

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-026289

09/28/2011

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
D. Harding
Deputy

DONALD R GATTS, et al.

MATTHEW ALLEN KLOPP

v.

DREAMLAND VILLA COMMUNITY CLUB
INC

CHARLES E MAXWELL

MINUTE ENTRY

The Court received and considered Plaintiffs' Motion For Summary Judgment, Defendant Dreamland Villa Community Club, Inc. (Defendant) responsive pleading and the subsequent reply submitted by Plaintiffs' in this matter.

In the interest of expediting the business of the Court and pursuant to Ariz. R. Civ. P. rule 7.1(c)(2) oral arguments are herein waived. The parties' pleadings adequately address the issues presented for this Court's consideration. In addition, there have been several appellate decisions which have addressed the issues raised by these parties.

General Background. The Plaintiffs' all own real property which is located within a community known as the Dreamland Villa. The deed restrictions on these properties for nearly a half century made no mention of mandatory membership in any homeowner's club organization. Historically, the Dreamland Villa Community Club, Inc. operated as a voluntary organization that maintained private recreational facilities for its members. There were no common areas in the community and member who wished to join this association and use these recreational facilities did so voluntarily. The Defendant subsequently modified the deed restrictions in the area making it mandatory for all residents to join and pay dues. The Second Amended

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Declarations was the product of this effort by Defendant and it was eventually recorded in all of the sections of Dreamland Villa.

Some but not all of the homeowners refused to pay the assessments levied by Defendant. As a consequence, the Defendant sued those homeowners who refused to pay these assessments. The central legal issue in that related lawsuit centered on the validity of the Second Amended Declarations. Eventually that issue made its way to the Court of Appeals. The Court of Appeals issued an opinion in this related action on March 16, 2010. The Court in that appellate decision concluded that the Second Amended Declarations were invalid and unenforceable in all sections of the Dreamland Villa community.¹

The Plaintiffs' in this action are all homeowners in this same community and are all similarly situated to the owners involved in the original *Dreamland Villa* case. They initiated this action to quiet title to their properties and remove the encumbrance imposed by these declarations.

On remand in the *Dreamland Villa* case the trial court made several rulings which were subsequently appealed and heard as a special action by the Court of Appeals. The Court of Appeal recently issued a supplemental opinion which addresses the issues presented by the parties' in this action.²

In the context of this motion, these Plaintiffs' seek summary judgment on their quiet title claim pursuant to A.R.S. § 12-1103, seek removal of the disputed declarations, seek statutory damages for the fraudulent recording of these declarations, pursuant to A.R.S. §33-420, seek a declaration from this Court that the disputed declarations are, in fact, invalid and unenforceable, seek injunctive relief against any efforts by Defendants to enforce the disputed declarations and seek restitution for of dues and late fees paid pursuant to the disputed declarations to Defendant.

The Second Amended Declarations are void and unenforceable, as a matter of law. The appellate court in the *Raimy* case made clear that the Second Amended Declarations in Sections 7, 14, 15, 16, 17 and 18 are invalid and unenforceable as to every homeowner within these sections. The court specifically precluded Defendant from enforcing the restrictions against any homeowner living within the applicable six sections. These Plaintiffs all reside within the Dreamland Villa community. The appellate court's multiple rulings on this issue clearly applied to these Plaintiffs.

¹ *Dreamland Villa Community Club, Inc. v. Raimy, et. al.*, 224 Ariz. 42, 226 P.3d 411 [App. 2010].

² *Raimy v. Dreamland Villa Community Club, Inc.*, 1 CA-SA 10-0255 filed on July 21, 2011.

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Defendant's Defenses. The appellate court in both of its decisions in the related action, substantively addressed the defenses being advanced by Defendant in this matter. In that action the Defendant raised a statute of limitations defense and the defense that these declarations applied to all homeowners who purchased with notice of these provisions.

Statute of Limitation is not a bar to these claims. As for the statute of limitations defense that Defendants advanced in this case. The Court of Appeals in its *Raimy* decision specifically rejected the legal argument that the statute of limitations precludes any homeowners from attacking the invalidity of the Second Amended Declarations. The Court specifically held that the declarations are invalid and therefore void, thus they cannot be confirmed or ratified by the running of the statute of limitations. Thus, the Court held that the statute of limitations was not a bar to those homeowners' claims.

Declarations invalid despite the fact that homeowners purchased with notice. In addition, the court in the *Raimy* decision addressed another defense being made by Defendant in this matter. That is, that the restriction is binding as to all subsequent purchasers who brought their property with notice of a recorded amended declaration. The Court stated as follows, "we decline to adopt a principle that would allow the Second Amended Declarations to be enforced against homeowners who purchased with notice." "In sum, we conclude that the Second Amended Declarations are invalid as to all homeowners in the Six Sections, regardless of the purchase date."

As a means of quieting the titles of all properties affected, the *Raimy* court also allowed its petitioners to record a simply notice informing all homeowners in the six sections that the Second Amended Declarations are invalid and unenforceable. The appellate court in the *Raimy* decision also addressed the issue of restitution, holding that those plaintiffs were entitled to restitution on prior judgments entered for unpaid assessments and late fees they paid.

Discussion. This Court concurs with Plaintiffs that the cumulative impact of the two appellate decisions (*Dreamland Villa* and *Raimy*) are dispositive of the most of the issues presented for this Court's determination. It is clear that the Second Amended Declarations are invalid as a matter of law in the six applicable sections and that this ruling applied to every homeowner in those sections. Further, that the multiple defenses raised by Defendants are inapplicable. This Court finds that there is no genuine issue as to any material fact and further that Plaintiff are entitled to judgment as a matter of law. That summary judgment is proper on Plaintiffs' quiet title, fraudulent recording, declaratory judgment and injunction claims. The issues surrounding the validity of the Second Amended Declarations have been litigated and the appellate decisions are now final. As a consequence, Plaintiffs are entitled to summary judgment on Counts I-III of their First Amended Complaint.

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As for the unjust enrichment claim the Court finds that there exist genuine issues of material fact which preclude the granting of summary judgment on that claim.

For the reasons set forth in Plaintiffs' pleadings and the dispositive appellate decisions discussed, this Court grants Plaintiffs summary judgment on Count I-III of their First Amended complaint.

IT IS ORDERED granting Plaintiffs' Motion For Summary Judgment on Counts I-III of their First Amended Complaint;

IT IS FURTHER ORDERED denying Plaintiffs' Motion For Summary Judgment on Count IV (unjust enrichment claim) of their First Amended Complaint;

IT IS FURTHER ORDERED that Plaintiffs' shall file a Findings of Fact and Conclusion of Law, Affidavit of Fees, Statement of Costs, together with a formal judgment in this matter.

Dated: September 30, 2011

/ s / HONORABLE J. RICHARD GAMA

JUDICIAL OFFICER OF THE SUPERIOR COURT

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 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.