

## Oral arguments next up for RCSC lawsuit

### LAWSUIT

#### All [documents](#) in judge's hands

By Rusty Bradshaw

INDEPENDENT NEWSMEDIA

A lawsuit alleging Recreation Centers of Sun City officials must follow Arizona's Planned Communities Act could be headed for a conclusion.

A motion for summary judgment was filed by the plaintiff — a group of Sun City residents — in early June in Maricopa County Superior Court. In addition, the plaintiff filed a motion to certify the classes in the class action lawsuit.

RCSC attorneys filed their responses to the motions and the plaintiff filed its reply in late-June.

"The next action will be the oral arguments," said Sun City resident **Anne Randall Stewart** who, along with 20 other residents, comprise the plaintiff group. A date for oral arguments has not been set by

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**Anne Randall Stewart**

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### RCSC

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the court, but Ms. Stewart believes it could be as early as August.

RCSC officials routinely decline comment regarding the lawsuit.

### Planned community

The plaintiff alleges RCSC should follow the state's Planned Communities Act because it requires all property owners to pay assessments. However, RCSC attorneys argue that the corporation was set up as a "country club" rather than an association.

In their response to the motion, lawyers argue that RCSC was not created by declaration as defined by state law. They further argue that RCSC's facilities agreements do not mean payment of property assessments.

While RCSC officials in the late-1990s amended the entity's documents, attorneys argue there was no transformation from club to association status. They also believe paying assessments do not equal membership to RCSC. The corporation documents list three primary qualifications for membership — the owner must be a deeded real estate owner of a Sun City property; the owner must be at least 55 years old or qualify under the spousal exemption; and the owner must occupy the property as his or her primary Arizona residence (unless he or she has another Arizona residence more than 75 miles away).

Attorneys also argue that RCSC cannot be compelled to follow the Planned Communities Act because condominiums are excluded under the act. About two-

thirds of Sun City dwellings are considered condos, although some argue the vast majority do not fit the state's definition of a condo.

The Planned Communities Act was established in 1994. RCSC attorneys argue the act cannot be applied retroactively.

Plaintiff's attorneys maintain RCSC was not established as a "country club" because it was changed to require assessment payments from all property owners. The Sun City Civic Association and Town Hall Center were the two entities established to operate the recreational facilities when the community was started in 1960. They were initially voluntary dues payment but were later merged and changed to mandatory assessments. Plaintiff attorneys cite a portion of the defendant's response to clarify the point.

"[Sun City Civic Association] encountered financial difficulties because membership was optional and fewer owners joined than expected. Del Webb's solution was to begin requiring all buyers to sign a Facilities Agreement that obligated them to pay assessments regardless of whether they qualified to join or did so," as stated in the defendant's response.

Plaintiff's attorneys argue under RCSC's governing documents, property owners cannot free themselves from the assessment obligation by renouncing membership as assessments run with the land.

"Owners are required to sign facilities agreements and pay assessments under the threat of foreclosure," as stated in the plaintiff's reply.

The RCSC articles of incorporation and facilities agreements meet the definition

of a declaration according to state law, argued the plaintiff's attorneys. They also believe the Arizona Condominium Act recognizes condos can be part of a planned community.

In regards to retroactive application, plaintiff's lawyers argue the Planned Communities Act does not have a specified date after which the law applies. Rather, it calls for all planned communities to comply with the law.

#### **Class issue**

The parties are also at odds as to whether the lawsuit qualifies as a class action matter.

RCSC attorneys argue the plaintiff has not met the burden of proof.

"They have not provided the analysis and evidentiary support for their claims that Rule 23 and U.S. Supreme Court interpretations of the federal counterpart of Arizona's Rule 23 require. Because of the conclusory nature of Plaintiffs' motion, the court cannot conduct a proper analysis and make the evidentiary findings that Rule 23 requires," as stated in the response to that motion.

For the same reason, defendant's attorneys argue, RCSC has been denied the opportunity to fairly respond to Plaintiffs' motion.

Plaintiff's attorneys argue they have met the four Rule 23(a) requirements and have shown that the transfer fee class and assessment class should be certified under Rule 23(b) (1) and (3).

"This Court may exercise its broad discretion under Rule 23 and grant Plaintiffs' motion for class certification," as stated in the reply.

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