



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**Edward Powell et. al. v. Thomas Washburn, et. al. ,
CV 05-0186-PR**

PARTIES AND COUNSEL:

Petitioners: Powell et al., represented by John C. Churchill, Parker, Ariz., and John A. Shannon, Jr., c/o Hudson & Associates, Phoenix.

Respondents: Thomas Washburn, Rose Washburn and K.R.C. Company, represented by Robert D. McCoy, Wickenburg, Arizona. Bumgardner, Fivecoat, Nevilles, Phillips and Wright, represented by Keith S. Knochel, Bullhead City, Arizona.

Amicus Curiae: National Institute of Community Management, represented by Toby Zimbalist, filed an amicus brief in support of the petitioners' position.

FACTS:

This case is a dispute about the meaning of a real estate subdivision's conditions, covenants and restrictions (referred to as "CC&Rs"), which instruct the owners of lots in that subdivision how they can develop and use those lots. A number of owners of lots in the Indian Hills Airpark subdivision sued other subdivision lot owners seeking to enforce the CC&Rs to preclude the use of recreational vehicles ("RVs") as permanent residences. The trial court ruled in favor of the persons who brought the suit, and ruled that the subdivision's CC&Rs permitted only manufactured/mobile homes, constructed homes and "hangar houses" to be used as residences, and prohibited the use of RVs for that purpose. The Court of Appeals reversed, deciding for a number of reasons that the CC&Rs did not preclude the use of RVs as residences. The petitioners have now asked the Supreme Court to reinstate the trial court's ruling. Central to the case is the question of what approach to take when interpreting the meaning of real estate CC&Rs.

ISSUE:

"In a Dispute to Exclude Recreation Vehicles (RVs) from a Planned Development, governed by Covenants, Conditions and Restrictions (CC&Rs) does the maxim of contract construction that CC&Rs "Should be strictly construed in favor of free use of land" supercede the intent of the parties and other rules of contract construction?"

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.