

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-052655

05/08/2020

HONORABLE CYNTHIA J. BAILEY

CLERK OF THE COURT  
W. Tenover  
Deputy

MICHAEL BERENT, et al.

KRISTIN M. ROEBUCK

v.

GRAZYNA MROCKOWSKA, et al.

KEVIN M ARNOLD  
DEBRA S BROCKWAY  
JUDGE BAILEY

MINUTE ENTRY

The Court has read and considered Plaintiffs Motion for Ruling on Declaratory Relief, filed March 10, 2020. No Response was filed.

Plaintiffs asks this Court to rule on their declaratory judgment claim prior to the jury trial on the grounds that there is no material dispute of fact on this issues raised in the Third Amended Complaint, such that the Court, not the jury, should resolve this claim. Plaintiffs argue that the fact that the driveway in dispute in this litigation does not comply with the city ordinance is not disputed by the Mrockowska Defendants. Plaintiffs assert that “the only defense raised by the Defendants is that the City of Surprise purported to approve the driveway or at a minimum is not willing to enforce the City Ordinance.” However, Plaintiffs’ Third Amended Complaint implicates both actions by the Mrockowska Defendants and the HOA Defendants in reference to their claim seeking a declaratory judgment. As is clear from the Court’s prior rulings on various Motions for Summary Judgment, there are material issues of facts that are disputed as to the underlying facts necessary to resolve the declaratory relief action.

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A declaratory judgment action is a remedy for an underlying cause of action; it is not a separate cause of action. *See Steers v. CitiMortgage, Inc.*, 2011 WL 6258219, at \*3 (D.Ariz. Dec. 15, 2011) (citation omitted); [\*McMann v. City of Tucson\*, 202 Ariz. 468, 473, 47 P.3d 672, 678 \(App.2002\)](#) (noting that a declaratory judgment “remedy” is available “to declare the rights, status, and other legal relations”) (quoting [A.R.S. § 12-1831](#) and omitting internal quotation marks); *Land Dept. v. O’Toole*, 154 Ariz. 43, 47, 739 P.2d 1360, 1364 (Az.Ct.App.1987) (“The declaratory judgment procedure is not designed to furnish an additional remedy where an adequate one exists.”); *Yares v. Bear Stearns Residential Mortg. Corp.*, 2011 WL 2531090, at \*3 (D.Ariz. June 24, 2011) (holding that claims for declaratory and injunctive relief must be based on “a cognizable legal theory.”).

Because Plaintiffs first count is not a cause of action; but rather, a remedy that is dependent upon the success of their other causes of action, the Court declines to rule on the declaratory judgment count until the trial is concluded.

**IT IS THEREFORE ORDERED** denying Plaintiffs Motion for Ruling on Declaratory Relief, filed March 10, 2020.