

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-009400

07/23/2018

HONORABLE ROGER E. BRODMAN

CLERK OF THE COURT

M. Corriveau

Deputy

C J DESIGN & CONSTRUCTION
CORPORATION, et al.

CATHERINE CONNER

v.

686 NORTH L L C, et al.

GREGORY J GNEPPER

CHRISTOPHER D PAYNE
JUDGE BRODMAN

RULING ON APPLICATION FOR PRELIMINARY INJUNCTION

On July 19, 2018, the Court held a hearing on plaintiff's application for a preliminary injunction. The parties agreed to stipulated facts and several documents were admitted into evidence. The Court reviewed the legal briefs and responses. Neither party presented testimony, but exhibits were admitted into evidence.

I. STANDARDS FOR PRELIMINARY INJUNCTION

An applicant for a preliminary injunction must show: (1) a strong likelihood of succeeding on the merits; (2) the possibility of irreparable injury not remediable by damages if relief is withheld; (3) a balance of the equities in its favor; and (4) that public policy favors granting the relief. *IB Property Holdings, LLC v. Rancho Del Mar Apartments, Ltd. Partnership*, 228 Ariz. 61, 64 – 65, ¶ 9 (App. 2011); *Smith v. Arizona Citizens Commission*, 212 Ariz. 407, 410-11 (2006). This test is flexible based on specific facts and circumstances, and is a sliding scale. *Id.*

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II. ANALYSIS

The Court adopts by reference the undisputed facts set forth at pages 2:17-7:21 of the Joint Pretrial Statement.

In analyzing this request, the Court must interpret A.R.S. § 33-1228. There is no published authority on this statute in Arizona.

The instant action is governed by the Declarations and Arizona statutes. When plaintiff purchased property in the Condominium Association, it was aware that the condominium could be terminated. In fact, Article 11.1 of the Declarations provides as follows:

11.1 Termination. The Condominium may be voluntarily terminated in the manner provided in the Act at any time.

The Act is defined to be the “Arizona Condominium Act, Chapter 9 of Title 33 of the Arizona Revised statutes of 1956, as amended from time to time.” Declarations at Article 2.1. Thus, plaintiff purchased its units with the contractual understanding that the condominium could be terminated, its rights defined by the termination provisions of Arizona law, and that modifications of the law made by the Legislature would govern.

On July 2, 2018, a “Special Meeting of Owners” was held. Based on its overwhelming 95% majority, representatives of 668 North voted to ratify the terms of the proposed Termination Agreement, approve of two appraisers, and enter into the Termination Agreement.

Arizona has a statute, A.R.S. § 33-1228, that specifically governs termination of condominiums. In essence, the statute allows a forced buyout of unit owners if a supermajority of at least 80% of the votes in the condominium association agrees to terminate the condominium. The statute is part of the Arizona Condominium Act, which was taken from the Uniform Condominium Act.

Plaintiff first argues that § 33-1228 requires the sale of all condominium units or none. The Court disagrees. The Court believes that the statute specifically contemplates the type of sale proposed by 668 North in the Termination Agreement. For example, subsection C provides as follows:

C. A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement shall set forth the minimum terms of sale. (Emphasis added.)

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The Court agrees with defendant that the statute allows for the sale of less than all of the real property. The second sentence of Subsection C provides that “any real estate” is to be sold, not that “all real estate” must be sold. Similarly, subsection D uses the language “if any real estate in the condominium is to be sold following termination, title to that real estate on termination vests in the association as trustee for the holders of all interest in the units.” The legislature’s use of the word “any real estate” suggests that the statute applies to sales of something less than all of the real estate. Finally, it would be an absurdity to require 668 North to repurchase the real estate it already owns.

Plaintiff argues that A.R.S. § 33-1227(D) requires 100% approval. Again, the Court disagrees. When interpreting a statute, “specific statutes control over general statutes,” and, “when a general and a specific statute conflict, we treat the specific statute as an exception to the general.” *Mercy Healthcare Ariz., Inc. v. AHCCCS*, 181 Ariz. 95, 100 (App. 1994). Here, § 33-1228, not § 1227, specifically addresses the issue of condominium termination. Moreover, the Court does not read § 1227 to apply to this situation. The termination agreement is not an amendment to the Declarations. *La Esperanza Townhome Ass’n, Inc. v. Title Sec. Agency*, 142 Ariz. 235 (App. 1984), does not apply to a termination agreement adopted by a supermajority under § 33-1228.

Plaintiff argues that the Association did not comply with required rules for Condominium Association operations. The Court did not find this argument persuasive or grounds for injunctive relief. Undisputed evidence indicates that 668 North owns 95% of the condominiums, which is well over the 80% threshold. Section 1228 does not set forth a specific mechanism that must be followed for an association to adopt a termination agreement, and arguing that 668 North was not properly represented at the meeting elevates form over substance.

Finally, plaintiff argues that its constitutional rights have been violated, including claims of due process, equal protection and an unconstitutional taking. As an initial matter, there is no State action here. 668 North is asserting termination of the condominium association under a procedure agreed to in the privately-executed contract. More importantly, plaintiff contractually agreed to the process outlined in the statute for termination of the condominium, including the involuntary sale of its units for fair market value. Having agreed to such an arrangement, plaintiff has not been deprived of any constitutional rights.

The Court finds that plaintiff did not demonstrate a strong likelihood of success on the merits.

Because plaintiff failed to demonstrate a strong likelihood of success on the merits, the Court will spend little time on the other preliminary injunction factors. To the extent the

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defendant's appraisal is inadequate, unfair or inaccurate, such a claim can be addressed through monetary damages. As noted at oral argument, there is a contract between plaintiff and the Association. To the extent the Association provides an appraisal at a forced sale that does not fairly and accurately reflect fair market value, plaintiff may state a claim for breach of contract damages under the implied covenant of good faith and fair dealing. However, an inaccurate or incomplete appraisal would result in monetary damages, not a basis for injunctive relief to stop the sale.

Equity and public policy do not cut in plaintiff's favor. Although some may think the condominium termination procedure is unfair, it is a process that was adopted from the Uniform Condominium Act and prevents a minority condominium owner from holding out over the interests of a supermajority. Enforcing the law as written conforms to the public policy defined by the Arizona Legislature.

III. CONCLUSION

IT IS ORDERED that plaintiff's request for a preliminary injunction is denied.

DATED this 23rd day of July, 2018.

/s/ Roger E. Brodman

HONORABLE ROGER E. BRODMAN
JUDICIAL OFFICER OF THE SUPERIOR COURT