

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-006034

05/24/2017

HONORABLE DOUGLAS GERLACH

CLERK OF THE COURT  
D Arrieta  
Deputy

LES RODIN

MARK BAINBRIDGE

v.

LAS HADAS VILLAS ASSOCIATION, et al.

BRIAN E DITSCH

WILLIAM J CUROSH  
COURT ADMIN-CIVIL-ARB DESK

**MINUTE ENTRY**

East Court Building – Courtroom 513

10:01 a.m. This is the time set for Oral Argument on Las Hadas Villas Association, Nancy Fahy and June Francisco's Motion for Summary Judgment, filed on December 20, 2016; and Defendant Diania Buchholt's Motion for Partial Summary Judgment Against Plaintiff, filed on February 27, 2017.

The following counsel/parties are present:

- Plaintiff Les Rodin is present and represented by counsel, Mark Bainbridge.
- Defendant Las Hadas Villa Association is represented by counsel, Brian E. Ditsch.
- Defendants Nancy Fahy and June Francisco are present and represented by counsel, Brian E. Ditsch.
- Defendant Diana Buchholt is present and represented by counsel, William J. Curosh.
- Managers of PRM Association Management Paul Rubin and Susan Rubin are also present.

A record of the proceedings is made digitally in lieu of a court reporter.

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Discussion is held regarding the Motion for Summary Judgment and the Motion for Partial Summary Judgment.

Argument is heard and considered.

For the reasons stated on the record,

**IT IS ORDERED** granting Las Hadas Villas Association, Nancy Fahy and June Francisco's Motion for Summary Judgment, filed on December 20, 2016.

**IT IS FURTHER ORDERED** granting Defendant Diania Buchholt's Motion for Partial Summary Judgment Against Plaintiff, filed on February 27, 2017.

**IT IS FURTHER ORDERED** transferring the remaining issues to the Civil Court Administration Arbitration Desk for appointment of an arbitrator.

10:34 a.m. Matter concludes.

**LATER:**

During the oral argument, counsel for Rodin urged that, even if Rodin has not experienced any compensable financial injury attributable to any defendant's act or failure to act, he is, nevertheless, entitled to declaratory relief regarding the defendants' purported misconduct.

Two separate statements of fact have been submitted on Rodin's behalf in an effort to withstand summary judgment. [See Pltf's. Fact State. (1/24/17), Pltf's. Fact State. (4/3/17)] In both of those statements, the asserted wrongful conduct on which Rodin bases his claimed entitlement to declaratory relief occurred at times in the past, i.e., in both statements of fact, every act identified as wrongful is, without exception, described in the past tense. Moreover, in neither of the Rodin statements of fact is there a contention, much less a contention supported with admissible evidence, that any wrongdoing is ongoing, nor is there a contention supported with admissible evidence that any of the wrongful conduct on which Rodin bases his claim is likely to occur again in the future.<sup>1</sup>

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<sup>1</sup> A statement of facts is the only means by which a party opposing summary judgment may create a record showing the existence of facts that warrant denying the motion. Ariz. R. Civ. P. 56(c)(3). The statement of facts must be supported by specific citations to evidence that either accompanies the statement or appears elsewhere in the record. *Id.* (statements of fact must "cite the specific part of the record where support for each fact may be found"). And, the cited evidence must be admissible. *Orme School v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990) ("inadmissible evidence [is] . . . insufficient to withstand a motion for summary judgment").

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Declaratory relief requires the existence of a controversy, and whether that controversy exists is determined "at the time the court acts. It is not enough that there may have been a controversy when the action was commenced." 10B Charles Alan Wright et al., *Federal Practice & Procedure* §2757 (4th ed. April 2017 Westlaw update); *see also Golden v. Zwickler*, 394 U.S. 103, 108 (1969) (same). And, it is well-settled that declaratory relief is not available to a party that seeks to adjudicate conduct that occurred in the past absent evidence (not in the record here) that the conduct is likely to reoccur. *E.g., Ysais v. New Mexico*, 373 Fed.Appx. 863, 866 (10th Cir. 2010) ("A declaratory judgment is . . . not [meant] to proclaim liability for a past act"); *Fieger v. Ferry*, 471 F.3d 637, 643 (6th Cir. 2006) ("In the context of a declaratory judgment action, allegations of past injury alone are not sufficient"); *see also City of Los Angeles v. Lyons*, 461 U.S. 95, 103 (1983) (concluding in part that trial court's dismissal of request for declaratory relief was appropriate: "[P]ast wrongs do not in themselves amount to that real or immediate threat of injury necessary to make out a case or controversy" sufficient to warrant equitable relief).<sup>2</sup>

Apart from that, to grant Rodin the declaratory relief that he has requested would be meaningless. "A declaratory judgment does not command" anyone to do anything. *E.g., Marshall v. Crotty*, 185 F.2d 622, 629 (1st Cir. 1951); *Deglau v. Franke*, 184 F.Supp. 225, 228 (D. R.I. 1960) ("A declaratory judgment per se does not command action"). Thus, for example, if the court were merely to declare that the individual defendants failed to carry out their duties as members of the Association's board of directors in response to parking issues [see Complaint (7/25/16) at 4-5, paras. 20(b), 21(b), 29], nothing would change other than, perhaps, Rodin feeling some measure of satisfaction. Under no authority to which the court's attention has been directed, however, nor any that the court's independent research has uncovered, is declaratory

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<sup>2</sup> In addition, *see Excelsior Garage Parking, Inc. v. 1250 North Dearborn Cond. Ass'n*, 394 Ill. Dec. 700, 708, 36 N.E.2d 991, 999 (App. 2015) (recognizing that a declaratory judgment action that seeks "a declaration of liability on past conduct" warrants dismissal); *Stevenson v. Lanham*, 127 Md. App. 597, 619, 621, 736 A.2d 363, 375, 377 (1999) ("[T]here was no justiciable controversy when the [trial] court issued the declaratory judgment in this action" because the "appellant had stopped engaging in the conduct at issue"); and *Bluestar Energy, Inc. v. Murphy*, 205 S.W.3d 96 (Tex. App. 2006) (stating that a determination of liability "for past conduct is not normally a function of the declaratory judgment statute"). Because Illinois, Maryland, and Texas, like Arizona, have adopted the Uniform Declaratory Judgment Act, it is appropriate to rely on cases from those jurisdictions for guidance. *See Chandler Med. Bldg. Partners v. Chandler Dental Group*, 175 Ariz. 273, 279, 855 P.2d 787, 793 (App. 1993) (looking to "cases from other jurisdictions that have adopted . . . the Uniform Partnership Act" for guidance); *see also Moore v. Browning*, 203 Ariz. 102, 106, ¶10, 50 P.3d 852, 856 (App. 2002) (recognizing that legislatures adopt uniform laws intending "to make uniform the law of those states which enact it"); *Canon School Dist. No. 50 v. W.E.S. Const. Co. Inc.*, 180 Ariz. 148, 154, 882 P.2d 1274, 1280 (1994) (stating that "[i]t is axiomatic that a purpose in enacting uniform laws is to achieve conformity, not uniqueness. . . . This court should strive to maintain the standardization of construction of uniform acts to carry out the legislative intent of uniformity" (citation and internal quotation marks omitted)).

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relief available when, as here, it would accomplish nothing other than to allow a plaintiff to say to a defendant, "So there, I told you so."