

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2004-070758

12/20/2005

HONORABLE COLLEEN MCNALLY

CLERK OF THE COURT  
L. Glenn  
Deputy

FILED: 12/23/2005

PETER WILLIAMSON, et al.

SAMUEL T CRUMP SR.

v.

SUN CITY GRAND COMMUNITY  
ASSOCIATION INC

PAUL MICHAEL DUDA

TRAYLOR E RICHARDSON  
LISA A SHANNON

**RULING**

The Court read and considered the cross motions for summary judgment, the responses and the replies, as well as the associated statements of fact and the court file.

The uncontested facts are as follows:

Plaintiffs are homeowners in the Sun City Grand housing development and are subject to the governance of the Sun City Grand Community Association (Defendant) pursuant to the Declaration of Covenant, Conditions, and Restrictions (CC&Rs) recorded and referenced in the deed. Defendant is authorized by the CC&Rs to adopt rules regulations and guidelines for the benefit of the community and to enforce the CC&Rs as well as the rules, regulations and guidelines.

Plaintiffs sought authorization from Defendant to construct a barbeque in their backyard. Plaintiffs submitted an Architectural Review Committee Application for Approval on May 10, 2004. On that day, Julie Madden, Defendant's employee, met with Plaintiff, Mr. Williamson, to accept the Application. The governing documents as well as the Application required that the applicant submit two copies of plans illustrating where

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the proposed structure was planned to be built. Mr. Williamson and Ms. Madden discussed the need for plans to accompany the application. Ms. Madden provided Mr. Williamson with a copy of the plot plan for his lot so that he could show the placement of the barbeque on the lot. Ms. Madden drew the proposed barbeque on the plot plan at Mr. Williamson's direction. The modified plot plan showed the barbeque as being placed within 10 feet from the rear of the residence and well outside the 15 foot rear setback required by the CC&Rs.

The Application was submitted to the Architectural Review Committee with the modified plot plan. On May 14, 2004, the Application was conditionally approved. (The conditions were unrelated to location of the barbeque.) Plaintiffs contracted to have the barbeque built. The barbeque was constructed in an area different from that set forth in the modified plot plan and within the 15 foot rear yard setback. Defendant notified Plaintiffs of the violation on May 24, 2004. Plaintiffs appealed the Committee's decision to the Association. The appeal was denied. Plaintiffs applied to Defendant for a variance. The variance was also denied.

Plaintiffs claim that they are entitled to a variance by estoppel and that the barbeque should be allowed to remain as constructed.

Defendant claims that there are no disputed issues of material fact and that it is entitled to injunctive relief based upon the governing documents as a matter of contract law.

With respect to Defendant's position, the CC&Rs, and other governing documents adopted by Defendant constitute a contract between Plaintiffs and Defendant. By building a barbeque in a location other than that approved by Defendant, Plaintiffs are in breach of contract. Defendant is entitled to judgment as a matter of law.

As to Plaintiffs' claim of estoppel, Plaintiffs fail to show evidence of the elements. There is no evidence that Defendant committed acts inconsistent with a position it later adopted. The approval of the barbeque construction was based upon incorrect information provided by Plaintiffs. When Plaintiffs constructed the barbeque in a location different than the location presented to the Committee, Defendant rightfully enforced the governing documents. Plaintiffs did not rely upon Defendant's acts, but rather failed to use care in presenting an accurate plan or in using the approved plan to ensure that the location of the barbeque was consistent with the approved Application. Finally, Defendant never repudiated prior conduct, but rather enforced the specific and clear requirements of the governing documents and the approved Application.

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IT IS ORDERED denying Plaintiffs' Amended Motion for Summary Judgment.

IT IS ORDERED granting Defendant's Motion for Summary Judgment.

Defendant seeks injunctive relief in the form of an order requiring Plaintiffs to remove the barbeque. Because Defendant has prevailed on the merits and money damages would not adequately compensate Defendant and the members of the Association, a permanent injunction is appropriate.

Defendant also seeks attorneys' fees.

Counsel for Defendant is directed to submit a formal written judgment and an affidavit regarding attorneys' fees and costs. The form of judgment shall either be approved as to form or lodged for objection. The Court expects the documents to be submitted no later than **January 31, 2006**.