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8 *Attorney for:* Plaintiffs

9 **SUPERIOR COURT OF ARIZONA**  
10 **COCONINO COUNTY**

11 ROBERT R. HAWK and CECELIA J. )  
12 HAWK, husband and wife, )  
13 )  
14 Plaintiffs, )  
15 vs. )  
16 )  
17 PC VILLAGE ASSOCIATION INC., an )  
18 Arizona Corporation, )  
19 )  
20 Defendant. )

Case No.: CV 2011-00775

**COMPLAINT**

For their claim, Plaintiffs allege:

**COMMON ALLEGATIONS**

1. Plaintiffs Robert and Cecelia Hawk ("Hawk") are individuals residing in Coconino County.
2. The Hawks own real property in Coconino County located in the Pine Canyon Subdivision and more specifically identified as:  
  
Lot 197 of the Estates at Pine Canyon Unit Two as shown on the plat thereof, recorded in Case 9, Maps 28, 28A and 28B, records of Coconino County Arizona.
3. PC Village Association Inc., ("PC HOA") is an Arizona non-profit corporation.
4. PC HOA is responsible for managing the Pine Canyon Subdivision.
5. This court has jurisdiction over the parties and the subject matter of this action and venue is proper under A.R.S. § 12-401.

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1 6. The Pine Canyon Subdivision is subject to a Declaration of Covenants Conditions and  
2 Restrictions recorded at instrument number 3171314 as amended by a First Amendment to  
3 Declaration of Covenants Conditions and Restrictions at instrument number 3261475  
4 (collectively, "CC&R's"), both matters being recorded in Coconino County Public Records.

5 7. Section 12.3 of the CC&R's state:

6 12.3 Signs

7 No sign of any kind shall be Visible from Neighboring Property without  
8 the approval of the Village Association or the Design Review Committee,  
9 except: (a) signs used by Developer or any Related Party in connection  
10 with the development or sale of Lots, Tracts or Condominium Property of  
11 the Property; (b) signs required by legal proceedings, or the prohibition of  
12 which is precluded by law; or, (c) signs required for traffic control and  
13 regulation of Common Areas. No "For Sale" or "For Rent" sign may be  
14 posted on any Lot, Tract or Condominium Property.

15 8. A.R.S. § 33-1808 states in pertinent part:

16 **F.** Notwithstanding any provision in the community documents, an  
17 association shall not prohibit the indoor or outdoor display of a for sale  
18 sign and a sign rider by an association member on that member's property,  
19 including a sign that indicates the member is offering the property for sale  
20 by owner. The size of a sign offering a property for sale shall be in  
21 conformance with the industry standard size sign, which shall not exceed  
22 eighteen by twenty-four inches, and the industry standard size sign rider,  
23 which shall not exceed six by twenty-four inches. With respect to real  
24 estate for sale or lease in the planned community, an association shall not  
25 prohibit or otherwise regulate any of the following:

26 1. Temporary open house signs or a member's for sale sign. The  
association shall not require the use of particular signs indicating an  
open house or real property for sale and may not further regulate the  
use of temporary open house or for sale signs that are industry  
standard size and that are owned or used by the seller or the seller's  
agent.

**COUNT I – DECLARTORY AND INJUNCTIVE RELIEF**

1  
2 9. On August 16, 2011 Plaintiffs caused to be posted a “For Sale” sign on their own lot in the  
3 Pine Canyon Subdivision.

4 10. The sign was in conformity with industry standards and its size did not exceed eighteen by  
5 twenty-four inches. There was no rider as part of the sign.

6 11. The Defendant, PC HOA caused the sign and post to be immediately removed from  
7 Plaintiff’s property that same day.

8  
9 12. On August 17, 2011 Plaintiff’s caused a second “For Sale” sign to be posted on their lot in  
10 the Pine Canyon Subdivision.

11 13. The sign was in conformity with industry standards and its size did not exceed eighteen by  
12 twenty-four inches. There was no rider as part of the sign.

13 14. The Defendant, PC HOA caused the second sign and post to be immediately removed from  
14 Plaintiff’s property that same day.

15 15. A controversy exists between the parties concerning the validity and enforceability of the  
16 CC&R’s with respect to the posting of a “For Sale” sign on Plaintiffs’ own lot as follows:

17  
18 A. Plaintiff contends that A.R.S § 33-1808(F) prevents the governing documents of  
19 the Pine Canyon Subdivision (the CC&R’s) from restricting the posting of a “For  
20 Sale” sign as long as the sign is within the allowed size limits. Plaintiff further  
21 contends that A.R.S § 33-1808(F) invalidates and makes section 12.3 of the  
22 CC&R’s illegal, void and unenforceable to the extent that it is in conflict with  
23 Arizona law which prohibits such a restriction in the governing documents.

24 B. The Defendant contends that that the CC&R’s were recorded prior to the  
25 enactment of A.R.S. § 33-1808(F) and the law is not retroactive and therefore, the  
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1 law does not apply to Defendant and they may legally enforce section 12.3 of the  
2 CC&R's.

3 16. By reason of the foregoing, a declaratory judgment is both necessary and proper in order to  
4 set forth and determine the rights, obligations and liabilities of the parties in relation to the  
5 applicable law and CC&R's.

6 17. This action arises under Uniform Declaratory Judgment Act, A.R.S. § 12-1831 *et seq.*

7 18. Plaintiffs are also entitled to injunctive relief prohibiting Defendant from removing a "For  
8 Sale" sign posted on Plaintiffs' property that is in conformity with A.R.S. § 33-1808.

9 19. This matter arises out of contract and Plaintiffs are entitled to recover their attorney's fees  
10 and court costs.  
11

12 **WHEREFORE**, Plaintiff respectfully requests that this Court enter Judgment in favor of  
13 Plaintiffs and against Defendant as follows:

- 14 A. Declaring that A.R.S § 33-1808(F) supersedes section 12.3 of the CC&R's and  
15 that section 12.3 of the CC&R's is therefore, illegal, void and unenforceable with  
16 respect to Plaintiffs posting a "For Sale" sign on their own lot;  
17 B. For an injunction prohibiting Defendant from removing "For Sale" signs that are  
18 in conformity with A.R.S. § 33-1808 from Plaintiffs' property;  
19 C. Awarding Plaintiffs' their costs and attorney's fees incurred herein;  
20 D. Awarding such other and further relief as this Court deems just and proper.  
21

22 **RESPECTFULLY** submitted this 15<sup>th</sup> day of September, 2011.

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25 TEVIS REICH  
26 *Attorney for Plaintiffs*

VERIFICATION

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STATE OF ARIZONA        )  
                                  ) ss.  
County of Coconino        )

Cecilia Hawk first being duly sworn, upon oath deposes and says:

I Cecilia Hawk am a Plaintiff in the foregoing action and make this verification in that capacity; I have read the foregoing complaint and know the contents thereof, and that the matters and things therein alleged are true, except as to those matters and things therein alleged upon information and belief, and as to those I believe them to be true.

*Cecilia Hawk*  
\_\_\_\_\_  
Cecilia Hawk  
Plaintiff

**SUBSCRIBED AND SWORN** to before me this 15<sup>th</sup> day of September, 2011, by Cecilia Hawk.

*Nicole Grohmann*  
\_\_\_\_\_  
NOTARY PUBLIC



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VERIFICATION

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STATE OF ARIZONA        )  
                                  ) ss.  
County of Coconino        )

Robert Hawk first being duly sworn, upon oath deposes and says:

I Robert Hawk am a Plaintiff in the foregoing action and make this verification in that capacity; I have read the foregoing complaint and know the contents thereof, and that the matters and things therein alleged are true, except as to those matters and things therein alleged upon information and belief, and as to those I believe them to be true.

*Robert Hawk*

Robert Hawk  
*Plaintiff*

**SUBSCRIBED AND SWORN** to before me this 15<sup>th</sup> day of September, 2011, by Robert Hawk.

*Nicole Grohmann*  
NOTARY PUBLIC



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Category

CV



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