

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-008665

04/15/2022

HONORABLE JOAN M. SINCLAIR

CLERK OF THE COURT
S. Motzer
Deputy

MICHAEL LYON

DAMIEN R MEYER

v.

REGENCY HOUSE ASSOCIATION, et al.

AUGUSTUS H SHAW IV

JUDGE SINCLAIR

UNDER ADVISEMENT RULING

Plaintiff Michael Lyon filed his Motion for Partial Summary Judgment along with a Statement of Facts on October 15, 2021. The matter was fully briefed. An oral argument was held on March 25, 2022, and the Court took the matter under advisement. Plaintiff is seeking relief on count 1 (breach of contract) and count 6 (injunctive relief and/or specific performance). The Court notes that normally whether a breach of contract occurred is a factual determination. *Fehribach v. Smith*, 200 Ariz. 69, 73, ¶ 16 (App. 2001) (citation omitted).

The Plaintiff requests summary judgment under Rule 56 of the Arizona Rules of Civil Procedure. Motion, page 1. The moving party bears the burden of demonstrating both absence of any factual conflict and right to judgment. *Nat'l Bank of Ariz. v. Thurston*, 218 Ariz. 112, 115, ¶ 13-14 (App. 2008). If the movant meets the burden, the nonmovant “must respond with specific facts showing a genuine issue for trial.” *MacConnell v. Motten*, 131 Ariz. 22, 25 (1981). The evidence is to be viewed in the light most favorable to the non-moving party, *Espinoza v. Schulenburg*, 212 Ariz. 215, 216, ¶ 6 (2006), but the nonmoving party must produce more than a “scintilla of evidence” or a “slight doubt” to survive the motion. *Orme Sch. v. Reeves*, 166 Ariz. 301, 304 (1990).

This case involves the language of the governing covenants, conditions and restrictions (“CC&Rs”). The “common elements” of the property include the parking garage and parking

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-008665

04/15/2022

areas. Section 1.7 of the CC&Rs, p.3, Exhibit B to the complaint (hereinafter referred to simply by the section number). The plat recorded with the CC&Rs was incorporated by reference into the CC&Rs. Section 1.20. The recorded plat specifically identified the individual parking spaces in the first basement plan and the second basement plan as they existed in April, 1979. Exhibit F to the complaint. The Plaintiff was assigned parking space P-238 when he purchased his apartment in 2009. Plaintiff's SOF, ¶ 28.

To amend the CC&Rs and the plat, section 24 states that "[t]he provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission and signed and acknowledged by Owners owning not less than seventy-five percent (75%) of the total ownership of the Common Elements and by all institutional first Mortgagees. . ." and shall be effective once recorded. Section 24. In September 2019, the parking garage was altered with new parking spaces and loading zones. Complaint, ¶¶ 50-54. The Defendant argues that it was not required to follow the requirements of Section 24 in altering the parking areas; Plaintiff argues that it was.

At first blush, it appears that the parking spaces cannot be altered without following the Section 24 requirements. However, ownership of the common elements is not absolute. Section 6 of the CC&Rs states that each owner has the right to use the common elements but that "such right...shall be subject to and governed by the provisions of the Act, Declaration, Bylaws and rules and regulations of the Association." Section 6. Furthermore, all parking spaces "may be assigned, rented or otherwise used in such a manner as the Board may prescribe... ." Section 7. In addition, "[p]arking of vehicles in driveways and parking areas shall be subject to the rules and regulations of the Board applicable thereto." Section 21.9. Moreover, the Bylaws of the Regency House Association ("Bylaws") specifically provide the Board with the power to "adopt rules and regulations...governing the administration, management, operation and use of the Property and the Common Elements... ." Bylaws, Section 11, Exhibit C to the complaint.

The Bylaws specifically allow the Board to "adopt rules and regulations...governing the administration, management, operation and use of the Property and the Common Elements, and to amend such rules and regulations from time to time." Section 11(e), Bylaws. Similarly, the Board has the authority to "provide for the maintenance, repair and replacement of the Common Elements... ." Section 11 (f), Bylaws. The Defendant did not identify any particular rule or regulation that allowed for the changes to the parking areas. The crux of the issue here is whether the changes to the parking areas constitute either a "use" prescribed by the Board under Section 6 of the CC&Rs or part of the "maintenance, repair and replacement" of the common elements under the Board's authority as listed in the Bylaws at Section 11(f).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-008665

04/15/2022

A reasonable juror could find based on the language of the CC&Rs, the Bylaws, and the rules and regulations, that the Defendants have not breached the contract given the language noted above. Therefore, the Court determines that this is not a matter for summary judgment.

IT IS ORDERED denying the motion for partial summary judgment.