

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-095464

09/10/2013

HON. DAVID K. UDALL

CLERK OF THE COURT
K. Gilmet
Deputy

LISA MARX

CHRISTINA N MORGAN

v.

FIESTA VILLAS CONDOMINIUM
ASSOCIATION, et al.

PAUL R NEIL

H U B REALTY L L C
NO ADDRESS ON RECORD
DWIGHT SCHRUTE HOLDINGS L L C
NO ADDRESS ON RECORD
SPENCER J LINDAHL
NO ADDRESS ON RECORD
MELINDA C LINDAHL
NO ADDRESS ON RECORD

UNDER ADVISEMENT RULING

The Court took this matter under advisement after an Order to Show Cause Return Hearing on Plaintiff's Temporary Restraining Order held on September 9, 2013. The Court having considered the evidence presented, the arguments of the parties, as well as the pleadings, makes the following findings and enters the following orders:

Plaintiff received a Temporary Restraining Order from Judge Talamante on August 30, 2013 in which he enjoined Defendant DSH from casting their 26 votes at the September 10, 2013 elections for Fiesta Villas Condominium Association. The basis for his injunction was that DSH had purchased 26 units from HUB Realty, an Arizona Limited Liability Company, and that under the CC&Rs neither HUB Realty or DSH had paid the required Working Capital Fund assessment

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or Transfer Fee assessment. It is Plaintiff's contention that both HUB and DSH owe \$14,950.00 for the 26 units for the Transfer and Capital Working Fund fees.

Under the CC&Rs, 7.9 (Working Capital Fund), and 7.11 (Transfer Fee Fund) indicate that each purchaser of a unit be required to pay those separate fees. The Court looks at the definition of "Purchaser" under the CC&Rs at 1.2.30 ("Purchaser" means any Person other than the Declarant, who by means of voluntary transfer becomes a Unit Owner, except for a Person who purchases a Unit and then leases it to the Declarant for use as a model in connection with the sale of other Units, or a Person who, in addition to purchasing a Unit, is assigned any Special Declarant Right).

THE COURT FINDS that under the definition of Purchaser, anyone that has a Declarant right is not required to pay the Transfer Fee or Working Capital Fund fee.

THE COURT FURTHER FINDS that HUB Realty and DSH are managed by Spencer J. Lindahl. Mr. Lindahl states that HUB is a holding company for DSH.

THE COURT FURTHER FINDS that HUB Realty and DSH received their interest in the property through a Trustee's Deed Upon Sale and a Deed of Trust.

The Court has considered A.R.S. § 33-1244, Transfer of special declarant rights. Under subsection C, it states, "Unless otherwise provided in a mortgage or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust,...of any units owned by a declarant or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold succeeds to all special declarant rights related to that real estate held by that declarant whether or not the judgment or instrument conveying title provides for transfer of the special declarant rights."

The Court believes that Defendants have a good position to argue that under the terms of the CC&Rs, they are not required to pay the Transfer Fee or Working Capital Fees. Therefore, their voting rights under the CC&Rs would not be restricted or prohibited. The Defendants, as a result, would have a likelihood of success on the merits of this case.

THE COURT FINDS that Plaintiff's basis for the injunction, with respect to irreparable harm, is that the Board intends to assess a special \$2,000.00 levy on each unit for improvements. Whether or not DSH is able to cast its votes in the Homeowners' Association election, the Court believes it would still be speculative as to the outcome of the election based on the evidence that it heard in Court.

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IT IS ORDERED quashing the Temporary Restraining Order issued by Judge Talamante in this matter on August 30, 2013.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.