

Ari SEIA

Arizona Chapter of the Solar Energy Industries Association

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Arizona Court Again Strikes Down a HOA's Restrictions on Private Property Rights to use Solar Energy

The Arizona Court of Appeals recently issued a published opinion in a case that will lead to greater use of solar energy in Arizona. In Garden Lakes Community Association v. Madigan/Speak, the HOA was seeking to force the homeowners to take down solar panels installed on the roof. The Appeals Court found that the HOA's deed restriction and architectural guidelines, combined with the HOA's conduct, violated the public policy of Arizona as expressed in Arizona Revised Statute Section 33-439.

Garden Lakes Community Association is a master planned community located in Avondale, Arizona, with over 2,000 homes. Madigans and Speaks, retirees living in the HOA, installed solar swimming pool heaters for environmental and economic reasons. Heliocol Solar, a member of the Arizona Solar Energy Industries Association, installed the Speak system. The homeowners wanted to use Arizona's abundant sunshine to heat their swimming pools so they could exercise without pain in winter months. Little did they know the solar panels would lead to five years of litigation.

The HOA filed a lawsuit against the two seeking an injunction requiring removal of the solar panels and approximately \$100,000 in fines. Relying on the deed restriction and Architectural Review Guidelines, the HOA argued that the homeowners should have built a patio or screen to hide the solar panels. Madigans and Speaks countered that both options are prohibitively expensive and significantly reduce the efficiency of the systems. Madigans and Speaks won in the trial court but the HOA continued its litigation and appealed.

The Appeals Court, in upholding the lower courts decision in favor of the homeowners, concluded, the HOA's restriction on solar panels "effectively prohibited the installation and use of SED's (solar energy devices)." The Association attempted to place restrictive guidelines on the residents that were contrary to the provisions of A.R.S.-33-439 (A). The Arizona Legislature passed ARS-33-439 in 1979 in order to protect individual homeowners private property rights to use solar energy. The opinion can be reviewed at <http://www.cofad1.state.az.us/opinionfiles/cvidx.htm>.

Many HOAs place restrictions on the installation of solar devices that add significantly to their cost or prevent them from receiving sunlight, which would render them useless. This practice is a significant barrier to widespread use of solar energy by Arizona homeowners.

"Hopefully, this ruling will end the senseless attempts by homeowners associations to prevent

Arizonans from using solar energy,” said Kent Pulido, President of the Arizona Solar Energy Industries Association (AriSEIA). “With incentives such as the Arizona residential tax credit, the new utility rebate programs and the pending federal tax credit, Arizonans can now take advantage of the sun to reduce their monthly utility bills and allow our state to take advantage of the economic development and air quality benefits that solar can provide.”

According to information provided by Arizona utilities, in the Phoenix area, the installation of a solar domestic water heating system will annually displace 2600 pounds of pollutants, when replacing an electric water heater and 1200 pounds, when replacing a natural gas water heater. Swimming pool heating systems can prevent the emissions of 10,000 pounds of carbon dioxide and other pollutants annually when replacing natural gas for pool heating. Money saved by Arizona consumers remains in the local economy benefiting Arizona cities and towns.

Madigans and Speaks were represented by attorney Hyung S. Choi of CHOI & RHEE, PLLC, a law firm in Tempe, Arizona. Attorney Choi’s practice is focused on consumer protection litigation and in this case agreed to represent Madigans and Speaks because of the overreaching lawsuit filed by the HOA.

The Arizona Solar Energy Industries Association has been conducting an outreach program to homeowners associations promoting standards for the aesthetic installation of solar energy devices. The program, funded by the U.S. Department of Energy through a grant to the Arizona Department of Commerce, Energy Office has resulted in presentations to many homeowner associations and management companies throughout the state. The goal of the program is to demonstrate the increased property values of energy savings and the benefits of solar energy the state of Arizona.