IN THE SUPREME COURT

OF THE STATE OF ARIZONA

TURTLE ROCK III HOMEOWNERS ASSOCIATION, Plaintiff/Appellee, v. LYNNE A. FISHER, Defendant/Appellant.	No. CV-17-0339-PR Court of Appeals Division One No. 1 CA-CV-16-0455 Maricopa County Superior Court No. CV2015-095897

APPELLEE'S SUPPLEMENTAL BRIEF

Charles W. Wirken – 004276
GUST ROSENFELD P.L.C. – 145800
One East Washington Street, Suite 1600
Phoenix, Arizona 85004
602-257-7959
cwirken@gustlaw.com

Clint G. Goodman – 024188
Ashley N. Moscarello – 032572
GOODMAN LAW GROUP, LLP
3654 N. Power Road, Suite 132
Mesa, Arizona 85215
clint@goodlaw.legal
ashley@goodlaw.legal

Attorneys for Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

INTRODUCTION 5

STATEMENT OF FACTS 5

STATEMENT OF THE ISSUES.....10

SUMMARY OF ARGUMENT 10

ARGUMENT 11

I. Ad hoc penalties are not per se unreasonable under A.R.S. § 33-1803(B) because the myriad violations for which penalties may be imposed necessitates flexibility in fixing the amount of the penalty to suit the magnitude, frequency, and duration of each different violation, and ad hoc penalties are available under another statute for the same violations.....11

II. Ad hoc monetary penalties are reasonable even if they are not based on actual damages to the homeowner association because most violations do not cause readily measurable damages, proof of actual damages is unnecessary as a matter of law, requiring proof of actual damages has negative consequences, and damage awards are ineffective to cure violations. 17

WITHDRAWAL OF CLAIM FOR ATTORNEYS' FEES 21

CONCLUSION.....21

APPENDIX.....23

H.R. 41st Leg.-2d Reg. Sess., Comm. on Commerce, Minutes 2/8/1994, HB 2256 24

TABLE OF AUTHORITIES

Cases

Ahwatukee Custom Estates Mgmt. Ass'n, Inc. v. Turner, 196 Ariz. 631 (App. 2000) 20

Aztec Film Productions, Inc. v. Quinn, 116 Ariz. 468 (App. 1977) 18

Baker v. University Physicians Healthcare, 231 Ariz. 379 (2013) 19

Burns v. Jaquays Min. Corp., 156 Ariz. 375 (App. 1987) 20

City Ctr. Exec. Plaza, LLC v. Jantzen, 237 Ariz. 37 (App. 2015) 18

City of Tucson v. Apache Motors, 74 Ariz. 98 (1952) 20

Continental Oil Co. v. Fennemore, 38 Ariz. 277 (1931) 20

Downs v. Sulphur Springs Valley Elec. Co-op., Inc., 80 Ariz. 286 (1956) 18

La Paz Cty. v. Yuma Cty., 153 Ariz. 162 (1987) 15

Mejak v. Granville, 212 Ariz. 555 (2006) 20

Musgrave v. S. Pac. Co., 49 Ariz. 512 (1937) 16

Pima Cty. by City of Tucson v. Maya Const. Co., 158 Ariz. 151 (1988) 13

State v. Miller, 100 Ariz. 288 (1966) 17

Tierra Ranchos Homeowners Ass'n v. Kitchukov, 216 Ariz. 195 (2007) 17

Tucson Fed. Sav. & Loan Ass'n v. Aetna Inv. Corp., 74 Ariz. 163 (1952) 16

Turtle Rock III Homeowners Assoc. v. Fisher, 243 Ariz. 294 (App. 2017) 8, 9, 19

Utah Const. Co. v. Berg, 68 Ariz. 285 (1949) 16

Van Dyke v. Arizona E. R. Co., 18 Ariz. 220 (1916) 16

Villas at Hidden Lakes Condo. Ass'n v. Guepel Const. Co., Inc., 174 Ariz. 72 (App. 1992) 13

Statutes

A.R.S. § 1-213 ..... 17, 18

A.R.S. §§ 32-2199.01–.02 ..... 12, 15

A.R.S. § 33-1242 ..... 13, 14, 19

A.R.S. §§ 33-1801 – 1818 5

A.R.S. § 33-1802.....11, 17

A.R.S. § 33-1803.....*passim*

Other Authorities

25A C.J.S. Damages § 200 18

2016 Ariz. Sess. Laws, Chap. 172, §§ 1, 3 13

BLACK'S LAW DICTIONARY (10th ed. 2014) 18

H.R. 41st Leg.-2d Reg. Sess., Comm. on Commerce,
Minutes 2/8/1994, HB 2256 at 2.....21

RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 6.8 cmt. *b* (2000) 18

SCOTT B. CARPENTER, COMMUNITY ASSOCIATION LAW IN ARIZONA § 2.4.3
(5th ed. 2015) 16

Unif. Condo. Act § 3-102(a) 19

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1668 (2002) 18

INTRODUCTION

Arizona Revised Statutes § 33-1803(B) allows a homeowners association to impose reasonable monetary penalties on association members for violations of association rules. Whether ad hoc monetary penalties are reasonable is the issue.

STATEMENT OF FACTS

Lynne Fisher owns a home within the Turtle Rock III subdivision. (*Compare* I.R. 1, ¶ 3 *with* I.R. 15, ¶ 1; Ex. 2.)[1] Lots within the subdivision are subject to a recorded Declaration of Covenants, Conditions and Restrictions (CC&Rs). (*Compare* I.R. 1, ¶ 1 *with* I.R. 15, ¶ 1; Ex. 1.) The Turtle Rock III Homeowners Association ("HOA") was created pursuant to the CC&Rs and is an "association" governed by Arizona's Planned Communities statutes, A.R.S. §§ 33-1801 – 1818. *Compare* I.R. 1, ¶ 2 *with* I.R. 15, ¶ 1.)

One of those statutes, A.R.S. § 33-1803(B), allows an association to impose reasonable monetary penalties on association members for violations of the CC&Rs and certain other community documents:

> After notice and an opportunity to be heard, the board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association.
> * * *

The Turtle Rock HOA's CC&Rs also authorize the imposition of monetary penalties. (Ex. 1 at 3, art. II, § 2.)

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[1] "Ex." references are to trial exhibits.

Those CC&Rs require "the Owner of each Lot [to] maintain all improvements on said Lot in a clean and attractive condition" and to maintain the landscaping. (Ex. 1 at 8, art. VI, § 1.)

Fisher violated the CC&Rs in multiple ways – some continuously and others repeatedly – over a period of nearly two years. The violations of the covenant to maintain her lot in a clean and attractive condition were her failure to repair or replace the garage door, window blinds, stucco on the front of the house, a gate, window screens, and an exterior garage access door; failure to repaint the exterior of the home; failure to maintain the landscaping; and failure to remove holiday decorations. Fisher also repeatedly left her trash container out in view of neighboring lots on non-collection days. (*See* Exs. 3-4.)

Beginning in January 2014 and continuing through December 2015, the HOA gave Fisher repeated notices of numerous and continuing violations of the CC&Rs. (Ex. 4.) The first notice, dated January 29, identified four items needing replacement or repair (garage door, window blinds, stucco, and gate), but did not impose a monetary penalty. The second notice, dated February 21, listed the same items and imposed a $25 penalty. A third notice on March 11 again listed the same items and imposed a $50 penalty. The fourth notice on April 9 imposed another $50 penalty for the same continuing violations. Four more notices were sent in April and May for two continuing violations (gate and blinds) and two new

violations (landscaping and screens), but none of them imposed any penalty. Later in May, three more notices were sent for continuing violations (blinds, garage door, and gate) and monetary penalties were imposed, two for $25 and one for $100.

Ninety-eight notices of violation were given to Fisher over a period of approximately 23 months; too many to list and detail in this brief. A list of the violations for which monetary penalties were imposed is contained in the HOA's account ledger for Fisher. (Ex. 3.) The ledger and the notices of violation reflect the continuing or repetitive nature of the violations, and also that additional types of violations occurred over time and persisted or repeated (house needed painting, trash container left in view, holiday decorations not removed, and garage access door deterioration). Many of the violations are depicted in the photographs admitted in evidence. (Ex. 5.)

The ledger shows that the penalties ranged from $25 to $100. (The four penalties of $200 were reduced to $100 each by $100 credits.) (Ex. 3.)

On September 16, 2015, the HOA's counsel wrote Fisher to demand compliance with the CC&Rs and give notice that "[a]dditional fines will be assessed to your account at a rate of $25.00 per day from the date of this letter until the violations are remedied." (Ex. 4.)

Arizona Revised Statutes § 33-1803(C) allowed Fisher to contest any notice of violation. *Turtle Rock III Homeowners Assoc. v. Fisher*, 243 Ariz. 294, 296, ¶ 10, n.3 (App. 2017). And the CC&Rs entitled Fisher to request a hearing before the HOA board. (Ex. 1 at 9, art. VI, § 3.) Every notice of violation sent to Fisher, even those that did not impose a penalty, invited her to request a hearing. (Ex. 4.) The September 16, 2015 demand letter also advised Fisher of her right to appeal the violations and penalties. Although Fisher had multiple opportunities to request a hearing to contest the violations or the penalties, she never did.

The repeated notices of violation and the monetary penalties were ineffective to obtain Fisher's compliance. Therefore, the HOA filed suit on November 4, 2015 to obtain injunctive relief and judgment for the monetary penalties and attorneys' fees. (I.R. 1.)

At trial, the CC&Rs, Fisher's deed, the ledger, the violation notices, and photographs were admitted into evidence. (Exs. 1-5.) A representative of the HOA testified, but Fisher did not appear. (I.R. 30.) Her counsel presented no witnesses or exhibits. (I.R. 30.)

As directed by the trial court, the HOA submitted its Application for Monetary Penalties. (I.R. 31.) The amounts sought were $5,315, which was the total imposed by the notices and detailed in the ledger, and $3,850 calculated at $25 per day from the date of the September 16, 2015 demand letter until the day of

trial. Judgment was entered for injunctive relief, monetary penalties of only $3,850, and attorneys' fees and costs. (I.R. 39.)

Fisher appealed. She argued that because no written schedule of penalties was introduced into evidence the penalties are unreasonable and inconsistent with § 33-1803(B).

The Court of Appeals reversed the judgment for monetary penalties and attorneys' fees, holding and reasoning as follows:

> Monetary fines must be reasonable. *See* A.R.S. § 33-1803(B). Ad hoc fines are per se unreasonable. *Villas* [*at Hidden Lakes Condo Ass'n v. Guepel Const. Co. Inc.*], 174 Ariz. at 81, 847 P.2d at 126. *Villas* is dispositive on this issue. Under *Villas*, even where the HOA has the authority to levy fines, it must promulgate the schedule of fines prior to imposing the fines, and the failure to prove promulgation is fatal. *Id.*

243 Ariz. at 297, ¶ 14.

> There is also no support in the record for a determination that a fine of $25 per day, for any violation, is reasonable. A stipulated damages provision made in advance of a breach is a penalty, and is generally unenforceable. *Larson–Hegstrom & Assocs., Inc. v. Jeffries*, 145 Ariz. 329, 333, 701 P.2d 587, 591 (App. 1985).
>
> Therefore, although the HOA had the authority under state statutes and the CC&Rs to promulgate a fine schedule for monetary penalties, there is no competent evidence in the record before us that it did so. Without competent evidence of a fee schedule timely promulgated demonstrating the fine amounts and the appropriateness of such amounts, monetary penalties are per se unreasonable. Even if a fee schedule existed, the HOA had the burden to prove its damages.

243 Ariz. at 298, ¶¶ 17-18.

Only the HOA petitioned for review.

STATEMENT OF THE ISSUES

Are ad hoc penalties per se unreasonable under A.R.S. § 33-1803(B)?

If ad hoc penalties are permissible, are they unreasonable if they are not based on actual damages to the homeowner association?

SUMMARY OF ARGUMENT

Arizona Revised Statutes § 33-1803(B) allows the imposition of reasonable monetary penalties on association members for violations of "community documents." The possible violations are myriad, their magnitude varies, and they may be repetitive or continuing. The statute therefore permits ad hoc monetary penalties to provide flexibility in determining monetary penalties that are reasonable in the circumstances of each violation. The statute does not require the advance promulgation of a schedule of penalties because that would be impossible or impractical. Those conclusions are supported by the language of the statute and principles of statutory construction, including harmony with another statute that permits ad hoc penalties for the same violations.

The Legislature expressly chose to permit penalties rather than require damages for several reasons. Most violations do not cause readily measurable damage. Requiring damages could cause associations to enter homeowners' properties to cure violations and incur expenses as damages, rather than using penalties to motivate a cure. And requiring damages would increase litigation.

ARGUMENT

I. Ad hoc monetary penalties are not per se unreasonable under A.R.S. § 33-1803(B) because the myriad violations for which penalties may be imposed necessitates flexibility in fixing the amount of the penalty to suit the magnitude, frequency and duration of each different violation, and ad hoc penalties are available under another statute for the same violations.

Arizona Revised Statutes § 33-1803(B) allows the imposition of reasonable monetary penalties on association members for their violations of certain community documents:[2]

> After notice and an opportunity to be heard, the board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association.
> * * *

The statute contemplates ad hoc monetary penalties. The Legislature provides three indications of that intent. First, the statute does not expressly prohibit ad hoc monetary penalties. Second, it does not require that a schedule of monetary penalties be adopted in advance of a member's violation of CC&Rs. Third, the statute does not prescribe what a reasonable monetary penalty is, as it does for charges for the late payment of assessments: "Charges for the late

[2] "'Community documents' means the declaration, bylaws, articles of incorporation, if any, and rules, if any." A.R.S. § 33-1802. "CC&Rs" is used throughout this brief as shorthand for "community documents."

payment of assessments are limited to the greater of fifteen dollars or ten percent of the amount of the unpaid assessment.…" A.R.S. § 33-1803(A).

Moreover, other statutes on the same subject, A.R.S. §§ 32-2199.01–.02, allow ad hoc civil penalties for violations of CC&Rs. After an association member receives notice of a violation of the CC&Rs, § 33-1803(E) recognizes that "the member may petition for an administrative hearing on the matter in the state real estate department pursuant to § 32-2199.01…."[3] Such hearings are held before an administrative law judge who "may levy a civil penalty on the basis of each violation." A.R.S. § 32-2199.02(A). "On the basis of each violation" means on an ad hoc basis. That statute does not require the real estate department to adopt a schedule of civil penalties in advance of any violation of the CC&Rs.

Because the Legislature allows ALJs to impose ad hoc civil penalties, it follows for two reasons that § 33-1803(B) was intended to allow HOA boards to impose ad hoc monetary penalties. First, the same violations may be heard by an ALJ or an HOA board. Second, § 32-2199.02(A) allows associations to petition for an administrative hearing and thereby recover ad hoc monetary penalties. Accordingly, the two statutes on the same subject should be harmonized. "[I]f it is

[3] "A. For a dispute between an owner and a condominium association or planned community association that is regulated pursuant to title 33, chapter 9 or 16, the owner or association may petition the department for a hearing concerning violations of condominium documents or planned community documents or violations of the statutes that regulate condominiums or planned communities."

reasonably practical, a statute should be explained in conjunction with other statutes to the end that they may be harmonious and consistent; and, if statutes relate to the same subject and are thus *in pari materia*, they should be construed together with other related statutes as though they constituted one law." *Pima Cty. by City of Tucson v. Maya Const. Co.*, 158 Ariz. 151, 155 (1988).

No Arizona case is dispositive on the subject of ad hoc monetary penalties for violations of CC&Rs. *Villas at Hidden Lakes Condo. Ass'n v. Guepel Const. Co., Inc.*, 174 Ariz. 72 (App. 1992), *rev. dismissed* (1993), is distinguishable because it involved the retroactive imposition of late fees for nonpayment of assessments, not ad hoc monetary penalties for violations of CC&Rs. At issue in *Villas* was subsection 33-1242(A)(11) of the Condominium Act, which at the time provided that a condominium "association may … 11. Impose charges for late payment of assessments…."[4] The association adopted a late charge and applied it to already delinquent monthly assessments. Rejecting the retroactively enacted late charges, the *Villas* court reasoned they were unenforceable because the owner never had the choice of paying the assessment or incurring the late charge:

[4] That subsection was amended in 2016 by adding the condition that a condominium association may impose charges for late payment of assessments only "after the association has provided notice that the assessment is overdue or provided notice that the assessment is considered overdue after a certain date.…" Section 33-1803(A) was likewise amended at the same time. 2016 Ariz. Sess. Laws, Chap. 172, §§ 1, 3.

> [A]lthough the Association always had the power to enact a late payment penalty, it did not do so until October, 1987. Before that date, the Association did not require an owner to make a choice between making a timely monthly assessment payment and incurring a late penalty for failing to make a timely payment. We conclude that an owner who may have acted on the premise that the Association's only penalty for late payment of a monthly assessment was an interest charge of 12%, and who might have timely paid the monthly assessment rather than a late payment penalty, should not be subject to a late payment charge enacted many months after the date of delinquency. For that reason, we hold that, as a matter of law, the Association's imposition of a retroactive late fee was unreasonable, arbitrary, and an abuse of discretion.

174 Ariz. at 81.

The Condominium Act subsection at issue in *Villas* that authorizes charges for late payments of assessments is different from the Planned Communities Act subsection that authorizes monetary penalties for violations of CC&Rs. Subsection 33-1242(A)(11) does not include the safeguards of notice, an opportunity to be heard, and reasonableness, as does § 33-1803(B). Therefore, and also for the reason expressed in *Villas*, late charges must be fixed in advance. But penalties for violations of CC&Rs can be ad hoc, with notice of the amount given in the notice of violation, and subject to the member's right to a hearing and the requirement that the amount be reasonable.[5]

[5] A monetary sanction may be imposed with a notice of violation, as indicated by § 33-1803(C). "A member who receives a written notice that the condition of the property owned by the member is in violation of the community documents *without regard to whether a monetary penalty is imposed by the notice* may provide the association with a written response.…" (Emphasis added.)

Moreover, the concepts of charges for late payments of assessments and monetary penalties for violations of CC&Rs are substantially different. The distinction between a charge for a late payment and a penalty for a violation of CC&Rs is profoundly important for practical reasons. Late payment charges are like interest, which reflects the value of money. "Where money belonging to a party is not timely paid, interest is generally awarded. This is because the party entitled to use of the money has been deprived of that use, and the party retaining it has been unjustly enriched." *La Paz Cty. v. Yuma Cty.*, 153 Ariz. 162, 168 (1987) (internal citation omitted). For the reason explained in *Villas*, it is customary to fix the rate or amount of a late charge in advance of a late payment – so that the debtor knows what the cost of a decision not to pay on time will be.

Determining a penalty for a violation of CC&Rs is not as straightforward as fixing the charge for a late payment. The variety of CC&R violations is myriad. Therefore, unlike predetermining the charge for a late payment, the amount of the penalty for a violation of CC&Rs must be flexible. The amount must fit the circumstances of the violation, including its magnitude and frequency or duration. Accordingly, the Legislature allowed for such flexibility in both A.R.S. §§ 33-1803(B) and 32-2199.02(A) by authorizing associations and administrative law judges to impose ad hoc penalties.

Statutes must be "interpreted in the light of reason and common sense." *Tucson Fed. Sav. & Loan Ass'n v. Aetna Inv. Corp.*, 74 Ariz. 163, 168 (1952). They "should not be construed so as to require impossible or unreasonable things." *Musgrave v. S. Pac. Co.*, 49 Ariz. 512, 521 (1937). Instead, a practical construction is preferred. *Utah Const. Co. v. Berg*, 68 Ariz. 285, 293 (1949); *Van Dyke v. Arizona E. R. Co.*, 18 Ariz. 220, 227 (1916). Given the variety of possible CC&R violations and the individual circumstances of each violation (*e.g.*, magnitude, frequency and duration), it is impossible or at least impractical and thus unreasonable to require HOAs to anticipate every type and manner of violation and the degrees of each that might occur, and assign a penalty amount to each variation in advance. Reason and common sense therefore dictate that A.R.S. § 33-1803(B) was intended to allow HOAs flexibility to impose penalties ad hoc, subject to the controls of notice, an opportunity to be heard and reasonableness.

A respected treatise shares the view that the statute does not require advance promulgation of a schedule of penalties:

> Of additional significance, there is no statutory requirement that a planned community adopt either a monetary penalty policy or a monetary penalty schedule. There is also no requirement that it publish such a schedule to the membership in advance of imposing the monetary penalty.

SCOTT B. CARPENTER, COMMUNITY ASSOCIATION LAW IN ARIZONA § 2.4.3 (5th ed.

2015).[6]

For these reasons, ad hoc monetary penalties are not per se unreasonable.

II. Ad hoc monetary penalties are reasonable even if they are not based on actual damages to the homeowner association because most violations do not cause readily measurable damages, proof of actual damages is unnecessary as a matter of law, requiring proof of actual damages has negative consequences, and damage awards are ineffective to cure violations.

The simple and clear language of A.R.S. § 33-1803(B) allows monetary penalties for violations of an association's CC&Rs without any basis in actual damages:

> After notice and an opportunity to be heard, the board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association. * * *

"Penalties" is not a defined term in the Planned Communities Act. *See* A.R.S. § 33-1802. The Court must therefore apply its common meaning. "Words and phrases shall be construed according to the common and approved use of the language." A.R.S. § 1-213. *Accord State v. Miller*, 100 Ariz. 288, 296 (1966) ("the words of a statute are to be given their ordinary meaning unless it appears from the context or otherwise that a different meaning is intended.")

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[6] The treatise is cited favorably in *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 202, ¶ 27 (2007), on a different point of law.

In common parlance, a penalty is a punishment in some form for breaking a law, rule, or contract. *Aztec Film Productions, Inc. v. Quinn*, 116 Ariz. 468, 470 (App. 1977), quoting what is now 25A C.J.S. *Damages* § 200 ("A penalty is designed to punish for breach of contract…."); BLACK'S LAW DICTIONARY (10th ed. 2014) ("punishment imposed on a wrongdoer"); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1668 (2002) ("sum to be forfeited to which a person subjects himself by covenant or agreement in case of nonfulfillment of stipulations").[7]

In sharp contrast to the nature of monetary penalties, "[t]he most common meaning of damages is compensation for actual injury." *Downs v. Sulphur Springs Valley Elec. Co-op., Inc.*, 80 Ariz. 286, 293 (1956).

If the common meanings of "penalties" and "damages" are insufficient to distinguish them, the distinction is made clear by construing the word "penalties" according to its "peculiar and appropriate meaning in the law." A.R.S. § 1-213; *City Ctr. Exec. Plaza, LLC v. Jantzen*, 237 Ariz. 37, 41, ¶ 13 (App. 2015). As used

[7] A penalty is also intended to act as a deterrent. "[A] penalty is designed to prevent a breach by the threat of punishment." *Aztec Film*, 116 Ariz. at 470. In the context of common-interest communities such as homeowners' associations, "[f[ines and penalties are commonly used to deter violations of use restrictions.…" RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 6.8 cmt. *b* (2000).

in § 33-1803(B), a monetary penalty is a "fine."[8] That meaning is confirmed by comparison of the Planned Communities Act with Arizona's version of the Uniform Condominium Act. Both employ the same language. The Act provides that "the association may … impose reasonable monetary penalties on unit owners for violations of the declaration, bylaws and rules of the association." A.R.S. § 33-1242(A)(11). That section was adopted from the Uniform Condominium Act in 1985. The language of the Uniform Act is informative. It provides that "the association may … (11) … levy reasonable *fines* for violations of the declarations, bylaws, and rules and regulations of the association." Unif. Condo. Act § 3-102(a) (emphasis added). Thus, our legislature intended "monetary penalties" to have the same meaning as "fines." The language of the Condominium Act and its meaning were borrowed when the legislature enacted A.R.S. § 33-1803 as part of the Planned Communities Act in 1994.

There is no need to employ secondary tools of construction because the meaning of monetary penalties is clear from the language and context. *Baker v. University Physicians Healthcare*, 231 Ariz. 379, 383, ¶ 8 (2013). Nevertheless, the doctrine of *expressio unius est exclusio alterius* informs the interpretation of the § 33-1803(B). The legislature's choice of "penalties" rather than the

[8] The Court of Appeals used "fine" and "fee" as synonyms for "penalty" when referring to a "schedule of fines" and a "fee schedule." 243 Ariz. at 297, ¶¶ 14-15.

alternative of "damages" excludes the latter from the scope of the statute. *E.g.*, *Mejak v. Granville*, 212 Ariz. 555, 558, ¶ 17 (2006).

No doubt the legislature chose to allow the imposition of monetary penalties for violations of CC&Rs rather than requiring proof of actual damages because so many violations do not cause damages readily measurable in monetary terms. Indeed, Fisher's violations did not. In the case of a home that has become an eyesore in the community due to a failure to maintain it, the HOA or other members would have to prove a reduction in value in other properties or other even less quantifiable nuisance damages such as annoyance. *City of Tucson v. Apache Motors*, 74 Ariz. 98, 103 (1952); *Burns v. Jaquays Min. Corp.*, 156 Ariz. 375, 379 (App. 1987).

Aside from the difficulty of proving actual damages, their proof is unnecessary. This Court has "recognized that a party seeking to enforce a valid deed restriction may demonstrate adequate harm merely by proving that to tolerate a violation would diminish the protection provided to all homeowners by the deed restriction." *Ahwatukee Custom Estates Mgmt. Ass'n, Inc. v. Turner*, 196 Ariz. 631, 636 (App. 2000), citing *Continental Oil Co. v. Fennemore*, 38 Ariz. 277 (1931).

Requiring proof of actual damages also has negative consequences. If such proof is required, HOAs will find it necessary to enter homeowners' properties to

cure violations in order to incur expenses that can be claimed as damages.[9] That result is simply inconsistent with the legislature's policy decision to allow monetary penalties to be used to motivate homeowner compliance. And requiring proof of actual damages would only cause or expand litigation, contrary to one of the purposes of the Planned Communities Act: "this legislation will decrease the large number of litigation cases that have consistently clogged the courts." H.R. 41st Leg.-2d Reg. Sess., Comm. on Commerce, Minutes 2/8/1994, HB 2256 at 2, appended hereto.

The Legislature likely also chose penalties over damages because a mere award of damages would be ineffective to cure the violation.

For these reasons, ad hoc penalties are reasonable even if they are not based on actual damages to the association or its members.

WITHDRAWAL OF CLAIM FOR ATTORNEYS' FEES

Petitioner withdraws the claim for attorneys' fees asserted in its Petition for Review.

CONCLUSION

The judgment of the trial court should be affirmed and the Opinion of the Court of Appeals should be vacated.

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[9] The CC&Rs expressly allow the HOA to enter a Lot to bring it into compliance. (Ex. 1 at 3, art. II, § 2.) But when the right of entry is invoked, the experience has been that the homeowner cries "trespass" and calls the police.

Respectfully submitted on July 3, 2018.

GUST ROSENFELD P.L.C.

By: /s/ *Charles W. Wirken*
Charles W. Wirken

and

GOODMAN LAW GROUP, LLP

By: /s/ *Clint G. Goodman*
Clint G. Goodman
Ashley N. Moscarello
Attorneys for Appellee

APPENDIX

H.R. 41st Leg.-2d Reg. Sess., Comm. on Commerce, Minutes 2/8/1994
HB 2256 24

ARIZONA HOUSE OF REPRESENTATIVES
Forty-first Legislature - Second Regular Session

COMMITTEE ON COMMERCE

Minutes of Meeting
Tuesday, February 8, 1994
House Hearing Room 2 - 8:30 a.m.

(Tape 6, Side A)

The meeting was called to order at 8:37 a.m. by Chairman G. Richardson and attendance was noted by the secretary.

Members Present

Mr. Armstead	Mr. Hubbard	Mr. Overton
Ms. Daniels	Mr. King	Mr. Patterson
Mr. Edens	Mr. Newman	Mr. G. Richardson, Chairman
Mrs. Hershberger	Mr. Ortega	

Members Absent

None

Speakers Present

Trisha Korwes, House Research Analyst
Wendy Gerlach, Attorney representing the Arizona Rental Dealers Association
Ronald DeMoss, Attorney representing the Arizona Rental Dealers Association
Paul Wifler, President, Arizona Rental Dealers Association
Lisa Hauser, Deputy Director, State Gaming Agency
Jack LaSota, Attorney representing Tucson Greyhound Park
Dale Phillips, President, Inter Tribal Council of Arizona
Luis Gonzales, Director of Governmental Operations, Pascua Yaqui Tribe of Arizona
Bob O'Leary, Executive Director, Water Utilities Association of Arizona
Renz Jennings, Commissioner, Arizona Corporation Commission

Guest List (Attachment 1)

CONSIDERATION OF BILLS

HB 2255, condominiums- DO PASS AMENDED

Trisha Korwes, House Research Analyst, explained the intent of HB 2255, as contained in the bill summary (Attachment 2). She referred to the Subcommittee Report on HB 2255 and HB 2256 (attachment 3) and the amendments adopted by the subcommittee (Attachments 4 and 5).

Ms. Daniels moved, seconded by Mrs. Hershberger, that HB 2255 do pass.

Ms. Daniels moved, seconded by Mr. Edens, that the proposed two-page amendment (Attachment 4) be adopted.

Ms. Daniels moved, seconded by Mrs. Hershberger, that the proposed three-line amendment (Attachment 5) to the amendment be adopted. The motion carried.

Ms. Daniels moved, seconded by Mrs. Hershberger, that the proposed two-page amendment (Attachment 4) as amended be adopted. The motion carried.

Ms. Daniels moved, seconded by Mrs. Hershberger, that HB 2255, as amended, do pass. The motion carried by a roll call vote of 10-0-0-1 (Attachment 6).

HB 2256, master planned communities - DO PASS AMENDED

Ms. Korwes explained the intent of HB 2256, as contained in the bill summary (Attachment 7).

Mr. Hubbard questioned the need for this issue to be put into the statutes. Mr. Richardson explained that passing this legislation will decrease the large number of litigation cases that have consistently clogged the courts.

Ms. Daniels moved, seconded by Mr. Edens, that HB 2256 do pass.

Ms. Daniels moved, seconded by Mrs. Hershberger, that the proposed two-page amendment (Attachment 8) be adopted.

Ms. Daniels moved, seconded by Mrs. Hershberger, that the proposed 17-line amendment to the amendment (Attachment 9) be adopted. The motion carried.

Ms. Daniels moved, seconded by Mrs. Hershberger, that the proposed two-page amendment (Attachment 8) as amended be adopted. The motion carried.

Ms. Daniels moved, seconded by Mrs. Hershberger, that HB 2256, as amended, do pass. The motion carried by a roll call vote of 10-0-1-0 (Attachment 10).

HB 2332, rental-purchase agreement act - DO PASS AMENDED

Ms. Korwes explained the intent of HB 2332, as contained in the bill summary (Attachment 11). She also explained that the proposed amendment (Attachment 12) makes a clarifying change.

Wendy Gerlach, Attorney representing the Arizona Rental Dealers Association, stated that the Association is comprised of 85 rent-to-own stores. She deferred to Ronald DeMoss to respond to technical questions.

Ronald DeMoss, Attorney representing the Arizona Rental Dealers Association, explained that HB 2332 will not change existing law or federal bankruptcy law, but clarifies that rental-purchase agreements do not fit within the definition of retail installment contracts or secured transactions. Mr. DeMoss reported that 36 other states have acts similar to HB 2332, which was modeled after an Oregon law and the Council of State Governments Handbook. He opined that this legislation will create a level playing field among dealers and provide protection for consumers.

Mr. Hubbard questioned why rental charges should be treated differently than credit card charges in the reclamation of property for nonpayment. Mr. DeMoss described the difference between the two types of charges. It was pointed out