

Lake owners prevail in lawsuit appeal

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For the second time, Viewpoint Lake homeowners won in court.

The Arizona Court of Appeals upheld a lower court ruling preventing Recreation Centers of Sun City from imposing an unprecedented 340 percent increase in the annual maintenance fee assessed on residents living on the shores of the Sun City lake. The lower court ruling, issued Oct. 29, 2009 by the Honorable Edward O. Burke, mandated that RCSC officials comply with the terms of two agreements, a 1975 accord, which required RCSC, as the owner of the Lake, to pay the first 50 percent of the maintenance costs, and a 1979 settlement agreement, which provided a fixed formula for allocating water usage and maintenance costs based on the annual Consumer Price Index, according to Nancy Mangone, the homeowners' attorney. "Judge Burke also ruled that the 1979 Agreement was a 'fair and equitable' settlement of a prior dispute that 'has been honored for the past 30 years,'" she said.

Viewpoint homeowners claim the lake has not been properly maintained and RCSC officials announced in December 2009 the lake water level is expected to continue to decrease. Low water level in the lake forced the 2009 cancellation of the annual lighted boat parade. But the event returned to the lake this year as part of the community's 50th anniversary celebration.

RCSC officials appealed Judge Burke's October 2009 ruling. In affirming the prior ruling, the Court of Appeals found that it need not decide whether the 1979 Agreement impermissibly amended the 1969 Declaration of Restrictions that govern Viewpoint Lake's management, according to Ms. Mangone.

"Rather, the appellate court focused on the parties' 30 years of 'acquiescence and knowing

conduct consistent with (the 1979) Agreement' in deciding that RCSC had waived its right to challenge its validity," she said.

The appeals court also ruled the 1979 Agreement was an enforceable private covenant which was not prohibited by the provision of the 1969 Declaration, she added.

The court specifically rejected RCSC's argument that the 1979 Agreement should remain in effect only for a reasonable time and that it could be terminated at will by either party, holding instead that the agreement was "adopted in settlement of a bona fide dispute, was enforceable, and was subject to the same term as the 1969 Declaration."

RCSC officials argued the 1975 and 1979 agreements were unenforceable.

The Court's decision went on to incorporate the duration clause of the 1969 Declaration into the 1979 Agreement, concluding that "the Agreement was binding for 30 years and would be extended for successive ten-year periods unless amended" by a vote of the lakefront property owners. The court also ruled that even though the Viewpoint Lake homeowners' association is not a legally constituted organization, RCSC cannot complain about its status, since RCSC treated the homeowners' association as an entity capable of entering into the 1979 Agreement and benefitted from assessments collected from its members for 30 years, Ms. Mangone explained.

RCSC officials tried in 2009 through the Viewpoint Lake Management Board — which consists of one homeowner, one RCSC board member and one RCSC employee — to raise homeowner assessments for lake maintenance.