

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-019545

08/14/2007

HONORABLE JOHN A. BUTTRICK

CLERK OF THE COURT
T. Melius
Deputy

HIGLEY UNIFIED SCHOOL DISTRICT NO 60 SCOTT A MALM
OF MARICOPA COUNTY ARIZONA

v.

CORONADO RANCH COMMUNITY
ASSOCIATION, et al.

JEFFREY B CORBEN

MINUTE ENTRY

Plaintiff Higley Unified School District (the "District") and Defendant Coronado Ranch Community Association (the "Association") have brought cross motions for summary judgment, both filed April 30, 2007, concerning the specific issue whether a certain well water usage agreement entered into on November 11, 1999 (the "Agreement") between the District and Gilbert 385 L.L.C. (the "Developer") is enforceable against the Association.

The Agreement was entered into by the District and the Developer before the Association was formed. It expressly contemplated that the Agreement would be binding upon the Association. Specifically, it provides that the Developer (and, later, the Association) would provide certain irrigation services to the District in exchange for some access to the District's playing fields for Association members. The obligation to provide water was intended to be perpetual.

The Association argues that the Agreement is unenforceable as procedurally and substantively unconscionable and unsupported by consideration.

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The District asserts that the field access provisions of the Agreement provide sufficient consideration to support the Agreement and defeat the unconscionability theory.

The Agreement provides that, in exchange for the water to be provided to the District, “the residents of the subdivision,” i.e., the Association members, shall have “the playing fields on the School Site available for [their] use” subject to the District’s “policies and rules regarding public use.” Those “policies and rules” allow all homeowners’ associations free use of the school site on a reserved basis for identified uses. For other uses that involve financial gain an hourly fee is charged.

The Association provided water to the District without apparent protest from 2002 until 2006 at an approximate annual cost of \$12,000.00. In October 2006 the Association gave the District notice of its intent to terminate the Agreement.

The Association bases its argument, as noted, on lack of consideration for the Agreement and its right to “terminate without penalty” any unconscionable contract. See Third Restatement of Property (Servitudes) § 6.19. Since the Association gains nothing under the Agreement and suffers a perpetual burden (the obligation to provide free water) it is voidable at its option.

The District responds that there is real consideration for the Agreement. Two primary consideration theories are posited. First, the District points to the existence of the nearby school as a benefit in itself. However, this “benefit” is not referenced at all in the Agreement. Presumably this “benefit” was reflected in enhanced purchase prices for the homes in the development. The second cited “benefit” is the aforementioned use of the school fields. But this “benefit” is no different than that enjoyed by members of all other homeowner associations who, notably, are not obligated to provide water to the District. The District argues strenuously that, unlike all other homeowners’ associations, the Association here is entitled to free use of the school grounds even for financially remunerative activities. There is no language in the Agreement supporting that position. In fact, the Agreement expressly conditions field usage by the Association on compliance with the District’s “policies and rules” which do not allow for such free usage.¹

Based on the undisputed material facts, the Agreement is unconscionable as unsupported by consideration. The Association’s Motion for Summary Judgment is granted and the District’s Motion for Summary Judgment is denied.

¹ The District also argues the Association is promissorially estopped from disavowing the Agreement based on its compliance from 2002 to 2006. The linchpin of this argument is the District’s supposed detrimental reliance upon the water supply. However, the water supply system was operating before the Association became the obligor under the Agreement. There was no change of position by the District based on anything done by the Association.