

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

JUDGMENT

This matter came before the Court on the Defendants' Motion for Summary Judgment filed on August 19, 2020, and the Plaintiff's Cross-Motion for Summary Judgment filed on November 4, 2020. The Court reviewed and considered the memoranda submitted on behalf of the parties as well as their respective statements of facts, the arguments made by counsel at the January 22, 2021 oral argument, and the record in this matter.

On March 24, 2021, the Court issued its Under Advisement ruling granting the Plaintiff's Cross-Motion for Summary Judgment and denying the Defendants' Motion for Summary Judgment as follows:

1. In 1989, UDC-Foothills Limited Partnership caused to be recorded a Declaration of Covenants, Conditions and Restrictions for a master planned community known as Foothills Club West in the official records of the Maricopa County Recorder ("MCR") at No. 1989-0337438 ("the Master CC&Rs"). The name of the association formed pursuant to the Master CC&Rs is the "Foothills Club West Community Association."

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2. In 1993, UDC Homes, Inc., and its wholly owned subsidiary, REA Acquisition Corporation (“REA”), caused to be recorded a Declaration of Covenants, Conditions and Restrictions at MCR No. 1993-0099989 (the “Golf Course Declaration”) for the Foothills Club West Golf Course (the “Golf Course”).
3. In September, 2010, the Defendant Foothills Club West Community Association (the “Association”), through its then-President, Paul Moroz, signed a document entitled “Assignment of Declarant Rights,” which was subsequently recorded at MCR No. 2010-0806003.
4. The Assignment of Declarant Rights identifies Shea Homes Limited Partnership (“Shea Homes”) as the successor-in-interest to the original Declarant, UDC Homes, and states that Shea Homes “desires to assign to the Association, and the Association desires to accept, all of the rights and obligations of the Declarant” under the Golf Course Declaration.
5. The only method for allowing the Golf Course to be annexed into the Property subject to the Master CC&Rs is to amend the Master CC&Rs as provided under Section 11.2 which requires a seventy-five percent-member (75%) vote to add or annex property to the Property.
6. The Association has no legal right or authority to accept the Assignment of Declarant’s Rights or to act as the Declarant under the Golf Course Declaration without adhering to Section 11.2 of the Master CC&Rs which requires an amendment, approved by a seventy-five percent-member (75%) vote, to annex the Golf Course property into the Property.
7. The Golf Course property has not been annexed to or become part of the Property subject to the Master CC&Rs.
8. The Association is required to abide by A.R.S. § 33-1804 (A), (F) which require that “all meetings of the members’ association and the board of directors, and any regularly scheduled committee meetings, are open to all members of the association... .” Matters which may be heard in an “executive session,” set forth in A.R.S. § 33-1804 (A)(1)-(5), are limited to those issues which involve: (a) obtaining legal advice; (b) discussing pending or contemplated litigation; (c) discussing

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- personal information relating to an individual member, employee or contractor of the community; or (d) discussing a member's appeal of a violation, citation or a penalty imposed by the community.
9. None of the authorized subjects for executive sessions include voting or otherwise taking action. The actions taken by the Association in accepting the Declarant Rights under the Golf Course Declaration and in subsequently enacting amendments to the Golf Course Declaration occurred in executive sessions which is contrary to A.R.S. § 33-1804.
 10. The Defendants failed to comply with the open meeting requirements and violated Arizona law when they voted and took the following acts in Executive Session:
 - A. Executing a document entitled "Assignment of Declarant Rights" recorded at MCR No. 2010-0806003.
 - B. Executing the First Amendment to Declaration of Covenants, Conditions and Restrictions for Foothills Club West Golf Course recorded at MCR No. 2018-0753974.
 - C. Executing the Fifth Amendment to Declaration of Covenants, Conditions and Restrictions for Foothills Club West Golf Course recorded at MCR No. 2019-0534283.

Based on the foregoing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Assignment of Declarant Rights recorded at MCR No. 2010-0806003 is null and void ab initio.
2. The First Amendment to the Declaration of Covenants, Conditions and Restrictions for Foothills Club West Golf Course recorded at MCR No. 2018-0753974 is null and void ab initio.
3. The Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions for Foothills Club West Golf Course recorded at MCR No. 2019-0534283 is null and void ab initio.
4. Shea Homes did not legally effectuate a valid transfer of the Declarant Rights under the Golf Course Declaration to the Association by the Assignment of Declarant Rights

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recorded at MCR No. 2010-0806003, and the Association did not become the Declarant under the Golf Course Declaration.

5. A copy of this Judgment shall be recorded in the Official Records of the Maricopa County Recorder so that the public record reflects that the foregoing instruments are null and void ab initio.
6. Plaintiff Club West Conservancy shall have judgment against the Association in the sum of \$5,108.83 together with interest thereon at the rate 4.25% per annum from the date of entry of this Judgment until paid.
7. The cash bond previously posted in the total amount of \$10,000.00 is released, and the Clerk of the Superior Court is directed to send a check in the full amount of \$10,000.00 to:

Club West Conservancy
c/o Francis J. Slavin, P.C.
2198 East Camelback Road, Suite 285
Phoenix, Arizona 85016

8. No further matters remain pending, and this Judgment is entered under Ariz. R. Civ. P. 54(c).

Dated this 10th day of November, 2021.

/s/ JOAN SINCLAIR
JUDGE JOAN SINCLAIR
JUDICIAL OFFICER OF THE SUPERIOR COURT