

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-001021

05/03/2021

HONORABLE JAMES D. SMITH

CLERK OF THE COURT
K. Treftz
Deputy

RON HASSID

RON HASSID
2401 E ELM ST
PHOENIX AZ 85016

v.

LA FUENTE CONDOMINIUM ASSOCIATION
INC, et al.

LYDIA P LINSMEIER

JUDGE J. SMITH

MINUTE ENTRY

The Court received La Fuente Condominium Association and Vision Community Management's Application for Attorneys' Fees and Costs (filed 04/08/2021). The central issue is whether the matter arose out of contract. Plaintiff's Complaint alleged only negligence claims. But these Defendants argued that the claims could not exist but for the contract, *i.e.*, the Declaration of Horizontal Property Regime.

The Court cannot find a copy of the CC&Rs in the record, so it is difficult to analyze the parties' contractual relationships and whether claims depend on them. When contract and tort theories may be intertwined, "it must be the case that the tort cause of action could not exist but for the breach of contract." *Robert E. Mann Constr. Co. v. Liebert Corp.*, 204 Ariz. 129, 134 ¶ 15, 60 P.3d 708, 713 (App. 2003). And Defendants did not argue that Plaintiff has a contract with Vision; its contract is with the HOA. *See Fire Ins. Exch. v. Thunderbird Masonry, Inc.*, 177 Ariz. 365, 370, 868 P.2d 948, 953 (App. 1993) (denying fee request under A.R.S. § 12-341.01 for property damage). Plaintiff pleaded allegations consistent with various tort theories that did not depend on a contract. Thus, the Court denies the request for attorneys' fees.

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These Defendants, however, are entitled to their taxable costs of \$265.75. Any final judgment will reflect that award.

IT IS SO ORDERED.