

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2023-052094

02/15/2024

HONORABLE MELISSA IYER JULIAN

CLERK OF THE COURT  
A. Delgado  
Deputy

SUSAN M MARCELLA

MARK BAINBRIDGE

v.

LEGEND TRAIL COMMUNITY  
ASSOCIATION, THE, et al.

TESSA KNUEPPEL

JUDGE JULIAN

**Vacating Order Granting Motion to Join Indispensable Parties, Denying Motion on the Merits, and Staying Pending Deadlines for 30 Days**

Currently pending are Plaintiff's Request for Clarification Regarding January 22, 2024, Order, filed February 2, 2024, Plaintiff's Motion to Stay All Discovery and Other Deadlines in the Scheduling Order, filed February 2, 2024, Defendant's Motion Seeking Clarification of Court's Ruling Regarding to Join Indispensable Parties, filed February 2, 2024, and Defendant's Motion to Stay Deadlines, filed February 2, 2024. Upon receipt of the above motions, this Court reviewed the docket and found that the order granting a prior motion for the joinder of indispensable parties was entered by mistake when it appeared that no response opposing the joinder was on docket and the time for responding had expired.

**A. Factual Background**

This case arises from a dispute between a homeowner and the community association, responsible for approving renovations pursuant to the terms and conditions of a Declaration of Covenants, Conditions, Restrictions and Easements (the "CC&Rs"). Plaintiff Susan Marcella owns a home in the Legend Trail master planned community. Lorenzo and Martin own a neighboring home in the community. The community is managed by Defendant Legend Trail

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Community Association (the “Association”) and is responsible for enforcement of the CC&Rs as well as for approving renovations to community homes. Plaintiff filed suit asserting several damages claims for breach of contract, breach of the implied covenant of good faith and fair dealing, “breach of duty,” and for violations of A.R.S. § 33-1805 relating to the production of association records. Although Plaintiff’s suit alleges other breaches, her lawsuit is premised in part on the Association’s approval of renovations to her neighbor’s home which she contends violated the terms of the CC&Rs. Her complaints are that her neighbor’s improperly approved renovations constitute a “nuisance and interfere with [the] quiet enjoyment” of her home. Plaintiff’s claim for breach of contract includes a damage that she was damaged by the Association’s failure to enforce the CC&Rs architectural requirements with respect to Lorenzo/Kraus home.

**B. Indispensable Parties Motion Granted as Unopposed by Mistake**

On December 13, 2023, Defendant’s filed a motion seeking the joinder of Plaintiff’s neighbors Martin Lorenzo and Peter Kraus as indispensable parties. A response was due 15 days later. *See* Ariz. R. Civ. P. 6 & 7.1(a). No timely response was filed nor did the parties file a notice extending the deadline pursuant to Rule 7.1(g). The Court granted the motion as unopposed on January 22, 2024, not realizing that Plaintiff filed a belated response on January 10, 2024, and Defendant’s filed a reply on January 22, 2024. The varying speed with which filings are processed and uploaded into the Court’s individual que (particularly during the holiday season) can sometimes result in an order being entered as unopposed by mistake, especially where a responsive brief is not timely filed, and no notice of extension has been filed to alert the court that the parties have agreed to extend a response deadline. After reviewing the docket, that is what apparently occurred here. Accordingly, and because this Court did not consider the motion to join indispensable parties on its merits, the Court vacates the Order granting the motion and entered on January 2, 2024. For the reasons set forth below and after considering the parties’ complete briefing on the merits, this Court finds that Lorenzo and Kraus are not indispensable to Plaintiff’s existing claims.

**C. Motion to Join Indispensable Parties on the Merits**

The motion was predicated on the argument that Lorenzo and Kraus are “indispensable” because “in Count one of her complaint, Plaintiff Susan M. Marcella seeks a declaratory judgment” that the Association violated its CC&Rs when it approved renovations to the Lorenzo/Kraus home. Although Plaintiff opposes the motion, she does not dispute that she seeks declaratory relief establishing that the approval of the Lorenzo/Kraus renovations constituted a violation of the CC&Rs, and her response vaguely implies that she is seeking to compel the Association to enforce these alleged violations as to the Lorenzo/Kraus property. If that were the case, then certainly

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Lorenzo/Kraus would have an indispensable interest in defending against a declaration that would directly impact their property.

Nevertheless, and despite the parties' briefing, the Court can find no actual request in Plaintiff's complaint for declaratory relief or for other affirmative relief (e.g., an injunction) seeking to compel the Association to take any action against Lorenzo/Kraus with respect to Plaintiff's complaints. Rather, her only claim for declaratory relief/injunctive relief seeks a declaration "requiring the Association to produce records." That request has no bearing on the Lorenzo/Kraus home and does not require their joinder.

In the absence of an affirmative claim that seeks declaratory or injunctive relief with respect to the Lorenzo/Kraus home, they are not indispensable to the adjudication of Plaintiff's damages claims. In the event either party wishes to amend their pleadings to assert a claim or third-party complaint which does seek such a declaration, then certainly Lorenzo and Kraus would need to be joined and served. But in the absence of such an amendment to the pleadings, there is no basis to compel their participation in this case.

**IT IS THEREFORE ORDERED** vacating the Order Granting Rule 19 Motion to Join Indispensable Parties, filed January 22, 2024.

**IT IS FURTHER ORDERED** denying Defendant's Motion to Join Indispensable Parties, filed December 13, 2023, without prejudice to any motion to amend the complaint or verified answer as appropriate under Rule 15 and considering the court's comments above.

**IT IS FURTHER ORDERED** deeming moot Plaintiff's Request for Clarification Regarding January 22, 2024, and Defendant's Motion Seeking Clarification of Court's Ruling Regarding to Join Indispensable Parties, filed February 2, 2024.

**D. Stay of Proceedings**

Both parties requested a stay of the proceedings and existing deadlines considering the Court's previous order directing Lorenzo and Kraus's joinder. This should have been filed as a stipulation but was not. As noted, it appears that both parties were operating under the assumption that a declaratory judgment as to the neighboring property and a request for enforcement even though neither a declaratory nor injunctive remedy as to the neighboring property was requested in the original complaint. Under these circumstances, it may be appropriate for the parties to seek amendment of the pleadings to add a claim for declaratory relief as to the Lorenzo/Kraus home. It may also be that the parties may agree upon an amendment and joinder when they meet and confer in good faith. In either case, the parties will need to stipulate to extend the existing deadlines and to reset the settlement conference and trial conference in this matter. The Court will give the

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parties an additional 35 days to meet and confer and submit a proposed amended scheduling order under the circumstances.

**IT IS ORDERED** granting Plaintiff's Motion to Stay All Discovery and Other Deadlines in the Scheduling Order, filed February 2, 2024, and Defendant's Motion to Stay Deadlines, filed February 2, 2024. The deadlines set forth in the October 26, 2023, are hereby stayed until Wednesday, March 20, 2024. On or before March 20, 2024, the parties shall file a stipulation to amend the scheduling order together with an amended scheduling order which sets forth any agreed upon extensions to the existing deadlines and includes blanks for a new trial setting conference to be set. If the parties fail to submit a stipulation and proposed scheduling order by that deadline, the Court will place this case on the dismissal calendar without further notice under Rule 38.1. **The parties shall meet and confer in person or by telephone or videoconference regarding any pleading amendments and discovery/mediation deadlines prior to filing the required stipulation.**