

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-092008

10/17/2008

THE HONORABLE LOUIS ARANETA

CLERK OF THE COURT
M. Brady
Deputy

APACHE WELLS HOMEOWNERS
ASSOCIATION INC

SCOTT L POTTER

v.

WALTER A STROMME, et al.

STEWART F GROSS

MINUTE ENTRY

The Court has considered the Defendants' Motion for Summary Judgment, and the Response, Reply and oral argument.

At issue is whether a prior Settlement Agreement and Mutual Release among the same parties in *Doshier v. Apache Wells*, CV2007-005085, applies to this action brought by the Plaintiff which would warrant summary judgment in favor of the Defendants.

Both sides largely agree with the context provided by the prior civil case in CV2007-005085.

In 2007, Defendant Walter Stromme was president of a group of homeowners called Save Apache Wells which opposed a special assessment planned by the Board of Directors of the Apache Wells Homeowners Association, Inc (Association). Strong feelings and harsh remarks were exchanged between polarized homeowners in this community. Ultimately, on April 23, 2007, Walter Stromme and approximately 100 other homeowners sued the Association in CV2007-005085 seeking injunctive and declaratory relief. A count of breach of fiduciary duty against individual directors of the Association was also included. Prior to the filing of the civil

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action, the Strommes had also filed an administrative action alleging that the Association improperly increased a transfer assessment fee.

During the litigation the two opposing groups of homeowners increased the intensity of their verbal attacks against each other. At one homeowner meeting, an opposing homeowner allegedly used some kind of physical force against Mr. Stromme. Criminal charges alleging assault were later dismissed.

On or about August 23, 2007, the Court, in CV2007-005085, granted partial summary judgment in favor of Plaintiff homeowners which included Mr. Stromme.

On November 5, 2007, the Association Arbitration Committee delivered notice to the Strommes that the wall in their backyard violated the Association's CC&R's. On November 27, 2007, Melanie McKeddie, counsel for the Strommes sent a letter to Eric M. Jackson, counsel for the Association, stating that the notice of the wall height violation was in retaliation against the Strommes for their involvement in the dispute against the Association. See Exhibit D to Defendants' Separate Statement of Facts in Support of Motion for Summary Judgment. In support of the claimed retaliation, counsel for the Strommes stated that the wall had been in place for three years, that a neighbor had an identical wall in height and location without any notice of violation and that the claim of a CC&R violation would further escalate the dispute between the respective clients to the civil litigation. The letter concluded:

Retaliatory action and selective enforcement are not taken well...however we will not pursue this issue if the Association acts accordingly. It truly is our clients' goal to work towards healing this community, which can only be accomplished through some degree of cooperation and mutual respect.

In February, 2008, the parties settled the action in CV2007-005085 by signing the Settlement Agreement and Mutual Release of Claims.

On July 11, 2008, the Association filed its complaint against the Strommes in this action.

To determine the intent of the parties, the Court has considered the entire settlement document and particularly the recital paragraph 1.3, the term of settlement paragraph 3.2 and the integration paragraph 4.14. When the paragraphs are considered together, the Court finds that the parties in their negotiated and reworded language of the settlement document intended to settle and discharge the wall height violation claim that the Association had made known to the Strommes.

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Specifically, in Paragraph 3.2, the parties used expansive language intended to put to rest and bring resolution to the polarized and extremely strained relationships among the homeowner parties:

Apache Wells Homeowners Association, Inc. [and all other named homeowner defendants]...hereby fully and completely release and discharge Plaintiffs in the broadest manner...from any and all conceivable claims, demands, obligations, actions, causes of actions, rights, damages, costs, losses of services, expenses, liabilities, and compensation of any and every kind and nature whatsoever, whether based on tort, contract or other theory or recovery, which the Defendants may now have, known or unknown on account of, related to, or that may in any way grow out [of] the subject of the complaint and all related pleadings, including without limitation and all known or unknown claims which were asserted or could have been asserted in the action. [emphasis added].

Here, Tom Finger, Chairman of the Association's Arbitration Committee who was a named Defendant in CV2007-005085 had signed the Association's wall violation complaint against named Plaintiff Mr. Stromme dated November 5, 2007. See Exhibit C to Defendants Separate Statement of Facts in Support of Motion for Summary Judgment.

The Association and the Strommes through the counsel letter of November 27, 2007 knew that the wall height violation complaint was alleged to have arisen as retaliation from the then pending action in CV2007-005085. While not mandatory, the Association could have filed a permissive counterclaim against the Strommes in CV2007-005085 for the alleged violation of the CC&R violation. Under the expansive languages of the settlement documents the Association released and discharged the Strommes from the alleged wall height CC&R violation.

The Court finds that there is now genuine issue as to material fact and that the Defendants are entitled to judgment as a matter of law.

IT IS ORDERED granting Defendants Motion for Summary Judgment. Counsel for Defendants shall prepare and file a form of judgment consistent with this ruling.