

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-055353

08/07/2024

HONORABLE M. SCOTT MCCOY

CLERK OF THE COURT
T. DeRaddo
Deputy

JIE CAO, et al.

COLIN F CAMPBELL

v.

LORNE POLGER, et al.

LOUIS D LOPEZ
ANDREW B HAYNES
GEOFFREY M STURR
CHARLES E MARKLE
JUDGE MCCOY

UNDER ADVISEMENT RULING

PFPP Dorsey's Motion to Enforce the Arbitration Provisions Between the Parties is before the Court. The Court has considered all related filings, the oral argument of counsel, and the record in this matter. Finding the agreement unenforceable, the Court will deny the motion.

I. Background

Plaintiffs Cao and XIA owned 1 of 96 units in Dorsey Place Condominiums. When the condominium terminated in 2019, Plaintiffs objected to the forced sale of their unit to Defendant PFPP Dorsey, which already owned a supermajority of units. Plaintiffs sued both PFPP Dorsey and their condominium association, alleging conversion, trespass, breach of fiduciary duty, unjust enrichment, and wrongful recording.

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Defendants moved to dismiss under Rule 12(b)(6). This Court dismissed, agreeing that Plaintiffs had no valid claim because A.R.S. § 33-1228 authorized the forced sale in connection with the condominium termination. On appeal, the Arizona Court of Appeals affirmed in part.

It found both that the statute was constitutional as applied and that it permitted the forced sale of some – but not all – condominium units. But the court reversed and remanded, holding that the trial court erred by applying the 1986 version of the statute. *Cao v. PFP Dorsey Invs., LLC*, 253 Ariz. 552, 516 P.3d 1 (App. 2022), *vacated*, 257 Ariz. 82, 545 P.3d 459 (2024).

On review, the Arizona Supreme Court vacated. It reasoned that:

- (i) the forced sale Plaintiffs unit did not present a constitutional question, because the parties incorporated the Arizona Condominium Act in their contract.
- (ii) the 2018 version of the Act applied; and
- (iii) critically, the forced sale of some – but not all 96 – units violated § 33-1228(C) of the Act.

Cao v. PFP Dorsey Invs., LLC, 257 Ariz. 82, ¶¶ 24-40 (2024). The Court then vacated the Court of Appeals’ opinion, “affirmed in part” this Court’s original dismissal, and remanded without further instructions. *Id.*, ¶ 48.

II. The Motion to Compel Arbitration

The parties now vehemently disagree regarding the effect of the Supreme Court’s opinion. Plaintiffs maintain that “[t]he case effectively is beginning from scratch.” Joint Scheduling Report, at 2. Defendants by contrast have declared virtually unequivocal victory: asserting that “[t]hankfully, Defendants’ actions have been vindicated, again . . .” *Id.*, at 3. After careful review, the Court finds Plaintiffs have the better understanding.

Defendants now move to compel arbitration, maintaining that the parties’ contract requires arbitration of what Defendants see as *the only* dispute on remand – i.e., the fair market value of Plaintiffs’ unit. Motion at 1-2. Defendants are correct only if two things are true:

- the condominium termination was valid (it was); *and*
- Defendants’ forced sale of Plaintiffs’ unit *also* was permitted (it was not).

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The logic of the Supreme Court’s ruling dictates otherwise:

- The Supreme Court began “with the foundational property law principle that, ordinarily, one party may not sell another's property.” 257 Ariz. 82, at ¶ 27.
- Continuing, the court reasoned that “[t]he source of the Association's power to take and sell [Plaintiffs’] unit [therefore] derived from the first sentence of § 33-1228(C).” *Id.*
- Interpreting Subsection C, the court found that it authorized a unit’s forced sale *only if* done as part of a sale of *all* condominium units. Bluntly, “[a]ll means all—not less than all.” *Id.*, ¶ 28.
- Concluding, the court held: “Thus, the forced sale of [Plaintiffs’] unit alone rather than as part of a sale of all common elements and units of the condominium was impermissible under § 33-1228(C).” *Id.*, ¶ 40.

Because the sale impermissibly violated § 33-1228(C) – the very source of Defendants’ power to sell Plaintiffs’ unit – it follows that the forced sale violated “fundamental” public policy. The parties’ arbitration agreement presupposing a valid sale therefore is unenforceable. *See, e.g., Zambrano v. M & RC II LLC*, 254 Ariz. 53, 58, ¶ 11 (2022) (recognizing contracts violating statutes or other sources of public policy are unenforceable).

Having ruled against Defendants, the Court nonetheless recognizes the force of their other arguments. The Plaintiffs no longer live in their unit, and the condominium regime that brought the parties together is long gone. Even if this case is more than “a \$20,000 dispute,” potential damages are very modest by the standards of the Commercial Court. As this matter approaches its fifth anniversary, the Court earnestly hopes cooler heads prevail.

III. Disposition

For all these reasons,

IT IS ORDERED denying Defendants’ motion.

IT IS FURTHER ORDERED lifting the stay of Defendants’ obligation to respond to pending motions.