

**SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI**

<p>VILLIAGE OF OAK CREEK ASSOCIATION,</p> <p>Plaintiff,</p> <p>-vs-</p> <p>LANCE E. BONHAM, JOHN DOES I-V, inclusive; JANE DOES I-V, inclusive; BLACK CORPORATIONS I-V, inclusive; WHITE PARTNERSHIPS I-V, inclusive; UNKNOWN HEIRS AND DEVISEES OF EACH OF THE ABOVE-NAMED DEFENDANTS, if deceased,</p> <p>Defendants.</p>	<p><b>Case No. V1300CV202280081</b></p> <p><b>RULING</b></p>
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<p><b>HONORABLE LINDA WALLACE</b></p> <p><b>DIVISION PRO TEM B</b></p>	<p><b>BY: Melissa Crouse, Judicial Assistant</b></p> <p><b>DATE: September 8, 2022</b></p>
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The court reviewed:

1. Defendant Lance Bonham's Motion to Dismiss filed May 24, 2022;
2. Plaintiff's Response in Opposition to Defendant's Motion to Dismiss filed June 8, 2022;
3. Defendant Lance Bonham's Reply in Support of Motion to Dismiss filed June 20, 2022; and
4. Defendant's Certificate of Good Faith Consultation filed August 24, 2022.

Defendant's Motion seeks dismissal of the Complaint based upon two arguments: 1) that the amendment restricting short term rentals is invalid under *Kalway*, and 2) that the amendment did not have sufficient votes to be enacted. *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 532, 506 P.3d 18 (2022).

Under Rule 12(b)(6), dismissal is only appropriate if as a matter of law the Plaintiff is not entitled to relief under any interpretation of the facts susceptible of proof. Ariz.R.Civ.Pro. R. 12(b)(6). Motions to dismiss for failure to state a claim filed at the initial pleading stage are

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disfavored. *Acker v. CSO Chevira*, 188 Ariz. 252, 934 P.2d 816 (App.Div.1 1997).

As stipulated to by the parties, Defendant owns property (“Property”) within the Village of Oakcreek Association planned community. *See* Stipulation of Material Facts and Exhibits, 06/08/2022. The Association is governed by the Master Declaration of Restrictive Covenants for all Property in the Village of Oakcreek Restated & Amended, which was recorded at Document # 2014-0021505 on May 13, 2014 (“the Declaration”). *Id.* The original declaration was recorded at Book 389, Page 950, records of Yavapai County, on June 17, 1981 (“Original Declaration”). *See* Motion, Ex. 3. The provision containing the restrictions on residential rentals is found in the amendment that was re-recorded on May 3, 2017 (“2017 Amendment”).

Plaintiff urges denial of the Motion because Defendant obtained title to the Property after the 2017 Amendment was recorded. Defendant disputes the timing of equitable title to the Property as he obtained it through his mother’s trust as a beneficiary, and his mother obtained title to the Property in 1989.

The court finds that Defendant did not purchase the property after the recording of the 2017 Amendment such that he would be bound by it without review of whether the notice requirement was met. In other words, the 2017 Amendment’s provision concerning the restriction on residential rentals must be reviewed under the notice standard of *Dreamland and Kalway. Dreamland Villa Community Club, Inc. v. Raimey*, 224 Ariz. 42, 226 P.3d 411 (App. 2010), *Kalway*, 252 Ariz. 532, 506 P.3d 18 (2022).

In the present case, the 2017 Amendment is not tethered to the Original Declaration nor the Declaration. The Original Declaration and Declaration both do not treat residential rentals as business activities, and they do not restrict residential rentals. Moreover, the Original Declaration and Declaration do not put the property owners on sufficient notice that residential rentals could be restricted in future amendments. The existence, or lack of existence, of a county ordinance is not material to this analysis.

The court finds that, as it relates to Defendant, the residential rental restriction of the 2017 Amendment is invalid. Because the residential rental restriction of the 2017 Amendment is invalid as it relates to Defendant, that provision is stricken as it severable. *Kalway*, 252 Ariz. 532, 506 P.3d 18 (2022) (citing *Valley Med. Specialists v. Farber*, 194 Ariz. 363, 372 ¶ 30, 982 P.2d 1277, 1286 (1999)).

Because the amendment restricting residential rentals fails the sufficient notice test of *Kalway* and *Dreamland*, the court does not address Defendant’s argument regarding the sufficiency of votes for the 2017 Amendment. *Kalway*, 252 Ariz. 532, 506 P.3d 18 (2022), *Dreamland Villa Community Club, Inc.*, 224 Ariz. 42, 226 P.3d 411 (App. 2010).

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Under this ruling, the deficiency of the Complaint cannot be cured by further pleading.

Therefore, IT IS ORDERED the Defendant's Motion to Dismiss is GRANTED.  
Defendant is directed to submit a form of order within twenty (20) days.



eSigned by WALLACE, LINDA 09/08/2022 16:25:03 UTHXQOKk

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Hon. Linda Wallace

cc: Mark J. Bainbridge – The Bainbridge Law Firm, LLC (e)  
Charlene Cruz/Tessa Husted – Carpenter, Hazlewood, Delgado & Bolen, LLP (e)

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