

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-003577

11/10/2021

HONORABLE JOAN M. SINCLAIR

CLERK OF THE COURT
S. Motzer
Deputy

CLUB WEST CONSERVANCY

FRANCIS J SLAVIN

v.

FOOTHILLS CLUB WEST COMMUNITY
ASSOCIATION, et al.

CARLOTTA L TURMAN

TIMOTHY H BARNES
DANIEL G DOWD
JUDGE SINCLAIR

MINUTE ENTRY

The Edge at Club West, LLC (“ECW”) filed a Motion to Intervene in this matter on August 13, 2021 and a Request to Appear at the August 17, 2021 status conference. That status conference was set to resolve an issue relative to the language in the proposed order. The Court held the hearing on August 17, 2021, did not allow ECW to appear because they were not a party at that point, and informed the parties that the Court would rule on the motion to intervene before issuing any order concerning the language of the judgment.

On September 1, 2021, the Plaintiff filed their Response to the motion to intervene. ECW filed their Reply on September 14, 2021. The Defendants filed a Sur-Reply to the motion to intervene and objected to ECW’s proposed form of judgment on September 17, 2021. ECW then filed its Motion to Strike the sur-reply on September 22, 2021 along with a notice of errata concerning an exhibit. On October 12, 2021 ECW filed a Motion for Summary Disposition on their motion to strike and on October 27, 2021 also filed a Motion for Leave to File Supplemental Brief in Support of Motion to Intervene. The Defendants filed a Response to this Motion for Leave on November 1, 2021.

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As preliminary matters,

IT IS ORDERED formally denying ECW's request to appear at the August 17, 2021 status conference.

IT IS FURTHER ORDERED granting ECW's motion for summary disposition and granting ECW's motion to strike the Defendants' sur-reply to their motion to intervene.

IT IS ALSO ORDERED denying ECW's motion for leave to file a supplemental brief.

As to ECW's motion to intervene,

IT IS ORDERED denying the motion to intervene. The Court denied the request for oral argument on this motion because the Court determined that it was not necessary to resolve the motion.

The original complaint filed on March 16, 2020 sought declaratory judgment that the Defendant HOA's recorded Assignment of Declarant Rights and its amendments were void and unenforceable and an order that the Defendant HOA may not act as the Declarant under the Golf Course Declaration. The First Amended Complaint filed on April 27, 2020 added a breach of contract claim that the Defendant HOA breached the Master Declaration. On July 2, 2020, the Court denied the Defendant HOA's motion to dismiss. The Defendant HOA then filed a motion for partial summary judgment on August 19, 2020 seeking a judgment as a matter of law that the HOA has the right to be the Declarant under the Golf Course Declaration. The Plaintiff filed a cross-motion for summary judgment seeking an order that the Defendant HOA breached its duties, acted in an unauthorized fashion, and had no legal authority to act as the Declarant under the Golf Course Declaration. The Plaintiff asked for a permanent injunction to stop the Defendant HOA from acting as the Declarant under the Golf Course Declaration and to extinguish the recorded assignments and amendments from the public record.

The Court issued its under advisement ruling granting the Plaintiff's Cross-Motion for Summary Judgment on March 24, 2021. The only issue pending at that point was the language of the order of judgment proposed by the Plaintiff, specifically the language of paragraph 5 of the proposed order and the statutory interest rate. At the August 17, 2021 status conference, the parties agreed that paragraph 5 will be omitted and the statutory rate should reflect 4.25%. It is at this juncture in the case that ECW filed its motion to intervene.

ECW states in its motion that if the Court signs the judgment proposed by the Plaintiff, it will likely withdraw its motion. The Court intends to sign that judgment. The judgment will track the language of the under advisement ruling only.