

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-094239

08/29/2023

HONORABLE ADAM D. DRIGGS

CLERK OF THE COURT
C. Avena
Deputy

ROBERT GIEDIT, et al.

KEVIN R HARPER

v.

TREVISO COMMUNITY ASSOCIATION

NICHOLAS C NOGAMI

JUDGE DRIGGS

MINUTE ENTRY

On August 8, 2023, the Court held a Final Pretrial Management Conference in this matter and conducted a brief discussion with the parties regarding Defendant Treviso Community Association's Motion in Limine No. 1 filed July 18, 2023.

The motion seeks to preclude the introduction of any evidence, argument, and/or testimony regarding the sixty-day automatic approval provision, as this has been resolved in the Court's prior ruling in the minute entry dated November 8, 2022, when it denied each parties' separate Motion for Summary Judgment and is therefore "law of the case." In that minute entry, the Court wrote, "[t]he Court finds that under the clear language of the CCRs, the 60-day waiver period championed by P's does not apply." Defendant argues that his language is dicta, and notes that the Court denied both parties' motions in the ruling.

The Court has considered the positions of each party as set forth in their respective pleadings and comments to the Court.

THE COURT FINDS that while the prior judge in this matter provided significant analysis on the issue, as well as the Court's position on the issue based on the information before it, that such finding is not "law of the case."

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THE COURT FURTHER FINDS that while the Courts indicated it's finding on the record, that such finding was no executed into a Court order. As such, the Court finds that the statement at issue made by the prior judge in his previous ruling is not binding on the Court at trial, but it may still be cited by as persuasive authority at trial.

The Court also notes that Judge Hopkins' minute entry of November 8, 2022, provided favorable dicta to each party, as it set forth significant judicial commentary on the positions of each party, including the unambiguous and ambiguous factual matters to be argued by the parties. It is clear that Judge Hopkins provided his own "take" on the evidence and which party he believed would likely prevail at trial, but the Court will allow each party to present their complete case on the merits and determine independently the persuasive weigh it will give the previous judge's findings and inclinations.

Based on the above,

IT IS ORDERED Treviso Community Association's Motion in Limine No. 1 is denied.