Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-008665 09/06/2022

HONORABLE JOAN M. SINCLAIR

CLERK OF THE COURT
S. Motzer
Deputy

MICHAEL LYON DAMIEN R MEYER

v.

REGENCY HOUSE ASSOCIATION, et al. AUGUSTUS H SHAW IV

JUDGE SINCLAIR

MINUTE ENTRY

Plaintiff filed a Motion for Reconsideration, supporting exhibits, and the supporting Declaration of Paul Bakalis on June 7, 2022. Defendant filed their Response June 29, 2022. Plaintiff filed his Reply on July 14, 2022. The Court declined oral argument. With the matter being fully briefed, the Court now rules.

Ariz. R. Civ. P. 7.1(e) gives parties the right to motion for reconsideration.
The Court was unfortunately unaware of *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 523 (2022) ("*Kalway*"), when considering the underlying motion for summary judgment. The Court will do so now.

The fact of that the Arizona Supreme Court took this case strongly suggests it is new precedent: "We granted review because the petition raises issues of statewide importance regarding the scope of an HOA's authority to amend CC&Rs." *Kalway, id.* at *23, ¶ 7. The Arizona Supreme Court considered whether an HOA's general amendment power can place restrictions on a homeowner's use of their land through the lens of "the reasonable expectations of the affected homeowners." *Kalway, id.* at *22, ¶ 1.

In *Kalway*, the homeowners amended the CC&Rs by a majority vote. While procedurally proper, the Arizona Supreme Court held that the general amendment provision or general-purpose

statement of the CC&Rs did not provide sufficient notice of the proposed changes which infringed on the reasonable expectations of the property owners. The Court notes that this is an objective inquiry.

"The notice requirement relies on a homeowner's reasonable expectations based on the declaration in effect at the time of purchase—in this case, the original declaration. Under general contract law principles, a majority could impose any new restrictions on the minority because the original declaration provided for amendments by majority vote. But allowing substantial, unforeseen, and unlimited amendments would alter the nature of the covenants to which the homeowners originally agreed." *Kalway, id*. at 24 ¶ 15.

In this case, there was no vote by 75% of the owners to change, modify or rescind the CC&Rs and the Plat under Section 24 of the CC&Rs. The recorded plat was incorporated into the Declaration and specifically identified the parking spaces as they originally existed.

Adding parking spots within the already cramped parking structure was not contemplated within the CC&Rs. The Plaintiff's parking spot and the other owners' spots between P-237 to P-246 were disproportionally affected by the decision to alter the parking spaces. While the Board has the authority to "maintain, repair, replace, administer and operate the Property" under Section 4.2 of the CC&Rs, this general authority does not extend to the completed alteration of the parking areas because those changes were substantial and unforeseen under the CC&Rs especially when no homeowners' vote was taken.

Furthermore, Plaintiff alleges that the new parking spaces are illegal. Motion, pp. 7-8; Exhibit 1 Bakalis Declaration. Defendants do not dispute the measurements taken by the Plaintiff to prove the point that the three parking spaces behind P-237 to P-246 were illegal. Illegal parking spaces are not something that a homeowner could reasonably expect. City of Phoenix Zoning Ordinance 702(B)(2)(a).

Therefore, the Court determines that its prior ruling was inconsistent with the *Kalway* decision.

IT IS ORDERED granting the Motion for Reconsideration and vacating the under advisement ruling filed on April 19, 2022.

IT IS FURTHER ORDERED granting the Plaintiff's Motion for Summary Judgment. The Plaintiff shall file a proposed order with the trial court by **September 30, 2022**.