

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

SUNDANCE ADULT VILLAGE HOMEOWNERS ASSOCIATION,
Plaintiff/Appellant,

v.

BILL ELLIOTT AND MARY ELLIOTT, HUSBAND AND WIFE; ROBERT C. LAMB AND SHARON R. LAMB, HUSBAND AND WIFE, AKA ROBERT LAMB AND SHARON LAMB, HUSBAND AND WIFE; HELEN J. HORNE AND EDWARD L. HORNE, WIFE AND HUSBAND AS COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP; JASON JOSEPH, A SINGLE MAN; MIKE MARTIN, AN UNMARRIED MAN; KATHLEEN LAMONT, AN UNMARRIED WOMAN; LELAND PINNEY, AN UNMARRIED MAN; CAROLINA ALCALA, AN UNMARRIED WOMAN; DAVID H. OTIS AND LEANN K. OTIS, TRUSTEES OF THE DAVE AND LEANN OTIS FAMILY TRUST, DATED MARCH 27, 2008,
Defendants/Appellees.

No. 2 CA-CV 2024-0314
Filed January 6, 2026

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See [Ariz. R. Sup. Ct. 111\(c\)\(1\)](#); [Ariz. R. Civ. App. P. 28\(a\)\(1\)](#), (f).

Appeal from the Superior Court in Maricopa County
No. CV2022090753
The Honorable Rodrick Coffey, Judge

AFFIRMED

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COUNSEL

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By Jonathan A. Dessaules and David E. Wood
Counsel for Defendants/Appellees

MEMORANDUM DECISION

Judge Kelly authored the decision of the Court, in which Presiding Judge Vásquez and Judge Gard concurred.

K E L L Y, Judge:

¶1 Sundance Adult Village Homeowners Association (“Sundance”) appeals from the superior court’s grant of summary judgment in favor of homeowners living within the association (“the Residents”). For the following reasons, we affirm.

Factual and Procedural Background

¶2 “On appeal from a summary judgment, we view the facts in the light most favorable to the party against whom judgment was entered and draw all justifiable inferences in its favor.” *Modular Mining Sys., Inc. v. Jigsaw Techs., Inc.*, 221 Ariz. 515, ¶ 2 (App. 2009). Sundance governs a residential community located in Buckeye, Arizona. In addition to residential units, the community includes a “Common Area” comprised of common area tracts for resident use. In the particular part of the community in question here, a wall separates the Common Area from adjoining private property lots containing single family detached houses. The wall straddles the relevant property lines, sitting partially on the Common Area and partially on the Residents’ lots.

¶3 In 2022, Sundance filed a complaint seeking, among other things, a declaration that the Residents, the owners of eight lots bordering

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the wall, “are responsible for contributing to half of the cost” of its “repair and replacement.” The complaint specified that water damage, discovered approximately a year prior, necessitated efforts to correct the wall. In 2023, both parties filed competing summary judgment motions.

¶4 In 2024, after a hearing, the superior court granted the Residents’ summary judgment motion and denied Sundance’s motion, concluding that the latter “shall be responsible for the costs of repairing the entire wall that separates [the Residents’] Lots from the common area,” absent a showing that the Residents caused the damage to the wall. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Discussion

¶5 Sundance argues that the superior court misinterpreted agreements between itself and the Residents and thus erred as a matter of law. “We review a trial court’s grant of summary judgment *de novo*.” *Hourani v. Benson Hosp.*, 211 Ariz. 427, ¶ 13 (App. 2005). A motion for summary judgment may only be granted if “there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” Ariz. R. Civ. P. 56(a); *see also Hourani*, 211 Ariz. 427, ¶ 13. We will uphold the court’s summary judgment rulings if they are correct for any reason. *Link v. Pima County*, 193 Ariz. 336, ¶ 12 (App. 1998).

¶6 The parties acknowledge that they are all subject to the Declaration of Active Adult Homeowner Benefits and Covenants, Conditions and Restrictions for the community (“the Declaration”). Section 5.01 thereof dictates that Sundance “will be responsible for the maintenance, repair, and replacement of the Active Adult Common Area.” Under Section 1.17, the “Active Adult Common Area” or “Common Area” is defined as including “all of the common area tracts owned by the Active Adult Housing Association” as well as “all structures . . . located on the common area tracts, and all rights, easements, and appurtenances relating to the common area tracts owned by [Sundance].” “Living Units,” on the other hand – which Section 1.28 of the Declaration defines in relevant part as “each Lot upon which a Detached Dwelling Unit is or is planned to be constructed” – are to be “maintained by the Owner of the applicable Living Unit,” under Section 5.03.

¶7 Section 7.03 of the Declaration provides for the creation of an “Architectural Committee,” which may “adopt, amend, and repeal rules and regulations or design guidelines.” The Declaration establishes that

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such rules must “be interpreted in a manner that is consistent with [the Declaration] and . . . will have the same force and effect as if they were established in full within and were part of [the] Declaration.” However, under Section 11.16, “If there are any discrepancies, inconsistencies, or conflicts between the provisions of [the] Declaration and the other Active Adult Project Documents, the provisions of [the] Declaration will prevail in all instances.” The procedure to amend the Declaration is described in Section 11.07, which specifies that “[a]ll amendments will be deemed adopted only if approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of 75% or more of the total number of eligible votes in the Active Adult Housing Association.”

¶8 In 2012, the Architectural Committee amended the Architectural Design Guidelines and Association Rules (“the Guidelines”) that had been adopted by Sundance in 2006. In pertinent part, the Committee adopted a new Guideline I(h)(7), which states, with respect to walls that separate a Lot from the Common Area:

Any Wall or Fence which separates a Lot and the Sundance Adult Village Homeowners Association Common Area and is a Declarant/Builder installed Fence or Wall shall be maintained, repaired and replaced by the Owner of the Lot or Parcel, except that Sundance Adult Village Homeowners Association shall be responsible for the painting, repair, and maintenance of the Wall or Fence which is visible from the Sundance Adult Village Homeowners Association Common Area.

¶9 In denying Sundance’s summary judgment motion, the superior court determined that the wall, under Section 1.17 of the Declaration, is a “structure relating to common area tracts” such that its maintenance and repair are Sundance’s responsibility under Section 5.01 of the Declaration. Although the superior court acknowledged that Guideline I(h)(7) supports Sundance’s contention that the Residents possess partial responsibility for this repair, it concluded that this guideline “directly conflicts” with Section 5.01 of the Declaration. Accordingly, citing Sections 7.03 and 11.16 of the Declaration, the court concluded that “Section 5.01 of the Declaration, which makes [Sundance] responsible for repairing the wall

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prevails over the inconsistent provision of the [Architectural Committee] Guidelines.”

¶10 Sundance argues that the superior court erred in failing to harmonize provisions of the Declaration and the Guidelines, which it maintains “are entirely consistent” with each other and contemplate both parties’ “shared responsibility to repair [the] wall.” Sundance further contends that the court misinterpreted the term “Common Area” in Section 1.17 of the Declaration because the provision “includes two series of items that fall within the definition of Common Area”: tangible items “located on the common area tracts” and intangible items “relating to the common area tracts.” Sundance asserts that, because the wall is a physical structure and therefore tangible, Sections 1.17 and 5.01 of the Guidelines require Sundance to engage in repair and maintenance only to the extent that the wall “is actually located *on* the Common Area.” On this basis, Sundance claims it is responsible for the portion of the wall located on the Common Area and that the Residents, pursuant to their obligation under Section 5.03 to maintain their “Living Units,” “have an obligation to repair and maintain that portion of the Wall that is located on [Residents’] Lots.” Sundance argues that this interpretation is both supported by other Declaration provisions and avoids absurd results.

¶11 A declaration of covenants, conditions, and restrictions forms “a contract between individual landowners and all the landowners bound by the restrictions, as a whole,” the interpretation of which we review *de novo*. *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 532, ¶¶ 9, 14 (2022). Such declarations, including their provisions specifying whether and how they can be amended, create vested rights on which unit owners are entitled to rely. *See Scholten v. Blackhawk Partners*, 184 Ariz. 326, 330 (App. 1995).

¶12 “When the terms of a contract are clear and unambiguous, the trial court gives effect to it as written.” *Skydive Ariz., Inc. v. Hogue*, 238 Ariz. 357, ¶ 40 (App. 2015); *see also Powell v. Washburn*, 211 Ariz. 553, ¶ 9 (2006) (same regarding clear, unambiguous restrictive covenants). “It is not within the province or power of the court to alter, revise, modify, extend, rewrite or remake an agreement,” because the court’s duty “is confined to the construction or interpretation of the one which the parties have made for themselves.” *Goodman v. Newzona Inv. Co.*, 101 Ariz. 470, 472 (1966). If the parties’ intent is expressed clearly and unambiguously, “there is no need or room for construction or interpretation and a court may not resort thereto.” *Id.*

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¶13 As noted above, the superior court determined that, under Sections 1.17 and 5.01 of the Declaration, the wall's maintenance and repair fall to Sundance because it is a "structure relating to common area tracts." Sundance is correct that this reading of Section 1.17 ignores the distinction between the two separate clauses, one regarding structures and other improvements "located on the common area tracts," and the other regarding "all rights, easements, and appurtenances relating to the common area tracts owned by [Sundance]." Sundance asserts that—like "rights" and "easements"—the term "appurtenances" describes only "intangible benefits associated with the Active Adult Common Area."

¶14 In construing a contract, we consider "a provision's meaning in the context of the entire contract," *Terrell v. Torres*, 248 Ariz. 47, ¶ 14 (2020), giving words "their ordinary, common sense meaning," *Aztar Corp. v. U.S. Fire Ins. Co.*, 223 Ariz. 463, ¶ 17 (App. 2010) (quoting *A Tumbling-T Ranches v. Flood Control Dist. of Maricopa Cnty.*, 220 Ariz. 202, ¶ 23 (App. 2008)). No party disputes that the wall at issue here is a structure. Furthermore, Sundance concedes that the wall is, at least partially, located directly "on the common area tract." Therefore, pursuant to the ordinary meaning of the word "on," the wall's placement renders it "on the common area tract" for Section 1.17 purposes. See *Bridgestone/Firestone N. Am. Tire, L.L.C. v. A.P.S. Rent-A-Car & Leasing, Inc.*, 207 Ariz. 502, ¶ 58 (App. 2004) ("In determining the ordinary meaning of a word, we may refer to an established and widely used dictionary." (quoting *State v. Mahaney*, 193 Ariz. 566, ¶ 12 (App. 1999))); *On*, Merriam-Webster, <https://www.merriam-webster.com> (last visited Jan. 5, 2026) (among other definitions, "used as a function word to indicate" either "position in contact with and supported by the top surface of" or "the location of something"). Accordingly, under the plain language of Section 1.17, the wall falls within the definition of "Common Area." See *Chandler Med. Bldg. Partners v. Chandler Dental Grp.*, 175 Ariz. 273, 277 (App. 1993) ("The controlling rule of contract interpretation requires that the ordinary meaning of language be given to words where circumstances do not show a different meaning is applicable.").

¶15 Consequently, the superior court did not err in concluding that Sundance is required to repair the entire wall pursuant to its Section 5.01 responsibility concerning the "maintenance, repair, and replacement" of the "Common Area" as defined at Section 1.17 of the Declaration. See *Hourani*, 211 Ariz. 427, ¶ 13; see also *Glaze v. Marcus*, 151 Ariz. 538, 540 (App. 1986) ("We will affirm the trial court's decision if it is correct for any reason, even if that reason was not considered by the trial court."); see also *Leflet v.*

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Redwood Fire & Cas. Ins. Co., 226 Ariz. 297, ¶ 12 (App. 2011) (appeals court may affirm superior court on any basis where record provides support).¹

¶16 Sundance is correct that Guideline I(h)(7), as enacted by the Architectural Committee in 2012, provides that the Residents and Sundance possess a shared financial obligation concerning a wall that separates a Lot and the Common Area, based on its visibility from the Common Area. However, this provision deviates from Section 5.01's assignment of sole responsibility to Sundance, absent a repair "[n]ecessitated by [an] [o]wner."² As such, enforcement of the guideline would effectively alter the Declaration in violation of Section 11.07's detailed amendment procedure, which requires an affirmative vote of at least seventy-five percent of Sundance eligible votes. And, as noted above, Section 11.16 of the Declaration expressly requires that, where "any discrepancies, inconsistencies, or conflicts" exist between the Declaration and other documents, the Declaration trumps "in all instances." This court will not "alter, revise, modify, extend, rewrite or remake" the parties' agreement by disregarding that requirement, and we thus decline to apply the conflicting portion of Guideline I(h)(7) under these facts. *See Goodman*, 101 Ariz. at 472.

¶17 Sundance contends that the Architectural Committee possessed the authority to enact Guideline I(h)(7) and thereby alter the maintenance and related financial obligations of Sundance and all homeowners, including the Residents. In support, Sundance argues that under Section 7.03 of the Declaration, the Committee is empowered to "adopt, amend, and repeal rules and regulations *or* design guidelines." The Residents counter that the Committee lacks this power, as it "may only create rules of aesthetics and procedures, not financial burdens." They likewise cite Section 7.03 of the Declaration, but for the opposite proposition, asserting that the provision refers to the Architectural Rules simply as "design guidelines."

¶18 Sections 7.01 through 7.07 of the Declaration, which pertain to "Architectural Control," do not support the broad authorization asserted by Sundance. The provisions throughout Article Seven are fundamentally

¹Given our determination that the wall is a "structure" located "on the common area tract," we need not resolve whether it is also an "appurtenance[]" relating to the common area tracts.

²On appeal, Sundance does not allege that the Residents' actions have necessitated the repairs at issue here.

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concerned with aesthetic matters and related procedures, as evidenced by the language of Section 7.03, which gives the Committee power to “adopt, amend, and repeal rules and regulations or design guidelines regarding the procedures for the Architectural Committee approval and the architectural style, nature, kind, shape, height, materials, exterior colors, surface texture, and location of any improvement on a Living Unit.” As such, Article Seven does not grant the Architectural Committee expansive authority to impose new financial obligations upon homeowners that did not exist in the original Declaration. See *Terrell*, 248 Ariz. 47, ¶ 14; *MT Builders, L.L.C. v. Fisher Roofing, Inc.*, 219 Ariz. 297, n.9 (App. 2008) (“[A] cardinal rule of contract construction requires us to look at the agreement as a whole, reading each part in light of all other parts.”); see also *Scholten*, 184 Ariz. at 330 (emphasizing “vested rights” of lot owners “who are entitled to rely on the provisions of the Declaration of Restrictions”); *Kalway*, 252 Ariz. 532, ¶ 14 (even full homeowners’ association “cannot create new affirmative obligations where the original declaration did not provide notice to the homeowners that they might be subject to such obligations”). Accordingly, the Architecture Committee lacked authority to modify the existing financial burdens found in the Declaration regarding Sundance’s financial responsibility for the repair of walls located, in whole or in part, on the Common Area.

Attorney Fees and Costs

¶19 Both parties request an award of attorney fees and costs on appeal pursuant to A.R.S. §§ 12-341 and 12-341.01 and Section 11.19 of the Declaration. As the prevailing party in an action instituted to enforce the provisions of the Declaration—a contract whose Section 11.19 requires the award of fees and costs to such a prevailing party—the Residents are entitled to recover their attorney fees and costs upon their compliance with Rule 21, Ariz. R. Civ. App. P.

Disposition

¶20 For the foregoing reasons, we affirm the superior court’s summary judgment rulings.