution for the appointment of a judge *pro tempore* to conduct a settlement conference. **Counsel and/or the parties will receive a minute entry from ADR appointing the judge *pro tempore*.** Counsel and any "pro per" parties will contact the appointed judge *pro tempore* to arrange the date, time, and location for the settlement conference. The judge *pro tempore* is requested to conduct a settlement conference not later than **December 14, 2006.** **The Office of Alternative Dispute Resolution will not do the scheduling of the settlement conference so please do not contact that office.**

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All counsel and their clients, or non-lawyer representatives who have full and complete authority to settle the case, shall personally appear and participate in good faith in the Settlement Conference. Sanctions may be imposed for failure to participate.

DATED this 21st day of August, 2006

/ s / HON. MARK F. ACETO

JUDICIAL OFFICER OF THE SUPERIOR COURT