

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-010791

09/18/2019

HON. ROSA MROZ

CLERK OF THE COURT
D. Charbagi
Deputy

MARDY C TOEPKE, et al.

MARK BAINBRIDGE

v.

PIONEER CONDOMINIUM ASSOCIATION OF SUN CITY WEST DAVID G SCHMIDT

JUDGE MROZ

MINUTE ENTRY

The Court has reviewed Plaintiffs' Application for Preliminary Injunction, Defendant's Response, Plaintiffs' Reply, Defendant's Sur-Reply, and Plaintiffs' Response to Defendant's Sur-Reply.

At the hearing on August 26, 2019, the Court inquired about the need for an evidentiary hearing. Plaintiffs' position was that there are two issues, only one of which requires an evidentiary hearing. Issue one is the applicability of A.R.S. § 33-1227(D), which requires unanimous consent of the unit owners before any amendments to Declarations that restrict the use of any unit can be imposed. Plaintiffs asserted that this is a purely legal issue. Issue two is the legitimacy of the HOA's incorporation. Plaintiffs asserted that this issue will require an evidentiary hearing regarding the timing of the incorporation. Plaintiffs further asserted that if the Court decides issue one in Plaintiffs' favor, issue two is moot and no evidentiary hearing will be needed. Defendants asserted that an evidentiary hearing is still necessary because issue one is intertwined with issue two.

It appears to the Court that Plaintiffs have now narrowed its request for the preliminary injunction to just issue one: the applicability of A.R.S. § 33-1227(D). While the Court agrees with

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Plaintiffs that this is a purely legal issue, the Court also agrees with Defendant that there are four factors that the Court must consider in deciding whether to grant the preliminary injunction, only one of which is whether the Plaintiffs have a strong likelihood of success on the merits. The Court does not know what evidence Defendant intends to present in support of the other three prongs but the Court needs to provide Defendant with an opportunity to do so.

IT IS ORDERED affirming the evidentiary hearing set for **September 24, 2019, at 9:00 a.m.** The evidentiary hearing is solely about issue one as it appears that Plaintiffs are only seeking relief based on issue one. If the Court is wrong about Plaintiffs' intention, Plaintiffs shall inform Defendant immediately so that both sides are prepared to present evidence about issue two as well.

The Court has also considered Defendant's argument that Plaintiffs failed to comply with rule 65(d), and that Plaintiffs' Revised Proposed Order "create[d] confusion regarding why an injunction should be issued, what the specific terms would be, and what acts would be restrained." The Court is not at all confused about what Plaintiffs are seeking, and based on Defendant's Sur-Reply, the Court believes that Defendant is not confused either.

To the extent that Defendant wants the Court to deny Plaintiffs' Application for Preliminary Injunction for any alleged violation of Rule 65(d), Defendant's request is denied.