

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-029971

08/17/2010

HON. JOHN REA

CLERK OF THE COURT
L. Gilbert
Deputy

TRAMONTO COMMUNITY MASTER
ASSOCIATION

CHAD PHILIP MIESEN

v.

ELLIOTT HOMES INC

STEVEN J LIPPMAN

MINUTE ENTRY

Following oral argument the Court took under advisement the parties' Cross-Motions for Summary Judgment. After consideration of the arguments and authorities in the memoranda and the oral argument,

IT IS ORDERED Plaintiff's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED Defendant's Motion for Summary Judgment is granted.

Discussion

Plaintiff filed this action to collect assessments it claims are due from Elliott Homes for Parcel W-13 pursuant to the CC&Rs. Elliott Homes relies on the Amended and Restated Tract Declaration for Parcel W-13 that states that no assessments shall be due and owing on Parcel W-13 until the earlier of the issuance of a certificate of occupancy or two years from the recordation of the Amended and Restated Tract Declaration. It is undisputed that no certificate of occupancy was issued for the time the Plaintiff seeks to collect assessments from Elliott Homes. The

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Plaintiff acknowledges that the Amended Tract Declaration applies to assessments after its execution but argues that it does not apply to assessments due prior to its execution.

The Court finds the language of the Amended Tract Declaration reasonably susceptible to both parties' proposed interpretations. That being true, the Court looks to extrinsic evidence to determine the intent of the parties. In this case, the extrinsic evidence is clear. The entire course of dealing between the Plaintiff and Elliott Homes, involving four other parcels, is consistent. The Plaintiff did not bill Elliott Homes for assessments until after the final plat was recorded.

For this reason, and the other reasons argued by Elliott Homes, the Court denies Plaintiff's Motion for Summary Judgment and grants summary judgment to Elliott Homes.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>