

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-024945

12/22/2008

HON. EDWARD O. BURKE

CLERK OF THE COURT
L. Nixon
Deputy

SAGUARO HIGHLANDS COMMUNITY
ASSOCIATION

J ROGER WOOD

v.

JACK C BILTIS, et al.

MARTIN F DEINHART

MINUTE ENTRY

The court has received and reviewed the parties' memoranda on the issue of Defendants' right to compel arbitration on Plaintiff's complaint against them and enters the following ruling.

Defendants' Motion to Compel Arbitration is DENIED.

The interpretation of a Declaration of Covenants, Conditions and Restrictions is a question of law for the court. Johnson v. Pointe Community Ass'n, Inc., 205 Ariz. 485, 490, 73 P.3d 616 (App. 2003). "Restrictive covenants should be interpreted to give effect to the intention of the parties as determined from the language of the document in its entirety and the purpose for which the covenants were executed." Powell v. Washburn, 211 Ariz. 553, 554, 125 P.3d 373 (2006).

Upon reflection and a complete review of the Declaration of Covenants, Conditions and Restrictions for Saguaro Highlands (the "CC&Rs"), the court has concluded that the intent of the drafter was that Article 10 required arbitration of disputes between the homeowners, their association and/or the association's board and the original declarant and developers as to the quality of construction of improvements and its compliance with building codes and good construction and development practices. The arbitration clause was not intended to apply to

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disputes between the association and individual homeowners concerning payment of fees and construction of improvements by homeowners which may violate the CC&Rs. See Art. 5.13 and 6.10,5.

Article 9.1 grants the association the right to enforce the project documents in any manner provided by law or in equity, including an action to obtain an injunction to compel removal of any improvements or to otherwise compel compliance with the project documents. The CC&Rs grant the association the right to foreclose its lien for dues and assessments, something that an arbitrator could not order. (Article 6.10,5)

Accordingly, notwithstanding the law's strong preference for arbitration, the CC&Rs do not require arbitration of disputes between the association and a homeowner for the removal of an improvement constructed by a homeowner and the hearing on Plaintiff's Order to Show Cause shall take place as scheduled on **December 24, 2008 at 9:00 a.m.**