



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



JIE CAO, et al. v. PFP DORSEY INVESTMENTS, LLC, et al.
CV-22-0228-PR
253 Ariz. 552 (App. 2022)

PARTIES:

Petitioners: Jie Cao and Haning Xia

Respondent: PFP Dorsey Investments, LLC and Dorsey Place Condominium Association

FACTS:

This case involves a condominium termination and the sale of condominium property pursuant to the Condominium Act, A.R.S. § 33-1201, *et seq.* After PFP Dorsey acquired 90 of the 96 units in the Dorsey Place Condominiums, the Association voted to terminate the condominium and sell the six individually owned units to PFP Dorsey. The Xias, who owned a unit in the condominium, opposed the termination and sale. The Xias filed suit against PFP Dorsey and the Association, claiming that the transaction had violated the terms of the Condominium Act and, alternatively, that A.R.S. § 33-1228 – the section of the Condominium Act purportedly authorizing the sale of condominium units upon termination, potentially without the unit owner’s consent – was unconstitutional as applied. Following briefing by the parties, the superior court dismissed the Xias’ complaint, and they appealed.

In its opinion, the court of appeals stated that A.R.S. § 33-1228 was not unconstitutional as applied and was enforceable as to the unit owners in Dorsey Place because the Condominium Act was incorporated by reference into the terms of the condominium’s Declaration. The court of appeals further held that the Association erred when it conducted the termination and sale pursuant to the terms of the then-current 2018 version of A.R.S. § 33-1228 rather than the 1986 version that was in effect when the Xias actually purchased their unit. The court of appeals remanded the case for the superior court to determine whether the Association breached its fiduciary obligations under the 1986 version of A.R.S. § 33-1228 as opposed to the 2018 version.

ISSUES:

1. Either on its face or as applied in this case, does A.R.S. § 33-1228 authorize the taking of private property for private use in violation of Article 2, § 17 of the Arizona Constitution?
2. If any common elements or units in a condominium are to be sold pursuant to a condominium termination agreement, does A.R.S. § 33-1228 require all the common elements and units to be part of that sale?
3. If a contract incorporates an unconstitutional statute by reference, are the terms of that statute enforceable as to the contracting parties?

4. If a condominium declaration incorporates a statute by reference, are subsequent statutory amendments incorporated into the agreement?

ARIZONA CONSTITUTION:

Article 2, § 17 of the Arizona Constitution provides in relevant part:

Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches, on or across the lands of others for mining, agricultural, domestic, or sanitary purposes.

STATUTES:

The version of A.R.S. § 33-1228 in effect at the time of the termination provided in relevant part:

A. Except in the case of a taking of all the units by eminent domain, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

B. An agreement to terminate shall be evidenced by the execution or ratifications of a termination agreement, in the same manner as a deed, by the requisite number of unit owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications of a termination agreement shall be recorded in each county in which a portion of the condominium is situated and is effective only on recordation.

C. A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

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