

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

VILLAGE OF OAKCREEK
ASSOCIATION,

Plaintiff / Appellant,

vs.

LANCE BONHAM; JOHN DOES I-V,
INCLUSIVE; JANE DOES I-V,
INCLUSIVE; BLACK CORPORATIONS
I-V; WHITE PARTNERSHIPS I-V,
inclusive; Unknown Heirs and Devisees of
each of the above-names Defendants, if
deceased,

Defendant / Appellee.

**Court of Appeals
Division One
1 CA-CV 22-0780**

**Yavapai County
Superior Court
Case No. V1300-CV2022-80081**

APPELLANT’S REPLY BRIEF

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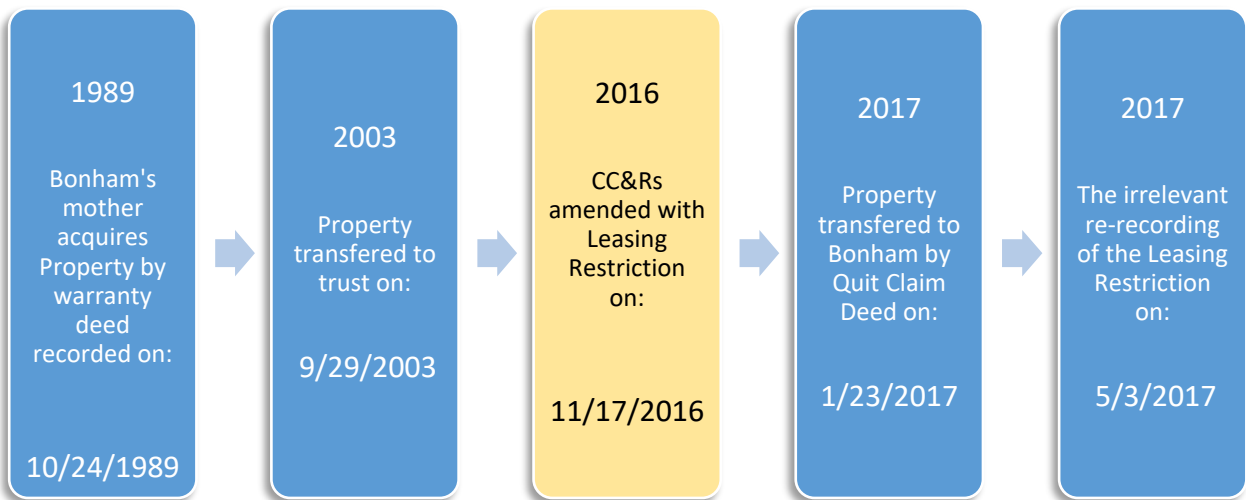
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INTRODUCTION

I. CRITICAL TIMELINE TO DETERMINATION OF ISSUES ON APPEAL

This chart depicts the relevant timeline critical to the determination of the issues on appeal:



The 2016 Amendment established a Lease Restriction minimum lease term of thirty (30) days. [IR #1 at Exhibit C]. The Association then re-recorded the identical Lease Restriction language in 2017 for the sole purpose of correcting a clerical error. The minimum lease term provision was unchanged. Bonham agrees that the re-recording is largely irrelevant to the analysis. [Appellee's Answering Brief at p. 4 footnote²].

The Association's Complaint enforces the Lease Restriction seeking, among other things, for the Trial Court to enter preliminary and permanent injunctions ordering Bonham to lease the Property for no less than thirty (30) days. [IR #1].

Bonham’s Motion to Dismiss challenged the validity of the 2016 Amendment. In granting Bonham’s Motion to Dismiss, the Trial Court stated, “The court finds that Defendant did not purchase the property after recording of the 2017 Amendment such that he would be bound by it without review as to whether the notice requirement was met.” [IR #25].

ARGUMENT

I. THE TRIAL COURT ERRED IN THE APPLICATION OF THE LAW BASED ON THE WRONG RECORDING DATE OF THE AMENDMENT.

Bonham argues that the 2016 Amendment is invalid because Bonham was not on sufficient notice. [Appellee’s Answering Brief at p. 5]. Bonham argues that there is not sufficient notice because the 2016 Amendment cannot serve as notice to Bonham since he acquired his interest in the Property “over a decade” before the Amendment was recorded. [Appellee’s Answering Brief at p. 7].

“The notice requirement relies on a homeowner’s reasonable expectations based on the declaration in effect *at the time of purchase...*” [*Kalway v. Calabria Ranch HOA, LLC*](#), 252 Ariz. 532, 538 (2022). Emphasis Added. This means that the relevant time period for the analysis of sufficient notice is November 17, 2016 when the Lease Restriction was recorded. The relevant “time of purchase” is when Bonham became an Owner, as defined by the Declaration. The Declaration defines Owner at Section 2(L) as follows:

“Owner” means the record owner, whether one or more persons of Legal, beneficial or equitable title to fee simple interest to a Lot or Unit. **In the case of Lots, the fee simple title to which is vested in a trustee pursuant to A.R.S. Section 33-801, et seq., the Trustor shall be deemed to be the “Owner.”** [IR #1 at Exhibit B]. Emphasis Added.

The Property is Lot 75 in the Association.

“A trust is a form of ownership in which the legal title to property is vested in a trustee, who has equitable duties to hold and manage it for the benefit of the beneficiaries.” [Restatement of Trusts, Second, § 2 \(1959\)](#). From 2003 to 2017, Bonham was a beneficiary of his mother’s trust. Pursuant to the Declaration, Bonham was not an Owner until the Property was transferred to him by Quit Claim Deed on January 23, 2017.

The Court’s ruling was based on a conclusion that “Defendant did not purchase the property after the recording of the 2017 Amendment.” That basis is an error because (1) it is the 2016 Amendment that is relevant and not the 2017 re-recording, and (2) Bonham became an Owner, as defined by the Declaration, after the 2016 Amendment was recorded. Pursuant to the [Kalway](#) test, the 2016 Amendment is valid because Bonham had actual and record notice of it before he became an Owner. The Trial Court erred in the application of the law based on the wrong recording date of the amendment.

II. THE TRIAL COURT ERRED IN CONCLUDING THAT THE PROPERTY IS NOT BOUND BY THE LEASE RESTRICTION

Bonham argues that the 2016 Amendment is invalid because Bonham was not on sufficient notice. Bonham argues that there is not sufficient notice because “the Declaration prior to the 2016 Amendment did not restrict rentals.” [Appellee’s Answering Brief at p. 7].

Pursuant to [Arizona Rule of Civil Procedure 12\(b\)\(6\)](#), the allegations in the Association’s Complaint must be taken as true, and all reasonable inferences from those allegations must be drawn in the Association’s favor in evaluating the Motion. “Dismissal for failure to state a claim is appropriate only if as a matter of law ... plaintiffs would not be entitled to relief under any interpretation of the facts susceptible to proof. [Rowland v. Kellogg Brown & Root, Inc.](#), 210 Ariz. 530, 534, ¶ 15, 115 P.3d 124, 128 (App. 2005); [State ex rel. Corbin v. Pickrell](#), 667 P.2d 1304, 1309 (Ariz. 1983).

The facts in the Complaint, taken as true, establish that Bonham had sufficient notice of the Amendment. Section 4.02 of the Declaration originally restricted the Property to residential use and limited such use to “personal residential purposes.” Section 4.03 of the Declaration originally prohibited business of any kind from being conducted from or located on properties subject to the Declaration. It was also reasonably foreseeable that when [A.R.S. § 11-269.17](#) invalidated the short-term rental

restrictions of the Planning and Zoning Ordinances of Yavapai County, an amendment would be necessary to preserve the original character of the Declaration prohibiting short-term rentals. Therefore, the Amendment is not “entirely new or different in character” or untethered to the original Declaration, as [Kalway](#) describes.

The fact that previous courts in the jurisdiction have already held that the 2016 Amendment was valid and short-term rentals may be restricted proves that there is an interpretation of the facts entitling the Association relief. [IR #13-14 at p. 10 ¶ E].

CONCLUSION

The Trial Court erred in the application of the law based on the wrong recording date of the amendment. The Trial Court erred in entering judgment that the Property is not bound by the 2016 Amendment. The 2016 Amendment was recorded at the time Bonham became Owner of the Property. As such, any additional analysis under [Kalway](#) to determine sufficient notice is moot. Still, the 2016 Amendment otherwise passes the [Kalway](#) sufficient notice test because the Lease Restriction was not “entirely new and different in character, untethered to an original covenant.” [Kalway v. Calabria Ranch HOA, LLC](#), 506 P.3d 18, 25 (2022). Rather, the Lease Restriction is valid under [Kalway](#) because it merely refined the existing covenants against business use and filled in a gap left by [A.R.S. § 11-269.17](#) for restricting short-term rentals. *Id.*

For the foregoing reasons, the Association respectfully requests that the Court reverse the Superior Court’s decision on the matters addressed herein.

RESPECTFULLY SUBMITTED this 4th day of May, 2023.

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REQUEST FOR ATTORNEYS' FEES AND COSTS

Additionally, the Association hereby gives notice that it intends to claim attorneys' fees and costs pursuant to [Arizona Rule of Civil Appellate Procedure 21\(a\)](#), ARS [12-341](#) and [12-341.01](#) and Declaration section 5.13.

RESPECTFULLY SUBMITTED this 4th day of May, 2023.

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CERTIFICATE OF COMPLIANCE

This Certificate of compliance concerns a brief, and is submitted under Rule 14(a)(5) of Civil Appellate Procedure. The undersigned certifies that **APPELLANT’S REPLY BRIEF** to which this Certificate is attached uses proportionally spaced type of 14 points or more, is double-spaced using a roman font (Times New Roman), and contains 1075 words, which does not exceed the word limit that is set by Rule 14.

DATED this 4th day of May, 2023.

CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP

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CERTIFICATE OF SERVICE

Pursuant to Ariz. R. Civ. App. P. 4, the undersigned certifies that **APPELLANT'S REPLY** was filed and served as follows:

FILED: Electronically filed with:
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