

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2013-000334-001 DT

02/06/2014

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT

J. Eaton

Deputy

SUNDANCE RESIDENTIAL HOMEOWNERS
ASSOCIATION INC

JASON N MILLER

v.

GEISEL JARVIS (001)
JOSEPH JARVIS (001)

GEISEL JARVIS
1894 S 216TH LN
BUCKEYE AZ 85326
JOSEPH JARVIS
1894 S 216TH LN
BUCKEYE AZ 85326

REMAND DESK-LCA-CCC
WHITE TANK JUSTICE COURT

MINUTE ENTRY

Lower Court Case No. CC2011064291RC.

Defendants-Appellants (Defendants) request that this Court reconsider/rehear its determination in this case. On November 20, 2013, this Court entered its Minute Entry ruling. On December 10, 2013, Defendants filed a Motion for Reconsideration. Plaintiffs-Appellees responded. This Court has considered Defendants' requested reconsideration but, for the reasons stated below, denies reconsideration/rehearing.

Defendants' Motion For Reconsideration of this Court's November 10, 2013, Minute Entry Ruling was not filed until December 10, 2013. This request was untimely. Requests for rehearing of decisions or orders of the Superior Court are governed by Rule 14 of the Superior Court Rules of Appellate Procedure—Civil (SCRAP—Civ.) which allows 14 days for filing any request for rehearing. Defendants request is untimely as it was filed after the 14 day allowable time period expired. Defendants provided this Court with no reason for their untimely filing.

Additionally, Defendants' motion did not identify any court decisions, statutes or regulations that were issued after the Minute Entry Ruling was filed or that Defendants believed this Court overlooked. Instead, Defendants asserted (incorrectly) that Plaintiff defaulted because they did not object to Defendants' discovery or disclosure and therefore discovery was admitted by default. This Court knows of no authority that adopts this proposition.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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Additionally, Defendants claimed this Court erred by “not taking into consideration when ruling erroneously in favor of the appellee/plaintiff, error that was pointed out by the appellant when requesting the Justice court for a new trial and again in the appellants [sic.] memorandum”¹ [sic]. Defendant Geisel Jarvis signed this Motion on behalf of her husband—“In Legal representation of Joseph Jarvis.”² Ms. Geisel is not a member of the State Bar and cannot represent her husband.

Courts may inquire as to whether a person who appears before it in a representative capacity is admitted to the practice of law. Inquiry discloses that neither Mr. nor Mrs. Haberkorn is admitted to the practice of law in Arizona. In Bloch we considered the effect of Bernard Bloch’s representation of himself and his attempted representation of Nathan Bloch and Ruth Bloch. We held that he could not represent either Nathan Bloch or Ruth Bloch and where he attempted to represent them as plaintiffs in the trial court, neither Nathan Bloch nor Ruth Bloch were before the trial court or before this Court. The same legal principles preclude a husband, not a member of the Bar, from representing his wife in a court of law. This is true whether her interest be separate or community.

Haberkorn v. Sears, Roebuck & Co., 5 Ariz. App. 397, 399, 427 P.2d 378, 380 (1967).

This Court denies Defendants’ request for rehearing/reconsideration. Motions for reconsideration should not reargue issues already briefed by the parties and addressed by the decision. As early as 1886, the Supreme Court of the Territory of Arizona recognized the limitations on re-arguing cases that have just been finalized and stated:

Defendant petitioned this court for a rehearing of the cause, which was granted, and the case was reargued, and again submitted. Neither the petition itself, nor the argument of the case, point out any misapprehension of the record by this court, or any mistake in the law of the case. Every question urged upon us was submitted and considered by the court on the former hearing. We are, in effect, asked to review that decision of this court. This we decline to do. It is not the office or purpose of a rehearing to reopen the whole cause, and to require of the court a reconsideration of the whole case. Were this precedent to be established, it would open the doors for petitions for rehearing of all causes, and we should expect them more particularly when the persons who compose the court have been changed. On the argument of the cause many points have been urged upon the attention of the court, which were not included in the petition for rehearing. This we regard as bad practice. A petition for a rehearing should state particularly the ground upon which it is asked, and, if granted, the argument should be confined to those grounds.

Arizona Prince Copper Co. v. Copper Queen Copper Co., 2 Ariz. 169, 170-71, 11 P. 396 (1886). Here, Defendants challenged this Court’s affirmation of the trial court decision granting summary judgment to Plaintiff and finding Defendants had an obligation to pay their assessments under the CC&Rs. In addition, Defendants claimed:

¹ Motion For Reconsideration at p. 2, ll. 6–9.

² *Id.* at p. 3, l. 20.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2013-000334-001 DT

02/06/2014

1. They filed an answer to the Complaint on December 9, 2011;
2. Plaintiff failed to answer their allegation;
3. Plaintiff did not object to their disclosure which they filed on March 3, 2012;
4. There was no basis for summary judgment because they “had given an abundance of legal grounds for a trial”;
5. Their proffered disclosure provided grounds for a trial;
6. Defendants claimed the Public Reports are not a basis for a contract and for demonstrating Plaintiff had the right to assess them;
7. The CC&Rs do not provide for assessment rights;
8. The HOA’s maintenance did not meet the minimum standards for the town;
9. The Superior Court erred by “supplementing the deficiencies” for the appellees/plaintiff because Plaintiff did not claim to meet the town standards and this violated Defendants’ due process rights;
10. The trial court failed to properly notify Defendants about the summary judgment as the Order was not sent to Defendants.

Although Defendants filed a responsive pleading to Plaintiff’s Complaint, Plaintiff had no obligation to answer or respond to any of Defendants’ allegations as Defendants failed to file a counterclaim. Similarly, Plaintiff had no obligation to object to Defendants’ disclosure. This Court addressed the reasons for summary judgment in its prior ruling of November 20, 2013, and will not rehash these explanations. Defendants have not provided this Court with any basis for the trial court to have denied Plaintiff’s summary judgment since Defendants admitted they failed to pay the monthly assessments and the CC&Rs established Defendants’ obligation to pay these charges. Although Defendants deny the CC&Rs form a contract, the law provides otherwise. As the Arizona Supreme Court stated:

A deed containing a restrictive covenant that runs with the land is a contract.

Powell v. Washburn, 211 Ariz. 553, 125 P.3d 373, ¶ 8 (2006). Accord, *Ahwatukee Custom Estates Mgmt. Ass’n, Inc. v. Turner*, 196 Ariz. 6312 P.3d 1276, ¶ 5 (Ct. App. 2000) where the Arizona Court of Appeals held:

We consider on appeal whether the trial court correctly found that the Turners had violated the CC&Rs, correctly denied ACEMA retrospective injunctive relief, and correctly denied both parties attorneys’ fees. In so doing, we are guided by the following precepts: (1) CC&Rs constitute a contract between the subdivision’s property owners as a whole and individual lot owners.

Arizona law establishes CC&Rs form contracts.

Defendants also claim they have a guaranteed right to a trial by jury despite Plaintiff having been awarded summary judgment. They provided no authority for this position. Our Court of Appeals addressed a similar issue and held that summary judgment precludes a later trial by jury. The Arizona Court of Appeals stated:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2013-000334-001 DT

02/06/2014

It is obvious that the entry of summary judgment will preclude a later trial by jury. This is the design of Rule 56-to resolve whether material issues of fact exist, and if none do, then to enter judgment for the moving party if he is entitled to it as a matter of law. *Union Bank v. Pfeffer*, 18 Ariz. App. 386, 502 P.2d 535 (1972). It is not the intention of the rules to grant a trial on the merits when there is no genuine fact issue or where a claim may be frivolous. *Hackin v. Rupp*, 9 Ariz. App. 354, 452 P.2d 519 (1969).

Morrell v. St. Luke's Med. Ctr., 27 Ariz. App. 486, 490, 556 P.2d 334, 338 (1976). Accord, *Cagle v. Carlson*, 146 Ariz. 292, 297-98, 705 P.2d 1343, 1348-49 (Ariz. Ct. App. 1985) where the Arizona Court of Appeals stated:

Finally, the appellant argues that the grant of summary judgment denied him his right to trial by jury under the United States and Arizona Constitutions. We find this claim to be without merit.

Defendants did not have a right to a jury trial after Plaintiff was awarded summary judgment.

Based on the foregoing, this Court denies Defendants' requested relief.

IT IS THEREFORE ORDERED denying Defendants' requested relief.

IT IS FURTHER ORDERED remanding this matter to the White Tank Justice Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Myra Harris

THE HON. MYRA HARRIS
Judicial Officer of the Superior Court

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NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.