

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-091004

08/31/2005

HON. MARK F. ACETO

CLERK OF THE COURT
K. Stone
Deputy

FILED: 09/02/2005

SPRINGFIELD COMMUNITY ASSOCIATION J ROGER WOOD

v.

JOHN WILSON

CHRISTOPHER A COMBS

MINUTE ENTRY

On June 17, 2005, Plaintiff filed a Consent to Dismissal of Injunctive Claim/Motion for Summary Judgment re: Breach of Contract Claim. On July 7, 2005, Defendant filed a Cross-Motion for Summary Judgment. The Court has reviewed the pleadings. Pursuant to Rule 7.1, the Court declines to schedule oral argument.

Pursuant to the consent of Plaintiff,

IT IS ORDERED dismissing Count 1.

Through their summary judgment motions, each side has taken the position that it is entitled to an attorney fee award as a matter of law.

Through Count 1, Plaintiff sought an order requiring Defendant to take down the “for sale” sign in question. It is undisputed that Defendant has now taken down the for sale sign. Plaintiff contends that Defendant took the sign down because of Plaintiff’s lawsuit. Defendant contends that he did not take down the sign because of the lawsuit. Rather, Defendant contends that he did so because he ultimately sold the home. In other words, there is a genuine factual dispute regarding why the sign has been taken down.

CC&Rs are subject to contract analysis. Count 2 is a breach of contract claim. Plaintiff claims that placement and maintenance of the sign by Defendant constitutes a breach of contract. Defendant contends that Plaintiff agreed to allow Defendant to leave the sign in place. Promissory estoppel (see Restatement of Contracts (2nd) §89) and waiver can be viable defenses

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-091004

08/31/2005

to enforcement of a contract. These defenses are factually intensive. In this case, genuine factual disputes are present. Under the circumstances,

IT IS ORDERED denying the summary judgment motions of both Plaintiff and Defendant.

NOTE

The CC&Rs provide that the prevailing party in litigation such as this is entitled to a fee award. However, the Court suspects that only "reasonable" fees need be awarded. Query: may a court determine that fees associated with an unsuccessful Motion for Summary Judgment are not reasonable? Given all of the circumstances, the parties may wish to attempt to reach an agreement resolving this litigation.¹

DATED the 31st day of August, 2005.

/s/ HON. MARK F. ACETO

JUDICIAL OFFICER OF THE SUPERIOR COURT

¹ The Court had ordered that the parties participate in a settlement conference with a judge pro tem. The parties ultimately stipulated to vacate the settlement conference in order to pursue summary judgment. If further court intervention is required, the first step might be a request for establishment of a new deadline for completion of a settlement conference.