

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 William P. Lee v,
4 Petitioner,

5 vs.

6 Greenlaw Townhouses Unit Two,
7 Respondent.

No. 19F-H1918019-REL-RHG

**ADMINISTRATIVE LAW JUDGE
DECISION**

8 **HEARING:** April 1, 2019

9 **APPEARANCES:** Petitioner William P. Lee appeared on behalf of himself.

10 Timothy D. Butterfield, Esq. appeared on behalf of Respondent Greenlaw Townhouses
11 Unit Two.

12 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

13
14 **FINDINGS OF FACT**

15 1. Petitioner William P. Lee owns a townhouse in Greenlaw Unit Two.
16 Mr. Lee is a member of Greenlaw United Two Homeowners Association ("Greenlaw").

17 2. On or about September 12, 2018, Mr. Lee filed a single-issue petition with
18 the Arizona Department of Real Estate ("Department"), which contained an allegation
19 that Greenlaw had violated amendments 1, 2, and 3 of its Covenants, Conditions, and
20 Restrictions ("CC&Rs"), and Greenlaw's Rules and Regulations, when it banned all
21 parking on Greenlaw streets and contracted with a towing company to boot vehicles
22 parked on Greenlaw streets.

23 3. The original hearing on Mr. Garcia's petition was conducted on
24 December 13, 2018. After the Administrative Law Judge issued a decision in that
25 matter, Mr. Lee requested a rehearing.

26 4. On or about February 11, 2019, the Department issued an order setting
27 the above-captioned matter for rehearing on April 1, 2019, at the Office of
28 Administrative Hearings in Phoenix, Arizona.

29 5. A rehearing was held on April 1, 2019.
30

1 6. Mr. Lee testified on behalf of himself and submitted exhibits 1, 2, 4
2 through 7, 11 through 17, and 19.

3 7. Greenlaw submitted exhibits 20 and 21.

4 8. The Department is authorized by statute to receive and to decide petitions
5 for hearings from members of homeowners' associations in Arizona.

6 9. On or about July 2, 1999, Greenlaw Declaration of CC&Rs was recorded
7 at the Coconino County Recorder.

8 10. Owners agree to be bound by the CC&Rs.

9 11. Amendments 1, 2, and 3 of Greenlaw CC&Rs provide:

10 Amendment #1

11 Article II, PERMITTED USES, is amended by adding a new
12 paragraph (n) as follows:

13 The Association, after conferring with the office of the
14 Fire Marshal, City of Flagstaff, shall cause signs to be
15 placed and curbs painted red to designate fire lanes for
16 access of emergency vehicles. No parking shall be
17 permitted in such designated fire lanes and violations
18 will be enforced by citation as with other fire lane
19 violations on private property.

20 APPROVED: Yes 39, No 6.

21 Amendment #2

22 Article II, PERMITTED USES, is amended by adding a new
23 paragraph (o) as follows:

24 It shall be a violation of these Covenants, Conditions and
25 Restrictions for any resident or visitor to park on roads of
26 the Greenlaw Townhouses Unit II Subdivision during
27 periods of snow removal. At the direction of the
28 Association, violators will be towed at the expense of the
29 owner of the vehicle.
30

1 APPROVED: Yes 39, No 6.

2 Amendment #3

3
4 Article II, PERMITTED USES, is amended by adding a new
5 paragraph (p) as follows: Vehicles parked at curb side in
6 an obvious state of disrepair for a period of seventy-two
7 (72) hours shall be considered abandoned and towed
8 from the property at the expense of the owner of the
9 vehicle

10 APPROVED: Yes 42, No 6. Section 7(B) of the CC&Rs concerns
11 Alterations, Additions and Improvements and provides in relevant part that
12 “[n]o alterations of any Limited or General Common Elements or any
13 additions or improvements thereto shall be made by any Owner without
14 the prior written approval of the Board. . . .”

15 12. On or about June 16, 1986, Greenlaw Bylaws were recorded at the
16 Coconino County Recorder. Section 1 of Article V of the Bylaws provided:

17 Notices to directors and lot owners shall be in writing and
18 delivered personally or mailed to the directors or lot owners
19 at their addresses appearing on the books of the
20 corporation. The corporation shall use the address on
21 record with the Coconino County Assessor unless otherwise
22 notified in writing by the lot owner. Notice by mail shall be
23 deemed to be given at the time when the same shall be
24 mailed. Notice to directors may also be given by telegram.

25 13. Section 8 of Greenlaw’s current Rules and Regulations ban parking on
26 any association street as follows:

27 Parking is not allowed on any association street or alleyway
28 at any time. Eva, Heidi and Jeffrey Loops are not city
29 streets. They are owned and maintained solely by the HOA.
30 Under city code, the streets are considered “Private Fire
Access Lanes.” Consequently, cars parked in violation may
be booted and/or towed by a contracted independent towing
company.

14. Greenlaw revised its Rules and Regulations effective July 2018.

1 15. On July 6, 2018, Greenlaw sent a copy of the May 2018 revised Rules and
2 Regulations to its members by electronic mail ("e-mail") in the form of an attachment
3 entitled, "Greenlaw II Townhomes Rules and Regulations – May 2018.pdf".

4 16. Mr. Lee received the July 5, 2018 e-mail and the May 2018 Revised Rules
5 and Regulations.

6 17. Mr. Lee contended that Greenlaw failed to provide him with proper notice
7 that the Rules and Regulations were revised in 2018, and that as a result, the revisions
8 were not valid or controlling.

9 18. Mr. Lee also contended that the July 6, 2018 email did not clearly indicate
10 that the Rules and Regulations had recently been changed.

11 19. Mr. Lee contended that because the 2018 revised Rules and Regulations
12 were not valid because Greenlaw was required under its Bylaws to send the
13 homeowners notice of the revised Rules and Regulations personally or by postal mail.

14 20. Mr. Lee did not even contend that Greenlaw violated any law or CC&R
15 other than A.R.S. §§ 33-1803 and 1809.

16 21. Mr. Lee contended that the only reason that the Association banned
17 parking was to please Barbara, a board member who did not want anyone to park
18 behind her property.

19 22. Greenlaw contended that the 2003 revised Rules and Regulations were
20 controlling.

21 23. Greenlaw contended that it was not required under the Bylaws to send
22 notice of the revised Rules and Regulations by mail or personal delivery because
23 Section 1 Article V of the bylaws only apply to notices that are required to be sent to the
24 homeowners under statute or the CC&Rs.

25 24. Greenlaw contended that it is not required under law or the CC&RS to
26 provide the homeowners with notice of an amendment to the Rules and Regulations.

27 25. Greenlaw contended that Mr. Lee received notice of the revised Rules and
28 Regulations on July 6, 2018 by e-mail.

29 26. Mr. Lee provided no evidence that Greenlaw booted or towed any of the
30 vehicles belonging to Greenlaw members.

1 27. Mr. Lee asserted at hearing that he observed a jeep parked in a driveway
2 that had been booted. Mr. Lee stated that he contacted the Greenlaw manager about
3 his observation. Mr. Lee testified that in response to his inquiry, the Greenlaw manager
4 wrote, "'No Parking' on the street so if the tow company were to tour the property then
5 they can boot a car/truck in violation." However, there was no evidence provided that
6 the Greenlaw manager stated that Greenlaw was responsible for booting the jeep.
7 Moreover, Mr. Lee did not know who owned the jeep, nor who was responsible for
8 booting the jeep.

9 28. Mr. Lee did not even allege that Greenlaw booted or towed one of his
10 vehicles.

11 CONCLUSIONS OF LAW

12 1. ARIZ. REV. STAT. "A.R.S." § 32-2199(B) permits an owner or a planned
13 community organization to file a petition with the Department for a hearing concerning
14 violations of planned community documents under the authority Title 33, Chapter 16.¹

15 2. This matter lies with the Department's jurisdiction.

16 3. Mr. Lee bears the burden of proof to establish that Greenlaw violated
17 amendments 1, 2, and 3 of the CC&Rs, and the Greenlaw Rules and Regulations by a
18 preponderance of the evidence.² Greenlaw bears the burden to establish affirmative
19 defenses by the same evidentiary standard.³

20 4. "A preponderance of the evidence is such proof as convinces the trier of
21 fact that the contention is more probably true than not."⁴ A preponderance of the
22 evidence is "[t]he greater weight of the evidence, not necessarily established by the
23 greater number of witnesses testifying to a fact but by evidence that has the most
24 convincing force; superior evidentiary weight that, though not sufficient to free the mind
25 wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one
26 side of the issue rather than the other."⁵

27 ¹ See A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce
28 the development's CC&RSs

29 ² See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74
30 Ariz. 369, 372, 249 P.2d 837 (1952).

³ See A.A.C. R2-19-119(B)(2).

⁴ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁵ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

5. In Arizona, if a restrictive covenant is unambiguous, it is enforced to give effect to the intent of the parties.⁶ “Restrictive covenants must be construed as a whole and interpreted in view of their underlying purposes, giving effect to all provisions contained therein.”⁷

6. Mr. Lee failed to establish that the 2003 Rules and Regulation were effective at the time that he filed the petition. The weight of the evidence presented at hearing shows that Greenlaw's Rules and Regulations were revised effective July 2018 and are the controlling Rules and Regulations of Greenlaw.

7. Mr. Lee failed to establish that Greenlaw violated A.R.S. §§ 33-1803 and 1809. A.R.S. § 33-1803 applies to notices to members for alleged violations of the declaration, bylaws or rules of the Association. A.R.S. § 33-1809 forbids associations from prohibiting a resident who has a specific form of employment, from parking on its streets in very limited scenarios, notwithstanding the association's Rules and Regulations.

8. The preponderance of the evidence shows that the Rule and Regulations which were revised effective July 2018, allow the association to ban all parking on the association streets and tow or boot a car that is parked in violation of its rule.

9. Amendments 1, 2, and 3 of the Greenlaw CC&Rs only provide specific scenarios in which parking on the streets is banned.

10. Mr. Lee failed to establish by a preponderance of the evidence that Greenlaw's decision to ban parking on Greenlaw streets and to contract with a towing company to boot vehicles parked on Greenlaw streets, violated amendments 1, 2, and 3 of the Greenlaw CC&Rs.

11. Mr. Lee failed to establish by a preponderance of the evidence that Greenlaw's decision to ban parking on Greenlaw streets, and to contract with a towing company to boot vehicles violated Greenlaw's Rules and Regulations.

ORDER

IT IS ORDERED that Petitioners' petition is denied.

⁶ See *Powell v. Washburn*, 211 Ariz. 553, 556 ¶ 9, 125 P.3d 373, 376 (2006).

⁷ *Lookout Mountain Paradise Hills Homeowners' Ass'n v. Viewpoint Assocs.*, 867 P.2d 70, 75 (Colo. App. 1993) (quoted in *Powell*, 211 Ariz. at 557 ¶ 16, 125 P.3d at 377).

NOTICE

This administrative law judge order, having been issued as a result of a rehearing, is binding on the parties. ARIZ. REV. STAT. section 32-2199.02(B). A party wishing to appeal this order must seek judicial review as prescribed by ARIZ. REV. STAT. section and title 12, chapter 7, article 6. Any such appeal must be filed with the superior court within thirty-five days from the date when a copy of this order was served upon the parties. ARIZ. REV. STAT. section 12-904(A).

Done this day, April 22, 2019.

/s/ Velva Moses-Thompson
Administrative Law Judge

Transmitted electronically to:

Judy Lowe, Commissioner
Arizona Department of Real Estate