

Missouri Court of Appeals Upholds Subdivision Declaration Barring Solar Panels

AUTHOR: MENGMENG LUO

CONTRIBUTOR: MENGMENG LUO, TIMOTHY SANSONE, MICHAEL LECINSKI

As discussed in *Harborview Homeowners Association, Inc. v. Sakaguchi*, No. WD84323, 639 S.W.3d 566 (Mo. App. W.D. 2022), a subdivision had a Declaration with covenants and restrictions affecting certain lots. These restrictions included a prohibition on the installation of solar panels. Angelika Sakaguchi purchased one of those lots and installed solar panels in violation of the Declaration. The Harborview Homeowners Association (our client), through its board, repeatedly told Sakaguchi remove the solar panels from her home, to no avail. The association then filed a lawsuit against her, seeking an injunction that would order her to remove the solar panels and pay the association its attorney's fees and costs, as required by the Declaration.

Sakaguchi filed a cross-petition against the association for a declaratory judgment stating that the covenants and restrictions in the Declaration did not apply to her property, and that the board did not have authority to enforce the Declaration because the board did not timely hold elections. The trial court (1) granted the association's motions for summary judgment, finding the Declaration applied and the board had authority to enforce the Declaration; (2) denied Sakaguchi's cross-motion for summary judgment; and (3) entered an order awarding a permanent injunction under which Sakaguchi must remove the solar panels from her home, along with reasonable attorneys' fees and costs incurred by the association during the litigation.

Sakaguchi appealed this decision, but it was upheld by the Missouri Court of Appeals, Western District. Our Appellate Team pointed out that the uncontroverted material facts showed that the Declaration – including the section prohibiting the installation of solar panels – applied to Sakaguchi’s property, and that Section 442.012 RSMo regarding solar panels did not exempt her from abiding by the Declaration to which she voluntarily agreed when she purchased her property. The Western District found that Sakaguchi did not properly respond to the uncontroverted statements of fact in Harborview’s motion for summary judgment, as required by Rule 74.04. Therefore, the facts were deemed admitted. The Court also addressed Sakaguchi’s argument about board elections and stated that under Section 355.231.6, the board still had authority to act, despite not having had an election for new board members. The Court found no error in granting the summary judgment, and awarded our client reasonable attorney’s fees and costs.