

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-015126

03/20/2006

HONORABLE ROBERT E. MILES

CLERK OF THE COURT
W. Yank/T. Melius
Deputy

FILED: 03/29/2006

EAGLE MOUNTAIN COMMUNITY
ASSOCIATION

WILLIAM F SHORE III

v.

EAGLE MOUNTAIN INVESTORS L L C

WILLIAM A NEBEKER

LEONARD M BELL
ROGER E BRODMAN
DAVID J CANTELME
WILLIAM H DOYLE
ANDREW M FEDERHAR
DENISE J HENSLEE
CHRISTOPHER D HOSSACK
CRAIG L KELLER
MITCHELL J RESNICK
DEAN C ROBERTSON
G MICHAEL TRYON
MEREDITH L VIVONA

MINUTE ENTRY

The Court has had under advisement Defendant Eagle Mountain Investors, LLC's Motion for Partial Summary Judgment. The Motion is granted in part and denied in part.

Eagle Mountain Investors ("EMI") asserts that Plaintiff lacks standing to sue regarding alleged defects on property that EMI does not own or have responsibility to maintain, as opposed to common areas that EMI does have the duty to maintain and manage. Specifically, EMI challenges Plaintiff's standing to sue regarding alleged defects on

- 1) Property owned by private homeowners within Eagle Mountain
- 2) Golf Course Land which is not part of the Master Common area (as defined in the CC & R's)

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3) Property owned or dedicated to a governmental entity such as Maricopa County, as provided in the CC & R's

The Court notes that Plaintiff's Response to EMI's Motion does not address the standing issue as it applies to the Golf Course Land or property dedicated to governmental entities.

Section 16.1 of the CC & R's for Eagle Mountain expressly states that Golf Course Land (as defined in the CC & R's) is not part of the Master Common Area for which Plaintiff is responsible. The CC & R's also state that "IT IS EXPRESSLY INTENDED... THAT EAGLE MOUNTAIN...NOT INCLUDE THE GOLF COURSE LAND". Since neither the Plaintiff nor the members of the Plaintiff's Association have any interest in the Golf Course Land (id; §16.1), Plaintiff is without standing to sue for alleged defects to the Golf Course Land.

The CC & R's define "Exempt Property" to include all land and improvements owned by or dedicated to and accepted by a political subdivision. The only references to "Exempt Property" that the Court could find in the CC & R's are in the definition of "Assessable Property" and in section 6.1, regarding the number of memberships in the Association. Neither reference aids in a determination of the issue here. However, the CC & R's also provide that portions of the Property dedicated to a governmental entity for public purposes are not subject to the CC & Rs. Since the Plaintiff asserts its right to representational standing by virtue of its duties under the CC & R's, the Court concludes that it cannot sue for alleged defects to property that is owned or dedicated to a governmental entity.

Whether the Plaintiff may sue for alleged damages to the property of individual lot owners is a more difficult question. Plaintiff argues that it has representational standing pursuant to Section 12.1 of the CC & Rs, but that provision only grants Plaintiff the right to enforce the CC & R's. This is not a suit to enforce the CC & Rs. Plaintiff also argues that it can bring this claim as a Homeowners' Association Dwelling Action. The statute defines "dwelling" for purposes of such an action as a residential unit and property "either owned by a homeowners' association or jointly by all members of a homeowners association". The damage alleged here is not to "residential units", nor is it damage to jointly owned property. Instead, it is alleged damage to property owned individually by various lot owners within Eagle Mountain. Thus, these arguments are not persuasive.

In Armory Park Neighborhood Association v. Episcopal Community Services in Arizona, 148 Ariz 1, 712 P. 2d 914 (1985), the Supreme Court concluded that an association could sue on behalf of its members if, given all the circumstances, the association has a legitimate interest in an actual controversy involving its members and if judicial economy and administration will be promoted by allowing representational appearance. The Court concludes that that standard is met in this case and that Plaintiff will adequately and fairly represent the interests of its members.

Accordingly, IT IS ORDERED that Plaintiff may not pursue claims in this case insofar as they relate to alleged damage to Golf Course Land or property owned by or dedicated to a governmental authority.

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The Court has also had under advisement Plaintiff's Motion to Strike EMI's Experts pending advice from counsel as to what, if any, issues remain regarding experts. The Court has not received notice of any issues still in dispute. Accordingly,

IT IS FURTHER ORDERED denying the Motion to Strike EMI's Experts as moot.