

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ROBERT JASHINSKY, *Plaintiff/Appellee*,

v.

DORADA ESTATES COMMUNITY ASSOCIATION, INC.,
Defendant/Appellant.

No. 1 CA-CV 24-0721

FILED 05-29-2025

Appeal from the Superior Court in Maricopa County
No. CV2022-006735
The Honorable Timothy J. Ryan, Judge

AFFIRMED

COUNSEL

Galbut Beabeau, P.C., Scottsdale
By Angelika O. Doebler, Olivier A. Beabeau
Counsel for Plaintiff/Appellee

CHDB Law LLP, Tempe
By Nicholas C. Nogami, Tessa Knueppel
Counsel for Defendant/Appellant

JASHINSKY v. DORADA ESTATES
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Cynthia J. Bailey delivered the decision of the Court, in which Vice Chief Judge Randall M. Howe and Judge Andrew M. Jacobs joined.

B A I L E Y, Judge:

¶1 Dorada Estates Community Association, Inc. (“Dorada Estates”) appeals a jury verdict awarding damages to Robert Jashinsky. Dorada Estates also challenges the superior court’s award of equitable relief to Jashinsky. Dorada Estates argues: (1) Jashinsky’s testimony about his estimated building costs was inadmissible hearsay; (2) insufficient evidence supported the jury’s damages award; (3) Dorada Estates acted reasonably in denying Jashinsky’s proposal; (4) Jashinsky failed to plead for his desired equitable relief; and (5) the judgment was inconsistent with Jashinsky’s requested relief and violated the plain language of Dorada Estates’ governing documents. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 The Dorada Estates community is governed by the Amended and Restated Declaration of Covenants, Conditions and Restrictions (“Declaration”), a recorded deed restriction. The Declaration authorizes Dorada Estates’ board of directors (“Board”) to create a Design Review Committee (“DRC”) to review proposals for modifications by community members. The Declaration permits the DRC to consider, among other factors, whether a proposal complies with Dorada Estates’ architectural guidelines, standards, and procedures (“Design Guidelines”), which the DRC is also responsible for promulgating.

¶3 Section 11.3 of the Declaration provides:

Review of Plans. In reviewing plans and specifications for any Modification, the Design Review Committee may consider any and all factors which the Design Review Committee, in its sole and absolute discretion, determines to be relevant The Design Review Committee may disapprove plans and specifications for any Modification even though the plans and specifications may be in

JASHINSKY v. DORADA ESTATES

Decision of the Court

substantial compliance with this Declaration and the Design Guidelines if the Design Review Committee, in its sole and absolute discretion, determines that the proposed Modification, or some aspect or portion thereof, is undesirable or unattractive.

¶4 Jashinsky purchased a home in the Dorada Estates community in 2019. In early 2021, Jashinsky sought to build a casita with an attached pergola in his backyard. He planned for the casita to occupy 879 square feet and for the pergola to be roughly 55 feet long. Pursuant to city code, the combined structure would be set back by five feet from his back fence and ten feet from each side fence. At the time of his proposal, Jashinsky observed that similar structures existed in the Dorada Estates community.

¶5 After hiring an architect to create drawings and obtaining approval from the Town of Queen Creek, Jashinsky submitted his plan to the DRC for approval on April 16. At the time of his submission, the Design Guidelines read: “Structures shall be visually connected to the main building with walls, courtyards, trellis or other major landscape elements” The Design Guidelines also stated that additional structures could not exceed 1,000 square feet in size.

¶6 Three days later, unbeknownst to Jashinsky, Byron Applegate, the DRC chair, sent an email to the Board and Dorada Estates’ community manager, Shana Morton, with the subject line: “HUGE REAR YARD CASITA REQUEST!” In the body, Applegate wrote:

Ok I was afraid of this... We have a request that puts a full casita in the back yard and does everything according to city set back standards yet it flies fully in the face of what we have been discussing. If I am not mistaken we have to approve or deny upon the current design guidelines, NOT THE ONES WE ARE WORKING ON! . . . Question is if this is something we should be including in the new guidelines . . .

Currently we (Bill, Sharon, and I) can deny this request because the current guidelines state . . . “ Structures shall be visually connected to the main building”

¶7 Jashinsky later received a disapproval notification from Morton. The notification stated: “In this case, the request was not approved for the following reason(s): Current guidelines state . . . ‘Structures shall be visually connected to the main building[.]’”

JASHINSKY v. DORADA ESTATES
Decision of the Court

¶8 Shortly after the disapproval notification issued, Bill Monaccio, another DRC member, emailed Morton and the other DRC members:

Unfortunately we have not put the side yard only regulation into effect prior to his request. Based on the fact that [another lot] was allowed a backyard structure, we may not have a leg to stand on if we get sued He is an intelligent man who did his homework and drew this to city code.

I tried to find anything in our rules that would work, but cannot. Visually attached to the home is all that I can see, but it is too vague.

¶9 Jashinsky had his architect revise the drawings so that the casita would be visually connected to the main house with a travertine walkway.¹ He submitted his revised plan (“Revised Architectural Request”) to the DRC for approval on May 4.

¶10 In a May 20 meeting, the Board voted to approve a revised version of the Design Guidelines (“Revised Design Guidelines”). The Revised Design Guidelines expanded the maximum square footage of additional structures to 1,200 square feet and included a new provision: “Rear wall of structure shall not extend passed [sic] the original rear wall of home.” Several days after the Board meeting, Jashinsky received a second disapproval notification stating: “Per the updated guidelines, casitas need to be on the side of the home and not exceed the back of the home.”

¶11 In October, Jashinsky invited Board members, including Applegate, to his home to walk the proposed project site and discuss the Board’s concerns. After the meeting, Jashinsky emailed the Board president to memorialize the changes they discussed and request additional feedback. He later received another denial that simply reiterated that the casita needed to be built on the side of his home.

¶12 In May 2022, Jashinsky filed a complaint against Dorada Estates, asserting claims for breach of the covenant of good faith and fair

¹ At trial, Jashinsky testified that his architect had “done other homes in the area,” and when he shared the disapproval notification with his architect, his architect responded that “[i]t shouldn’t be a problem” for him to submit a revised proposal with the structures visually connected by a walkway or trellis.

JASHINSKY v. DORADA ESTATES

Decision of the Court

dealing, promissory estoppel, equitable estoppel, negligent misrepresentation, and declaratory relief. Over a three-day trial, Applegate's and Monaccio's emails were admitted into evidence, and the jury heard testimony from various witnesses, including Jashinsky and Applegate.

¶13 Jashinsky testified that based on conversations with his architect and contractor, his estimated cost to construct the casita was roughly \$200 per square foot in 2021. He further testified that according to a federal price index, construction costs in Phoenix had increased by about 30% since then.² Applegate testified that he thought the size of Jashinsky's proposed project was like a "Berlin Wall." Recounting the meeting at Jashinsky's home, he also testified: "[W]hen I got there and I saw the immensity of what it was going to be . . . I could have told you in the first 30 seconds there was no way I would vote yes for that."

¶14 At the close of evidence, Dorada Estates moved for judgment as a matter of law, *see* Ariz. R. Civ. P. 50(a), arguing that Jashinsky had insufficient evidence to support his alleged damages. The superior court denied the motion. In his closing argument, Jashinsky summarized that his damages totaled \$52,740—his estimated cost of building the casita, multiplied by his estimated increase in construction costs due to inflation.

¶15 The jury found in Jashinsky's favor and awarded him \$52,740 in damages. Following a hearing on Jashinsky's equitable claims, the superior court entered judgment in Jashinsky's favor on his equitable estoppel and declaratory relief claims. The court later issued a final judgment ordering Dorada Estates to allow him to construct his proposed project according to the Revised Architectural Request.

¶16 Dorada Estates timely appealed. We have jurisdiction under Arizona Revised Statutes ("A.R.S.") sections 12-2101(A)(1) and 12-120.21(A)(1).

² The court later took judicial notice of a schedule of the producer price index ("PPI") for final demand construction, compiled by the Federal Reserve Economic Data Division of the Federal Reserve Bank of St. Louis. The PPI measures the average change over time in the prices domestic producers receive for their output.

JASHINSKY v. DORADA ESTATES
Decision of the Court

DISCUSSION

I. The superior court did not err by allowing Jashinsky to testify about his estimated cost of building the casita.

¶17 On appeal, Dorada Estates maintains the following testimony on direct examination was inadmissible hearsay:

COUNSEL: So can you tell me about the cost damages that you have incurred because of inflation?

JASHINSKY: Yeah. Well, if we had built this in 2021, the rough order of magnitude estimate was about \$200 a square foot.

COUNSEL: Where did you get \$200 a square foot from?

JASHINSKY: Talking to my architect and talking to a general contractor.

¶18 The superior court overruled Dorada Estates' objection on hearsay grounds. We review evidentiary rulings for an abuse of discretion. *Larsen v. Decker*, 196 Ariz. 239, 241, ¶ 6 (App. 2000).

¶19 Hearsay is an out-of-court statement offered to prove the truth of the matter asserted and is generally not admissible unless it falls within a recognized exception. See Ariz. R. Evid. 801(c), 802-04. Our supreme court explored the issue of "value testimony as hearsay" in *State v. Printz*, 125 Ariz. 300 (1980). In *Printz*, an undercover police task force sold television sets to suspected dealers of stolen property. *Id.* at 301. A member of the task force later testified that, based on two months of undercover transactions he had participated in, the value of the television sets was around \$300. *Id.* at 302. In considering whether this testimony was hearsay, the court noted:

Knowledge of value does not necessarily rest on hearsay. It might be supposed that to know value is merely to know what other people say the thing is worth, merely to have heard them offering and accepting prices. But the answer is that these various instances of offers or acceptances of prices, averaged into a mean or probable figure, are what constitute value. The statements of persons declaring their estimates of the prices they would give or receive are not taken, on the credit of those persons, as trustworthy assertions of the fact of

JASHINSKY v. DORADA ESTATES

Decision of the Court

value, but merely as items of conduct which in themselves make up that total fact of conduct which we call value. Thus, if A sits in a merchant's office and listens to the terms accepted and rejected for a dozen articles, he acquires a first-hand knowledge of value; but if he goes in and asks the merchant to tell him the value of a given article, his knowledge is based on a belief in the truth of the merchant's assertion. In the former case, his knowledge is not based on hearsay.

Id. at 302–03 (quoting *State v. Miller*, 108 Ariz. 303, 307–08 (1972) (quoting Wigmore on Evidence (3rd ed.) § 719 (1940))). The court concluded the testimony was not hearsay, explaining: “The witness testified not as to specific information supplied him in the course of a single transaction, but instead stated the figure based upon numerous negotiations.” *Id.* at 303.

¶20 Here, Jashinsky acquired first-hand knowledge of the casita's estimated building cost based on consultations with several individuals—namely, an architect and contractor. The superior court did not abuse its discretion by declining to exclude this testimony as hearsay.

II. We lack jurisdiction to consider the sufficiency of the evidence to sustain the jury verdict.

¶21 Dorada Estates argues that insufficient evidence supported the jury's damages award, making it error for the superior court to deny its motion for judgment as a matter of law. *See* Ariz. R. Civ. P. 50(a).

¶22 We independently review whether we have jurisdiction to address an appellate issue. *Engel v. Landman*, 221 Ariz. 504, 508, ¶ 10 (App. 2009). Appellate jurisdiction is limited by statute. *Eaton v. Unified Sch. Dist. No. 1*, 122 Ariz. 391, 392 (App. 1979). When appealing from a jury trial, to preserve a Rule 50(a) challenge to the sufficiency of evidence, an appellant must move for new trial or renewed motion for judgment as a matter of law. A.R.S. § 12-2102(C); *Marquette Venture Partners II, L.P. v. Leonesio*, 227 Ariz. 179, 182–83, ¶¶ 6–13 (App. 2011).

¶23 Because Dorada Estates failed to move for a new trial or for renewed judgment as a matter of law, we lack jurisdiction to consider whether the evidence was sufficient to sustain the jury verdict.

JASHINSKY v. DORADA ESTATES
Decision of the Court

III. Whether Dorada Estates acted reasonably is a factual determination reserved for the jury.

¶24 Dorada Estates argues the DRC acted reasonably in denying Jashinsky's proposed structure because the community's governing documents afforded it the discretion to do so. Specifically, Dorada Estates argues that the DRC retained broad discretion under the Declaration to deny the proposal even if the proposal substantially complied with both the Declaration and Design Guidelines. Dorada Estates also argues that the proposal did not substantially comply with the Design Guidelines, as the combined square footage of the casita and pergola exceeded the maximum square footage permitted under either version of the Design Guidelines.

¶25 But even if a community association is afforded broad discretion under its governing documents, the exercise of such discretion is constrained by certain duties owed by the association to its members. The duty of good faith and fair dealing is a term implied in all contracts. *See* Restatement (Second) of Contracts § 205 (1981); Restatement (Third) of Property (Servitudes) § 4.1 (2000). The Restatement (Third) of Property (Servitudes) § 6.13(1)(b), (c) (2000) further provides that a community association has a duty to treat members fairly and act reasonably in the exercise of its discretionary powers, including its design-control powers. Arizona has adopted this Restatement-driven approach. *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 202, ¶ 27 (App. 2007).

¶26 Whether a community association breached its duties to its members is a question of fact properly reserved for the jury. *See Maleki v. Desert Palms Pro. Props., L.L.C.*, 222 Ariz. 327, 333, ¶ 28 (App. 2009) ("Whether a party has breached the covenant of good faith and fair dealing is a question of fact." (citation omitted)); *Tierra Ranchos*, 216 Ariz. at 202, ¶ 28 ("[I]ssues of reasonableness are usually questions of fact." (citations omitted)); *Est. of Reinen v. N. Ariz. Orthopedics, Ltd.*, 198 Ariz. 283, 287, ¶ 12 (2000) (stating witness credibility and the weight given to testimony are within the province of the jury).

¶27 Here, by awarding damages to Jashinsky, the jury implicitly found that Dorada Estates breached both its duty of good faith and fair dealing and its duty to act reasonably in exercising its discretionary powers.³ The record supports this finding. From the evidence presented at

³ Throughout this litigation, the parties have treated the duty to treat members fairly and act reasonably as a part of the contractual duty of good

JASHINSKY v. DORADA ESTATES

Decision of the Court

trial, the jury could have found that the DRC behaved unfairly and unreasonably by providing only pretextual reasons to Jashinsky for denying his requests. It could also have found that the DRC behaved unfairly and unreasonably by denying Jashinsky's Revised Architectural Request based on Design Guidelines that were not in effect at the time of his submission.

IV. Jashinsky was not barred from receiving his requested equitable relief merely by not having pled for injunctive relief in his complaint.

¶28 Characterizing the equitable relief Jashinsky sought as injunctive relief, Dorada Estates argues that Jashinsky failed to plead for injunctive relief in his complaint.

¶29 Even if a party fails to allege a particular claim for relief in its complaint, it effectively amends its complaint to include the claim by listing the claim as a material, contested issue in the parties' joint pretrial statement. *Murphy Farrell Dev., LLLP v. Sourant*, 229 Ariz. 124, 128, ¶ 15 (App. 2012); *Carlton v. Emhardt*, 138 Ariz. 353, 355 (App. 1983). Here, in the joint pretrial statement, Jashinsky listed the following questions among the other issues of fact or law he deemed material:

- Whether Defendant is estopped from denying Plaintiff's Revised Architectural Request when Plaintiff had already addressed all issues Defendant had raised in its Notification of Disapproval of Plaintiff's initial Architectural Request?
- Whether Defendant's listing that the only reason for the Notification of Disapproval for Plaintiff's initial Architectural Request was the lack of the buildings being "visually connected" means that it is promissory or

faith and fair dealing. It is unclear, however, whether the former duty is subsumed into the latter. See Restatement (Second) of Contracts § 205; Restatement (Third) of Property (Servitudes) § 6.13 cmt. a ("The duties recognized in this section grow out of the relationship created by servitudes between individually owned property and a common-interest community."); *Riss v. Angel*, 934 P.2d 669, 680-81 (Wash. 1997) (en banc) (recognizing that an association has a duty to act reasonably in addition to its duty to act in good faith in exercising discretionary powers). We need not resolve this issue because the jury was instructed to award damages only if it found that Dorada Estates had breached both duties.

JASHINSKY v. DORADA ESTATES
Decision of the Court

equitably estopped from denying Plaintiff's Revised Architectural Request based on differing or additional reasons?

¶30 We agree with Dorada Estates that the equitable relief Jashinsky sought could be appropriately characterized as injunctive relief. *See* Restatement (Third) of Property (Servitudes) § 8.3, cmt. b (2000) (“Injunctive relief is normally available to redress violations of . . . restrictive covenants . . .”). But by including the above questions in the joint pretrial statement, Jashinsky effectively amended his complaint to include a claim for such relief. Jashinsky framed these questions as requests for promissory or equitable estoppel, but they nevertheless express the relief he desired – namely, a court order requiring Dorada Estates to allow him to build his proposed project. Jashinsky’s decision not to include a claim for relief in his complaint that could be injunctive in nature was not fatal to his cause of action where his questions in the joint pretrial statement asked the court for essentially the same relief.

V. The superior court did not err in awarding Jashinsky’s requested equitable relief.

¶31 In its minute entry awarding equitable relief to Jashinsky, the superior court ruled that Dorada Estates was equitably estopped from relying on the Revised Design Guidelines to deny Jashinsky’s proposal. The court also ruled that Jashinsky was entitled to a declaratory judgment, effectively interpreting Dorada Estates’ governing documents to find that Jashinsky had a right to build his proposed project. *See* A.R.S. §§ 12-1831 to -1845 (authorizing courts to declare the respective rights and obligations of contracting parties).

¶32 Dorada Estates argues that the superior court’s entry of judgment on equitable estoppel and declaratory judgment grounds was inconsistent with the actual relief awarded, which it again characterizes as injunctive. In its final judgment awarding damages and equitable relief, however, the superior court ordered: “[Dorada Estates] shall allow [Jashinsky] to construct a casita and patio as set forth in [Jashinsky]’s [Revised Architectural Request].” We interpret this as ruling on Jashinsky’s questions in the joint pretrial statement, which, as discussed, effectively amended Jashinsky’s pleading. Because the relief pleaded is consistent with the relief that was ultimately awarded, we see no error.

¶33 Dorada Estates also argues that the superior court fashioned an equitable remedy that violated the plain language of Dorada Estates’

JASHINSKY v. DORADA ESTATES
Decision of the Court

governing documents. But the relevant question is not whether the superior court declined to enforce a covenant, but whether doing so amounted to an abuse of discretion. See *Swain v. Bixby Vill. Golf Course Inc.*, 247 Ariz. 405, 413, ¶ 33 (App. 2019) (“Whether a covenant should be enforced depends on equitable considerations, such as the parties’ relative hardships, the parties’ misconduct, public interest, and adequacy of other remedies.”); *Ahwatukee Custom Ests. Mgmt. Ass’n, Inc. v. Turner*, 196 Ariz. 631, 635, ¶ 10 (App. 2000) (affirming that mandatory injunctive relief should not issue to enforce a requirement of formal approval by a community association board, where such approval was arbitrarily and unreasonably withheld); *Loiselle v. Cosas Mgmt. Grp., LLC*, 224 Ariz. 207, 210, ¶ 8 (App. 2010) (stating that the superior court’s equitable remedy is reviewed for an abuse of discretion).

¶34 Equity supports the relief the superior court awarded Jashinsky. The court could consider Dorada Estates’ misconduct, given that the jury found Dorada Estates breached its duties and acted unreasonably. The court could also consider the inadequacy of damages as a remedy, as Jashinsky’s ultimate purpose in bringing this lawsuit was not merely to recover damages but to secure permission to build. On this record, we cannot say the court abused its discretion in fashioning the equitable remedy of permitting Jashinsky to build his proposed project.

VI. We award attorneys’ fees and costs to Jashinsky.

¶35 Jashinsky requests his attorneys’ fees and costs incurred on appeal. Under the terms of the Declaration and A.R.S. § 12-341, we award Jashinsky attorneys’ fees and taxable costs in an amount to be determined upon compliance with Rule 21, ARCAP.

CONCLUSION

¶36 We affirm.



MATTHEW J. MARTIN • Clerk of the Court
FILED: JR