

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2018-052668

05/24/2021

HONORABLE THEODORE CAMPAGNOLO

CLERK OF THE COURT

J. Escarcega

Deputy

ROWLEY FAMILY TRUST, THE, et al.

JUSTIN R COOLEY

v.

DOVE VALLEY RANCH COMMUNITY  
ASSOCIATION, et al.

B AUSTIN BAILLIO

AMANDA E NELSON  
JUDGE BACHUS  
JUDGE CAMPAGNOLO

MINUTE ENTRY

The Court has reviewed and considered Defendant Baron's Motion for Summary Judgment, Plaintiff's Response thereto, Defendant Baron's Reply, the respective Statements of Facts, the declarations and exhibits attached to the foregoing pleadings, the Complaint and the First Amended Complaint, other relevant filings, and the applicable law. The Court finds that oral arguments would not materially assist the Court in ruling on the Motion. Because the parties did not request oral arguments, the Court is authorized to grant the Motion without holding an oral arguments hearing. *See* Rule 56(c)(1), ARIZ. R. CIV. P.; Maricopa County Local Rule 3.2(d).

Defendants Dove Valley Community Association, Michael D. Schwartz and Dana V. Schwartz filed a joinder to Defendant Baron's Motion for Summary Judgment. None of these defendants filed their own summary judgment motions. The Court finds that these three defendants stand in different positions than Defendant Baron. This Court's Ruling on Defendant Baron's Motion for Summary Judgment is based entirely on the discreet facts applicable to Defendant Baron. Therefore, this Ruling does not include the other three defendants, and they will not be joined in such Ruling.

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The Motion for Summary Judgment, filed on December 23, 2020, pertained to the original Complaint. Plaintiff subsequently filed its First Amended Complaint on February 4, 2021. Plaintiff did not file its Response to Defendant Baron's Motion until March 29, 2021, nearly two months after the First Amended Complaint was filed. The First Amended Complaint is now the operative pleading, taking the place of the original Complaint. Because the First Amended Complaint alleged the same causes of action against Defendant Baron, although numbered differently, the Court's Ruling will pertain to the First Amended Complaint.

On summary judgment, the court must view the evidence and all reasonable inferences that such evidence will permit in the way that is most favorable to the party opposing summary judgment and must assume the truth of that party's allegations. *Esplendido Apartments v. Olsson*, 144 Ariz. 355, 361 (App. 1985). Summary judgment is inappropriate where the facts, even if undisputed, would allow reasonable minds to differ. *Nelson v. Phoenix Resort Corp.*, 181 Ariz. 188, 191 (App. 1994).

The party moving for summary judgment must produce evidence that it believes demonstrates the absence of a genuine issue of material fact, and must explain why summary judgment is warranted. *National Bank of Arizona v. Thruston*, 218 Ariz. 112, ¶12 (App. 2008). If the movant has made a *prima facie* showing that no genuine issue of material fact exists, the non-movant has the burden to produce sufficient evidence that there is indeed an issue. *W.J. Kroeger Co. v. Travelers Indemnity Co.*, 112 Ariz. 285, 286 (1975); *see also Thruston*, 218 Ariz. at ¶26 (If the moving party meets its burden, the burden shifts to the nonmoving party to present sufficient evidence demonstrating the existence of a disputed fact).

The First Amended Complaint alleged the following causes of action against Defendant Baron:

- Count One: Breach of contract under the CCR;
- Count Four: Breach of duty of good faith and fair dealing;
- Count Five: Interference with contract (purchase agreement); and
- Count Seven: Aiding and abetting breach of fiduciary duty.

Defendant Baron was the adjoining neighbor to the Rowleys' property on the other side of the party wall in question. Defendant Baron contended that Plaintiff does not have any viable claims against her.

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**Count One**  
**Breach of Contract (CCR)**

Plaintiff's only breach of contract claim against Defendant Baron is that she is a party to the Dove Valley Ranch Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements (the CCR), and she breached the terms of the CCR. Specifically, the First Amended Complaint claimed that Defendant Baron breached Article V, Section 5.1.14.5 and Art. XIV of the CCR.

Article V, Section 5.1.14.5 provides:

In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

Article XIV pertains primarily to the Association's duty to maintain common areas. In its Response, Plaintiff relied upon Section 14.8, which provides the procedure for the Association to take legal action against a property owner. That section does not require any affirmative action by a property owner.

Although not specifically cited by Plaintiff, the only provision that seems to apply to a property owner's duty to maintain premises is Section 14.1.4, which merely refers back to Article V. Section 14.1.4 provides as follows:

All walls and fences situated upon the Common Area, except that the allocation of responsibility for the maintenance and repair of party walls and party fences is set forth in Subparagraph 5.1.14

Before even reaching the specifics of Plaintiff's breach of contract claim against Defendant Baron, the Court questions Plaintiff's assertion that property owners in an HOA have a contractual duty to each other. The Court could find nothing in the CCR that created such a contractual obligation. The only provision in the CCR that even came close was Article 21, which simply provided that the Association and property owners were encouraged to participate in dispute resolution. Section 21.2 provided that dispute resolution was not mandatory.

There is no question that a recorded declaration forms a contract between the association and the individual property owners. *Johnson v. Pointe Community Association, Inc.*, 205 Ariz. 485, ¶23 (App. 2003). The Court could find no appellate cases that a recorded declaration creates a separate contract between the individual property owners. Plaintiff did not cite to any provision

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in the CCR, or any appellate case, that supports this assumption. Further, such a doctrine would defeat the essence of contract law, because there is no written agreement between one property owner and any or all of the other property owners. The CCR is between the Association and each property owner as the latter becomes a member.

Even assuming *arguendo* that such a contractual relationship existed, the summary judgment evidence, in the form of Association Minutes, undisputedly shows that Defendant Baron presented her complaint about the party wall to the Association, per Section 5.1.14.5. That was all that Defendant Baron was required to do. The Minutes show that the Association found that Plaintiff was responsible for the repair, which was binding. If the Association failed to follow the procedures upon receipt of a dispute, as alleged by Plaintiff, that does not create liability for Defendant Baron.

The interpretation of restrictive covenants is a question of law for the court. *Johnson v. Pointe Community Association, Inc.*, 205 Ariz. at ¶23. The Court finds that, pursuant to the terms of the CCR, assuming they created a contract between Plaintiff and Defendant Baron, Defendant Baron did not breach the CCR.

In any event, the Court finds that Defendant Baron presented a *prima facie* case that there is no genuine issue of material fact as to Count One, Plaintiff failed to rebut that *prima facie* showing. Defendant Baron is entitled to summary judgment on Count One as a matter of law.

**Count Four**  
**Breach of Duty of Good Faith and Fair Dealing**

A covenant of good faith and fair dealing is implied in every contract; it requires that neither party act to impair the right of the other to receive the benefits that flow from their agreement or contractual relationship. *Kuehn v. Stanley*, 208 Ariz. 124, ¶29 (App. 2004).

Having found that there was no contract between Plaintiff and Defendant, there can be no duty of good faith and fair dealing. Even if there was a contract, the Court has found that there was no genuine issue of material fact as to the lack of breach. Therefore, Defendant Baron could not have breached the duty of good faith and fair dealing.

**Count Five**  
**Interference with Contract (Purchase Agreement)**

The Court notes that Count Six of the Original Complaint alleged interference with contract as to the escrow agreement. The First Amended Complaint, which is now the operative

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pleading, changed the underlying contract to the purchase agreement. In any event, the Court's Ruling applies to either agreement.

To establish a *prima facie* claim for intentional interference with a contractual relationship, a plaintiff must show the existence of a valid contractual relationship or business expectancy; the interferer's knowledge of the relationship or expectancy; intentional interference inducing or causing a breach or termination of the relationship or expectancy; and resultant damage to the party whose relationship or expectancy has been disrupted. *Safeway Insurance Co., Inc. v. Guerrero*, 210 Ariz. 5, 10 (2005).

Defendant Baron has again presented a *prima facie* case that there is no genuine issue of material facts on this issue. Plaintiff has not only failed to rebut this showing, but it has failed to even show that it can establish a *prima facie* case of contractual interference by Defendant Baron. Plaintiff presented no specific evidence of any act by Defendant Baron that would even approach the elements of this cause of action. At most, Plaintiff attempted to substantiate its claim through speculative and unsupported conclusions.

**Count Seven**  
**Aiding and Abetting Breach of Fiduciary Duty**

Plaintiff claimed that Defendant Baron aided and abetted the Association's alleged breach of fiduciary duty in carrying out its business. However, Plaintiff presented no evidence, other than speculative and conclusory statements, to support any claim of aiding and abetting by Defendant Baron.

Again, Defendant Baron presented a *prima facie* showing that there is no genuine issue of material fact on this Count, and Plaintiff wholly failed to rebut it. Defendant Baron is entitled to summary judgment as a matter of law on Count Seven.

**Conclusion**

Plaintiff can no longer simply rely on the presumed truthfulness of its allegations, as it could in the face of a motion to dismiss. In a summary judgment proceeding, Plaintiff must present evidence that there is a genuine issue of material fact that would allow it to present its claims to a jury.

A motion for summary judgment should not be denied "simply on the speculation that some slight doubt, some scintilla of evidence, or some dispute over irrelevant or immaterial facts might blossom into a real controversy in the midst of trial." *Shaw v. Petersen*, 169 Ariz. 559, 560-61 (App. 1991) [citation omitted]. A motion for summary judgment should be granted "if

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the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense.” *Orme School v. Reeves*, 166 Ariz. 301, 309 (1990).

The Court finds that Plaintiff’s allegations against Defendant Baron were unsupported by admissible evidence, and were completely speculative and conclusory. The “facts” produced by Plaintiff against Defendant Baron had no probative value. Reasonable people could not agree that Defendant Baron is liable for the claims made against her. As to all four Counts alleged against Defendant Baron, there are no genuine issues of material fact, and Defendant Baron is entitled to summary judgment as a matter of law.

**IT IS ORDERED** granting Defendant Baron’s Motion for Summary Judgment.

**IT IS FURTHER ORDERED** that Counts One, Four, Five, and Seven of the First Amended Complaint are dismissed with prejudice against Defendant Beatrice Lee Baron.

**IT IS FURTHER ORDERED** that the Court has rejected the Joinder to Defendant Baron’s Motion for Summary Judgment filed by Defendants Dove Valley Community Association, Michael D. Schwartz and Dana V. Schwartz. The Court’s Ruling shall not apply to such Joinder.

**IT IS FURTHER ORDERED** that Defendant Baron may submit an application and affidavit for attorney’s fees under A.R.S. §12-341.01, and a verified statement of costs, no later than **June 21, 2021**. Plaintiff may file an objection/response no later than **July 6, 2021**. No Reply shall be allowed.

**IT IS FURTHER ORDERED** that the undersigned Judge shall rule on any application for attorney’s fees, despite judicial rotations on June 23, 2021. The remainder of the case shall remain in this Division, presided by the Honorable Alison S. Bachus.



HON. THEODORE CAMPAGNOLO  
JUDGE OF THE SUPERIOR COURT