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IN THE SUPERIOR COURT IN THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF NAVAJO

GORDON A. GROSS, et. al,)	CASE NUMBER
)	CV202200042
Plaintiff,)	
)	
vs.)	
)	HEARING RE AMENDED
THE SHORES AT RAINBOW LAKE,)	JUDGEMENT
)	
Defendants.)	
_____)	

TRANSCRIPT OF DIGITALLY TAPED PROCEEDINGS OF THE COURT

BEFORE THE HONORABLE JUDGE RUECHEL,
JUDGE OF THE SUPERIOR COURT, DIVISION IV

May 17, 2023
Holbrook, Arizona

TRANSCRIBED BY:

KELLY PALMER, RPR
CERTIFIED REPORTER
AZ #50298

A P P E A R A N C E S

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P R O C E E D I N G S

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3 THE COURT: On the record in Case Number CV2022-42, in
4 the matter of Gordon Gross, et. al, vs. The Shores at Rainbow
5 Lake Community Association. This is the date and time set for
6 the hearing to address the amended final judgment. Mr. Klopp
7 is appearing telephonically -- virtually on behalf of
8 plaintiffs, and Mr. Csontos is appearing virtually on behalf
9 of the defendant.

10 The Court has reviewed both proposed amended final
11 judgments as well as the response and reply. Mr. Klopp, do
12 you have anything else you would like to add at this time?

13 MR. KLOPP: No, Your Honor. Unless you have any
14 questions for plaintiffs, I think it's well briefed by all
15 sides.

16 THE COURT: Okay, thank you. Can you tell me what you
17 believe is incorrect, if anything, about the defendant's
18 amended final judgment.

19 MR. KLOPP: Sure, Your Honor. Two things. One, this
20 is set forth in our objection so I don't want to repeat it,
21 you know, overly, but to summarize that, one, is asking to
22 dismiss all claims -- and this is paragraph 5 -- all claims
23 that were alleged or that could have been asserted. I think
24 as an initial matter that goes beyond, and I believe, and I
25 don't want to put words in Mr. Csontos' mouth, but I believe

1 his position is that addressed the Court of Appeals' decision.
2 And my takeaway from the Court of Appeals' decision on this
3 was purely that there needed to be something in the judgment
4 that addressed it, how to. And so plaintiff's proposed
5 judgment makes it clear Count II is being dismissed. Problem
6 here is there are lots of things that in theory could have
7 been asserted, you know, that maybe doesn't even arise out of
8 the same, you know, operative nucleus. For instance, if one
9 of the plaintiffs had tripped and fallen in the rec center
10 that the association runs, that could have been asserted here,
11 that's not something to be dismissed. I'm not aware of any
12 such claims, but I think that goes beyond what the Court of
13 Appeals wants to have done.

14 The second issue is the defendant's, the judgment, I
15 think it's going beyond the blue penciling. It's asking the
16 Court to also make these findings or conclusions. I suppose
17 I'm not entirely sure what you would call them, but with
18 respect to the validity of the first amendment and Subsection
19 A that's been stricken as to people who had purchased after
20 the date of the recording, and I think that really goes beyond
21 what the Court is permitted to do. Under Calloway you are
22 suppose to blue pencil that restriction, and it's blue
23 penciled for everybody because we set forth, and it's in
24 Dreamland, it's in another case from the Court of Appeals,
25 Stevens vs. Landmark Partners, and just a general principle of

1 property law, negative reciprocal covenants have to apply to
2 everybody unless there's some reason in the original document,
3 if you were dealing with different sections in the community
4 or something where they would be treated differently, but as
5 of that they have to apply to everybody. So because the
6 Subsection A doesn't apply to the plaintiffs, it can't apply
7 to anybody regardless of when they purchased. I think that's
8 the, you know, probably the crux of the problems with the
9 defendant's form of judgment. And the second issue is the
10 timing that would apply is probably, I would imagine, the
11 issue that the defendant has the biggest dispute with. Did I
12 answer your question?

13 THE COURT: Yes, I appreciate that. And so I guess
14 then my question is: If I were to use their final judgment
15 but take out the portions that say, could have been asserted
16 in this litigation on page 3 line 4, and then change it to
17 being as to owners, period, on page 2 line 24, would that
18 address your concerns?

19 MR. KLOPP: It would be -- I just want -- so page 2
20 line -- it would be page 2 paragraph 2. On mine it's printed
21 on line 22, so that it's invalid as against owners, period.
22 And then removing the, who took title on or before March 3rd.

23 THE COURT: Yes, thank you. I was looking at the next
24 paragraph. Thank you.

25 MR. KLOPP: It would have to be a similar revision, it

1 would be paragraph 3, but it would be at the top of page 3,
2 and it would be, you know, with the Court finds by this Court
3 to be invalid, and then just say, as shown as stricken is
4 attached.

5 THE COURT: Okay. Yeah, when I printed it out that was
6 still at the bottom of page 2. I don't know why it came out
7 differently.

8 MR. KLOPP: I think those would be, hopefully resolve
9 that issue, resolve the problems.

10 THE COURT: Okay. But you still believe -- sorry --
11 but you still believe yours is more accurate, correct?

12 MR. KLOPP: I would think so. I think partly that's
13 really from -- with those changes they become pretty similar.
14 The only item that remains, and I guess we had ours also makes
15 clear that this judgment relates back-in-time. I don't know,
16 I sometimes look at these from the title perspective and what
17 is going to make the job easier for the title company later
18 and, yeah, it's an interesting question coming out of
19 Calloway, how you deal with the remedy in this sort of case,
20 but if you strike those portions of defendant's form of
21 judgment, I think you get something that is more or less what
22 plaintiffs had proposed.

23 THE COURT: All right, thank you.

24 MR. KLOPP: Uh-huh.

25 THE COURT: Mr. Csontos, do you have any remarks you

1 would like to make? I'll start there.

2 MR. CSONTOS: No, Your Honor. If I understand the
3 language that plaintiffs are objecting to in paragraph 2 and 3
4 of the form of judgment I lodged, you know, I disagree with it
5 but I understand what they are seeking, and it does match what
6 they are saying should happen. I do believe that the Court
7 should, you know, go ahead and comply with Calloway and use
8 the blue pencil rule and attach a copy of the blue pencil
9 CC&R's to the judgment, otherwise we might be back. And I am
10 still struggling with what happened to the other claims
11 alleged in Count I, that aren't being dismissed, when would
12 Your Honor like to set a trial on the other claims? Because I
13 want to make sure I get those claims dismissed as well, and
14 then we can add the final judgment, because then we'll have
15 addressed all the claims, including the claims alleged in
16 paragraph 70.75.

17 THE COURT: Okay. Do you mean defendant's claims?

18 MR. CSONTOS: No, plaintiff's allege that paragraph 74
19 and 75 of their amended complaint that vis-a-vie portions of
20 the amendment you found valid, could be found invalid because
21 it's (indiscernible) by these or other things that happened
22 during the election. So I want an adjudication of those
23 claims. So maybe we should set a trial on those claims first
24 and then we can talk about the final judgment later, because
25 right now plaintiffs are making it very clear that they are

1 dismissing those claims, yet they want to dismiss Count II but
2 they don't want to dismiss the claims alleged in Count I.

3 THE COURT: Okay. If we look at their proposed
4 judgment, the Court concludes that all the plaintiff's
5 alleged -- all their claims plaintiff alleged are dismissed
6 with prejudice. So how do you believe that leaves the
7 other --

8 MR. CSONTOS: If that's the judgment, it would be fine,
9 that's the defendant's form of judgment. The plaintiff's says
10 Count II is dismissed.

11 THE COURT: Okay. And --

12 MR. CSONTOS: So it would be confusing, the two
13 different forms, but what you discuss in paragraph 5 of the
14 defendant's form, I understand, and I understand their
15 objection that they should not have the language or that could
16 be asserted even though that comes right out of the Supreme
17 Court decisions talking about whether it does or doesn't, but
18 I think it's important that all claims are dismissed and not
19 just counts.

20 MR. KLOPP: Your Honor, if I can address that. Perhaps
21 this would (indiscernible) speaking across each other or
22 there's a misunderstanding in the defendant's brief, those
23 allegations were I think in furtherance of Count I.
24 Plaintiff's proposed form of judgment adjudicated Count I by
25 adjudicating it as it does. I guess I don't -- plaintiff's

1 perspective, those other allegations are standalone claims,
2 and it makes it being adjudicated, as it's being adjudicated,
3 and Count II is dismissed, and any other claims that otherwise
4 are asserted, are to be asserted will be dismissed. And
5 plaintiffs have no desire or intention to go litigate the
6 (indiscernible) the entirety of this case was about
7 invalidating Subsection A, if you look at the complaint as a
8 whole. So from plaintiff's perspective, the resolution of the
9 temporal leasing restriction, and then the clear dismissal of
10 Count II would resolve everything. So if having the language
11 from paragraph 5 in accordance with plaintiff's request to
12 dismiss all remaining claims, the Court concludes all other
13 claims the plaintiffs allege in this litigation are dismissed
14 with prejudice, I think that would -- it sounds like that
15 would resolve defendant's concern with respect to
16 paragraph 77, 78, and I think that makes sense from our
17 perspective.

18 MR. CSONTOS: It does make sense under defendant's
19 form, you're right, Your Honor, it does.

20 THE COURT: Okay. Then you still have other issues
21 that you think it leaves open, Mr. Csontos?

22 MR. CSONTOS: No. Dismissing all other claims alleged
23 in this litigation, that is clear enough to make this a
24 judgment.

25 THE COURT: Okay. And then to the relation-back to

1 March 3rd, plaintiffs are saying that that date should be
2 taken out. Do you have a response to that?

3 MR. CSONTOS: Well, Your Honor, the language you
4 pointed out in paragraph 2 and 3, I understand what they are
5 saying, that as to owners took title on or about March 3rd,
6 2021. I disagree with their revision to this form, and I
7 don't know of any authority that would support that, that
8 claim, because I don't know of any authority that says these
9 decisions like these relate back. But at least I understand
10 what they are talking about and, you know, without waiving my
11 claim that my language is correct, if that's what Your Honor's
12 final decision is, to strike those phrases, I understand what
13 is being done. I still think it will be a final judgment as
14 opposed to something that would be not binding.

15 THE COURT: And moving on to what I understand
16 Mr. Csontos's second concern is, whether there needs to be the
17 attachment, the blue line attachment. Do you have a response
18 to that, Mr. Klopp?

19 MR. KLOPP: Well, you know, I understand when we redo
20 decisions (indiscernible) they show how blue pencilling works,
21 and my understanding, and I could be wrong and perhaps
22 Mr. Csontos is correct, I don't know that it's required. I
23 don't know that it matters here. If one is attached, I don't
24 think plaintiffs would object as long as it's clearly striking
25 the entirety of that Subsection A, as he had done. To be

1 honest, the only reason plaintiffs hadn't done it is I didn't
2 have a ruler to make it pretty and, two, we recently moved
3 offices and my ability to upload things through the scanner is
4 a little bit compromised at this time, until I figure out some
5 of the new technology and, three, because we are striking the
6 entirety of the one whole subsection and leaving the
7 remainder, it seems like this is one we could do without
8 having that attached versus if you look at Calloway, Calloway
9 the Court was striking phrases within a sentence, so it's
10 obviously going to be clearer for the reader, you can actually
11 see the strike through here. I don't know that it was
12 necessary but that's fine. The copy attached striking
13 Subsection A in its entirety I think would be keeping with
14 what ours had stated, and just declaratory form with what
15 Calloway is doing, subject to the, I don't know that that's
16 necessary, this case has been resolved both on the law and
17 (indiscernible) so, you know, as long as -- I don't think the
18 Court is affirming there was a particular percentage of the
19 votes or membership that voted, and there are some recitals in
20 here, but what the Court is finding, Subsection A is stricken
21 as a matter of law, I think attaching this copy that he has
22 would be fine. I don't know that it's necessary. I don't
23 know that we need to argue about it though.

24 THE COURT: All right. I just -- I don't mind getting
25 cases back because I made an error in law or there's new law

1 but, yeah, I don't want to keep getting the same one back
2 because I didn't have enough in it, in the final judgment.

3 MR. KLOPP: That's fair, Your Honor, and I'm fine with
4 attaching this copy of defendant's.

5 THE COURT: Okay. Then what the Court is going to do
6 is I'm going to sign the amended final judgment that was
7 proposed by defendant's with the modifications specifically to
8 paragraph 2, mine is line 19, where it says is invalid as
9 against owners, as to the placement as shown in the 2021
10 amendment of Section 2.30(a), and then I would also take out
11 the dates in paragraph 3, specifically the next to last line.
12 And then changing paragraph 5, in this litigation -- the
13 plaintiff's alleged in this litigation are dismissed with
14 prejudice. And then I am going to go ahead and attach the
15 blue line amendment, again, just because I don't want to delay
16 a ruling from the Court of Appeals on that basis. Is there
17 anything else? Am I missing anything?

18 MR. KLOPP: Your Honor, I think you described language
19 we didn't discuss in paragraph 2. I think the only words in
20 paragraph 2, following the bold and invalid, and being as
21 against owners until title on or before March 3, 2021, that
22 would be the language I think we are discussing. Make leaving
23 the rest of the sentence as to the placement shown intact.

24 THE COURT: Yes. The only words that would be taken
25 out of that line are who took title on or before March 3rd,

1 2021.

2 MR. KLOPP: Okay.

3 THE COURT: And then the comma. Anything else?

4 MR. KLOPP: Would you like us to resubmit something,
5 Your Honor, or do you have the word version?

6 THE COURT: Actually, if you wouldn't mind I would like
7 you to resubmit it. Well, what I would like is, can you send
8 a pdf copy directly to my judicial assistance? Because for
9 some reason we're having trouble getting -- turning things
10 into pdf format so I can modify it without just using
11 whiteout.

12 MR. KLOPP: Yes, Your Honor. Would that be who I
13 received the email link to today's hearing?

14 THE COURT: She's here and I'll let her spell her last
15 name, because even after six months I'm not good at it. Here
16 she comes.

17 JUDICIAL ASSISTANT: Yes, I'm the one that sent you the
18 link. It's lbielefeldt@courts.az.gov.

19 MR. KLOPP: Okay, I'm set. I didn't have my pencil
20 ready.

21 JUDICIAL ASSISTANT: Okay. L-b-i-e-l-e-f, as in
22 frank --

23 MR. KLOPP: Okay, I got it now. I have it now.

24 JUDICIAL ASSISTANT: Thank you.

25 THE COURT: Good timing, thank you.

1 JUDICIAL ASSISTANT: You're very welcome.

2 THE COURT: Anything else?

3 MR. KLOPP: Nothing here, Your Honor.

4 THE COURT: All right.

5 MR. CSONTOS: No, Your Honor.

6 THE COURT: All right, thank you very much. We'll try
7 to get this out today so we can move forward. Thank you.

8 MR. KLOPP: Thank you, Your Honor.

9 THE COURT: We stand adjourned.

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C E R T I F I C A T E

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3 STATE OF ARIZONA

4 COUNTY OF NAVAJO

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7 I, Kelly Palmer, Official Reporter, in and for
8 the State of Arizona, do hereby certify that the
9 foregoing pages, numbered 2 through 14, inclusive,
10 constitute a full, true and accurate transcript of all
11 DIGITALLY TAPED proceedings the Court had on the 17th
12 day of May, 2023, in the above-entitled matter. All
13 done to the best of my knowledge, skill and ability, and
14 in compliance with ethical obligations.

15 Dated this 26th day of June, 2023.

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Kelly Palmer, RPR
Certified Reporter
AZ #50298

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