



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**

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**BURKETT v. DRYJA, et al.  
CV-25-0143-PR  
147 Arizona Cases Digest 26 (App. 2025)**

**PARTIES:**

*Petitioners:* John and Anita Dryja

*Respondent:* Stephanie Burkett, as trustee of the Stephanie Rae Burkett Revocable Trust dated January 28, 2011

**FACTS:**

In 2021, the Dryjas installed a new air-conditioning unit on their residential property. Burkett – the Dryjas’ next-door neighbor – sued the Dryjas for negligence and breach of contract, alleging that the AC unit was creating a nuisance in violation of the community’s declaration of covenants, conditions, and restrictions. She also sued the homeowners association for negligence and breach of contract, alleging the HOA failed to enforce the CC&Rs against the Dryjas. Burkett sought attorney fees under Section 10.3 of the CC&Rs, which provided that “if any court proceedings are instituted in connection with the rights of enforcement and remedies provided,” then the prevailing party shall be entitled to recover reasonable attorney fees and costs expended. The Dryjas sought attorney fees under the same provision. Following a bench trial, the trial court found in favor of the Dryjas and the HOA.

The Dryjas and the HOA timely applied for attorney fees and costs. The trial court held a hearing on the applications, during which it suggested that Burkett’s claims against the Dryjas were not properly breach of contract claims but were instead tort claims, such that the attorney fee provision of the CC&Rs would not apply. The parties filed supplemental briefs on the issue, and the trial court ultimately ruled that the Dryjas were not entitled to an award of attorney fees because Burkett’s claims against the Dryjas were essentially nuisance claims which could have been asserted against the Dryjas irrespective of the existence of the CC&Rs.

The court of appeals affirmed the superior court’s ruling, concluding that because the Dryjas’ underlying tort duties were preexisting legal duties that the Dryjas owed Burkett simply because of their relationship as neighbors, these duties did not exist “but for” the CC&Rs. Accordingly, Burkett’s suit to enforce those duties did not arise out of the CC&Rs, and the Dryjas were not entitled to fees.

**ISSUES:**

1. Where a written fee-shifting term in recorded CCRs requires an award of attorney’s fees to all prevailing parties in any Court Proceedings instituted in connection with the rights of enforcement and remedies under CCRs, is the term

enforceable as to all prevailing parties in an enforcement action?

2. Is a written anti-nuisance term in the recorded CCRs of an Arizona HOA enforceable in contract, where the prevailing party is a next-door neighbor of the losing party and therefore has a pre-existing duty in tort?

3. Did the Court of Appeals err in holding that a pre-existing tort duty renders unenforceable a written contractual term containing the same duty?

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