

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-019613

08/18/2008

HONORABLE A. CRAIG BLAKEY II

CLERK OF THE COURT
L. Gilbert
Deputy

MIRAGE CROSSING RESORT CASITAS
HOMEOWNERS ASSOCIATION INC

JOHN E CHAIX

v.

MIRAGE HOMES CONSTRUCTION INC, et al.

JACK G BARONE
DANIEL A BEATTY
JASON J BLISS
ADAM B CAMPBELL
WILLIAM H DOYLE
DOUGLAS H FITCH
MICHAEL J FRAZELLE
MICHAEL L GREEN
ANDREW R PESHEK
MITCHELL J RESNICK
RICHARD L RIGHI
JAN-GEORG ROESCH
ALLEN D BUCKNELL
JILL ANN HERMAN

MINUTE ENTRY

The Court is in receipt of Plaintiff's Motion for Reconsideration of the Court's February 5, 2008 Minute Entry and/or Stay Entry of Judgment for Sixty (60) Days, Plaintiff's Supplement to its Motion for Reconsideration and Defendants' and Third-Party Defendants' Responses thereto. Plaintiff requests the Court to reconsider its February 5, 2008 Minute Entry

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("prior Ruling") granting Defendants' Motions for Summary Judgment. Having considered the arguments set forth in the parties' memoranda, the Court issues the following Ruling.

Plaintiff contends the Court erred in finding Defendants and Third-Party Defendants had standing to challenge Plaintiff's non-compliance with A.R.S. § 33-2002. Alternately, Plaintiff contends its failure to comply with A.R.S. § 33-2002 is not a jurisdictional requirement warranting judgment against Plaintiff and, therefore, that the Court should allow Plaintiff an opportunity to cure any technical defects by issuing a Stay Entry of Judgment.

The Court agrees with Plaintiff that the Court's previous finding that A.R.S. § 33-2001, *et seq.*, binds individual homeowners to the outcome of a homeowners' association's suit was in error. However, the Court finds it did not err in the result of its prior Ruling. Although A.R.S. § 10-304 places certain limits on who can challenge the validity of a corporate act, a corporation's authority to bring suit is limited by express statutory law. In the case at bar, the Court finds that Plaintiff's non-compliance with A.R.S. § 33-2002 is properly raised as a jurisdictional bar by Defendants and Third-Party Defendants. Accordingly,

IT IS ORDERED denying Plaintiff's Motion for Reconsideration. As to Plaintiff's Motion to Stay Entry of Judgment for Sixty (60) Days, the Court has reviewed Plaintiff's notice letter sent to its individual members on February 19, 2008 ("the Notice Letter"), submitted *in camera*, as well as Plaintiff's Supplement to its Motion for Reconsideration. The Court finds that Plaintiff is currently in compliance with A.R.S. § 33-2002. Therefore, the Court declines to sign any judgment relating to its prior Ruling. As the Court is mindful of the intent of A.R.S. § 33-2001, *et seq.*, in protecting the interests of homeowners' association members, and as the Court determines justice demands that Plaintiff's individual members not be further penalized by going through the expense of re-filing the present action,

IT IS ORDERED allowing Plaintiff thirty (30) days to amend its Complaint to show compliance with A.R.S. § 33-2002. The Court finds that the aforesaid Notice Letter is discoverable. Accordingly,

IT IS FURTHER ORDERED directing Plaintiff to provide the Notice Letter to the Defendants within ten (10) days of the issuance of this minute entry. Because of this disclosure,

IT IS FURTHER ORDERED denying Defendants' Motion to Strike or to Compel Production of Documents Submitted to the Court and to Compel Production of Letters Referred to in Motion as Support for Plaintiff's Claims.

IT IS FURTHER ORDERED denying, without prejudice, all pending applications for fees and statements of costs lodged against the Plaintiff.