

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-008406

04/30/2025

HONORABLE SCOTT MINDER

CLERK OF THE COURT
M. R. Diaz
Deputy

MERRICK AVENUE MANAGEMENT L L C, et al. CODY J JESS

v.

TROON VILLAGE ASSOCIATION, et al. CHRISTINA N MORGAN

STEVEN A COHEN
GEOFFREY G COLLINS
TESSA KNUEPPEL
TODD D WEINTRAUB
25586 N 104TH WAY
SCOTTSDALE AZ 85255
SHARIL WEINTRAUB
25586 N 104TH WAY
SCOTTSDALE AZ 85255
JOSHUA TAYLOR GREER
DEEANN MARIE BARNES
JUDGE MINDER

ORAL ARGUMENT HELD/UNDER ADVISEMENT RULING

East Court Building – Courtroom 711

9:15 a.m. This is the time set for Oral Argument regarding Defendants Troon Fairways Homeowners' Association, Kinney, North, Friedman, Weintraub, Jaffe and Gold's Motion for Summary Judgment, filed January 29, 2025. Plaintiffs Merrick Avenue Management, LLC; Edward Trenton Albarracin, and Gretchen Marie Zamjahn are represented by counsel, Joshua

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Taylor Greer. Plaintiff Douglas J. Cordano, who is present, is represented by counsel of record, Steven A. Cohen. Defendants Troon Fairways Homeowners' Association; Jeffrey D. Kinney, Pamela D. North, Sanford L. Friedman, Amy J. Friedman, Richard S. Jaffee, Linda K. Jaffee, Eric Gold, and Melissa Mack Gold are represented by counsel of record, Geoffrey G. Collins.

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

The Court has received and reviewed Defendants Troon Fairways Homeowners' Association, Kinney, North, Friedman, Weintraub, Jaffe and Gold's Motion for Summary Judgment, filed January 29, 2025, the Response, the Reply, and all supporting documents.

Discussion is held regarding the status of the case and the pleadings in the case. The Court has been informed of Defendant Amcor's Motion for Summary Judgment.

The Court addresses the parties regarding oral argument. Discussion is held regarding the same.

9:22 a.m. Joshua Taylor Greer leaves the courtroom.

9:22 a.m. Court stands at recess.

9:32 a.m. The Court reconvenes with respective counsel and parties present. Counsel, DeeAnn Marie Barnes, appears virtually on behalf of Defendants Troon Village Association and Cornerstone Properties, Inc.

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

The Court addresses the parties regarding appearances.

9:33 a.m. Tessa Knueppel enters virtual courtroom, appearing as counsel of record for Defendant Amcor Property Professionals, Inc.

Discussion is further held regarding the status of the pleadings in this case.

Argument is presented.

Based upon the arguments presented,

IT IS ORDERED taking this matter under advisement.

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10:16 a.m. Matter concludes.

LATER:

ORDER GRANTING SUMMARY JUDGMENT

On January 29, 2025, Defendants Troon Fairways Homeowners' Association (HOA), along with individual defendants Kinney, North, Friedman, Weintraub, Jaffe, and Gold (Individual Defendants) (collectively, Defendants), moved for summary judgment on all counts. The Court has reviewed the motion, responses and reply, along with the associated statements of facts and controverting statements of facts. The Court has also reviewed the pertinent items on the docket, including the complaints. Oral argument was held on April 30, 2025. The motion is now granted because Plaintiffs cannot establish that Mr. Gruchala, the shooter, entered the HOA through the Happy Valley Road gate, the central allegation to their claims.

This case involves the tragic shooting of Mr. Cordano at the property of Mr. Albarracin and Ms. Zamjahn. That property falls within the HOA. On February 18, 2023, Mr. Cordano went to the property to administer IV injections to Mr. Albarracin and Ms. Zamjahn. Mr. Cordano was shot at close range while parked in the driveway. At the same time, and for a period of time beforehand, the gate at the entrance to the HOA was open. Plaintiffs' claims against all defendants, are based in negligence, and relate to the open gate.

The following facts are not in dispute:

- Mr. Albarracin and Ms. Zamjahn own property within the HOA (the "Residence"), at 25146 N. 104th Way in Scottsdale, Arizona.
- The Residence generally faces eastward and is on the west side of 104th Way, a mostly north-south running street. Behind the residence to the west is a wall, and beyond that runs Alma School Road, which runs generally north-south. To the north of the Residence is some unkept desert area.
- The HOA has a contractual obligation with the property owners to maintain common areas, including the gate at the entrance. The gate is to the south of the Residence and is accessible from Happy Valley Road, which runs east-west.
- Near, if not directly adjacent, to the gate were (1) short walls that can easily be stepped over, and (2) an un-gated path through the wall for golf carts.
- On February 18, 2023, the gate at the entrance from Happy Valley Road was not functioning and was left open at the direction of Defendant Kinney, the HOA Board President.
- The gate had not been operating for days or weeks prior to February 18, 2023.
- Mr. Gruchala entered into a business deal regarding his own home with Mr. Albarracin or Mr. Albarracin's company in the days leading up to the 18th.

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- On February 18, 2023, security cameras from the Residence recorded Mr. Gruchala walking southbound on 104th Way from north of the Residence. One camera, which appears to be a front-door camera captured Mr. Gruchala first. The security camera covering the driveway then recorded Mr. Gruchala walking just past the driveway, still on 104th Way and still walking southbound.
- Seconds later, the same camera recorded Mr. Cordano traveling north on 104th Way and turning left into the driveway at the Residence.
- As Mr. Cordano was parking, the same camera recorded Mr. Gruchala walking, then running in the driveway and shooting into Mr. Cordano's driver's side window eight times at point-blank range.
- The same camera recorded Mr. Gruchala running out of the driveway and northbound on 104th Way.
- A different camera overlooking the backyard pool at the Residence then recorded Mr. Gruchala riding a bicycle southbound on Alma School Road.
- No video recorded Mr. Gruchala entering the residential area. Detective Dyer opined that the backyard video was captured because there was movement from a dog in the backyard and that the video of Mr. Gruchala on his bicycle might not have been captured otherwise. The video shows dog movement in the backyard, three cars traveling on Alma School Road, and Mr. Gruchala on his bicycle.

A motion for summary judgment should be granted “if 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 Sch. v. Reeves*, 166 Ariz. 301, 309 (1990); Ariz. R. Civ. P. 56(c)(1).

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. *Nat'l Bank of Ariz. v. Thruston*, 218 Ariz. 112, 115 (Ct. App. 2008). If the nonmoving party has the burden of proof of the claim or defense at trial, the moving party need not disprove the nonmoving party's claim or defense but need only point out the lack of evidence on an essential element of the claim or defense. *Id.* at 117. 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. *Id.* at 119. The nonmoving party cannot then rest on its pleadings but must call to the court's attention evidence to explain why the motion should be denied. *Id.* “If the party with the burden of proof on the claim or defense cannot respond to the motion by showing that there is evidence creating a genuine issue of fact on the element in question, then the motion for summary judgment should be granted.” *Orme Sch.*, 166 Ariz. at 310.

A motion for summary judgment should not be denied simply on the speculation that some doubt, scintilla of evidence, or dispute over irrelevant or immaterial facts might blossom into a

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controversy in the middle of trial. *Shaw v. Petersen*, 169 Ariz. 559, 560-61 (Ct. App. 1991) (quoting *Orme Sch.*, 166 Ariz. at 309). Determining credibility, weighing the evidence, and drawing legitimate inferences from the facts are functions for a jury, not the judge. *Allstate Indem. Co. v. Ridgely*, 214 Ariz. 440, 444 (Ct. App. 2007). “Summary judgment is inappropriate where the facts, even if undisputed, would allow reasonable minds to differ.” *Nelson v. Phx. Resort Corp.*, 181 Ariz. 188, 191 (Ct. App. 1994) (citing *Orme Sch.*, 166 Ariz. at 310). “[I]f a material issue concerns the state of mind or intent of one of the parties, summary judgment normally is not appropriate.” *Mid-Century Ins. Co. v. Duzykowski*, 131 Ariz. 428, 429 (1982).

Gate at the Happy Valley Road Entrance

The inoperative gate at the entrance from Happy Valley Road underlies all claims against Defendants. The complaints make clear that the HOA’s failure involved the maintenance and operation of that gate. At oral argument, counsel for Mr. Cordano acknowledged the same. Plaintiffs must, therefore, as part of their claim against Defendants, demonstrate to a jury that Mr. Gruchala entered the HOA through the gate near Happy Valley Road.

Defendants, however, point to evidence showing that Mr. Gruchala came in from elsewhere, namely from the area to the north of the Residence on the east side of Alma School Road. The undisputed evidence shows valid reasons to believe this: (1) the security video showed Mr. Gruchala walking southbound—*toward* the gate rather than away from it—on 104th Way from north of the Residence to just south of the driveway, (2) the security video shows Mr. Gruchala running out of the driveway and turning north on 104th Way immediately after shooting Mr. Cordano, and (3) the security video shows Mr. Gruchala riding a bicycle moments later on Alma School, heading southbound which is generally *toward* the gate.

Plaintiffs attempt to diminish this evidence, pointing to Detective Dyer’s testimony that he didn’t “know if there is evidence to support, either way, how he accessed the property.” Merrick Ave. CSOF at ¶ 41. But that answer was given after he was asked to disregard his investigative beliefs and instead focus on whether there was “substantive evidence of how he accessed the property.” *Id.* The Court concludes that, given the context, Det. Dyer was essentially asked whether video of Mr. Gruchala entering from the north or from the gate exists, or whether witnesses saw him enter, rather than whether anyone could reasonably conclude Mr. Gruchala’s point of entry.

The Court concludes that the video footage provides sufficient evidence, for purposes of summary judgment, to shift the burden to Plaintiffs to demonstrate that a factual dispute exists. In other words, Mr. Gruchala’s approach from the north and retreat to the north, coupled with his use of a bicycle from the north, reasonably indicate that Mr. Gruchala entered from the north. Plaintiffs must, therefore, provide some basis that would permit a jury to conclude otherwise.

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Plaintiffs admit they have no evidence that Mr. Gruchala came in through the gate. Instead, they rely on the jury's ability to infer that Mr. Gruchala did exactly that. Because the Court must leave the drawing of all reasonable inferences to the jury, the only question is whether, in light of the evidence presented, a jury could reasonably infer that Mr. Gruchala entered through the gate.

The Court concludes that a jury could not reasonably make that inference. To find otherwise would require this Court to set aside Defendants' video evidence, all of which strongly infers that Mr. Gruchala entered from the north. (Again, he approached the house from the north, left the house from the north, left the HOA property from the north, and had a bicycle at his exit location from the north.) That means a jury would be required to infer that, unless Mr. Gruchala miraculously found a bicycle at the point he exited the HOA property to the north, that he either:

1. Left a bicycle at that exit point before, in broad daylight, walking south outside of the community on Alma School, a busy enough street where 3 different cars were seen in the 35 second of footage provided, turned west onto Happy Valley until reaching the entrance, which is not at the corner of Alma School and Happy Valley, walked through the gate rather than hop the short wall or go in through the open golf cart entrance off to the side, then walked along 104th Way, past the Residence, without triggering any video footage from the same cameras that recorded him walking southbound, turn around, and walk back towards the gate (now triggering that camera recording) before opening fire on Mr. Gruchala, and then heading northbound to collect the bicycle; *or*
2. Biked in through the gate and past the Residence—again without being recorded by either security camera—to stash the bicycle somewhere north of the house, walked back southward on 104th Way, shot Mr. Cordano, the ran back to get his bike which would have had to have been hoisted over the wall at some point, and biked away on Alma School Road.

Either of these alternatives, or any derivatives, would leave jurors questioning why Mr. Gruchala would maximize his exposure to others by walking along the streets beforehand or by walking though the front entrance, why he would not just bike up to the Residence and leave on the bike from the driveway rather than on foot, or a host of other logical doubts necessary to infer that, given the evidence already presented, Mr. Gruchala came in through the gate rather than from the north.¹ Plaintiffs' inference is not reasonable on the record presented.

Because a jury could not reasonably infer, and Plaintiffs have provided no evidence, that Mr. Gruchala entered through the gate, Plaintiffs have not met their burden to establish any evidentiary basis for the critical component of their claims against Defendants. Summary judgment is appropriate for Defendants.

¹ That Mr. Gruchala could have entered from the south but either stepped over the small wall or used the ungated golf-cart entrance even further lessens the reasonableness of the inference.

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Plaintiffs also argued that, because the gate had been open for days, weeks, or months prior, Mr. Gruchala could have entered through the gate before February 18, 2023 to ascertain the location of the house and understand the area. But the nature of the claims is not so broad. Again, Mr. Cordano’s counsel admitted that his case would not fare well if evidence showed that Mr. Gruchala came in from elsewhere on that day. Besides, maps and terrain are all easily accessible online, and Mr. Gruchala had searched for the address online. Regardless, Plaintiffs have no evidence that Mr. Gruchala ever entered through the gate before February 18, 2023. To infer otherwise would be pure speculation.

Duty

For negligence claims, a plaintiff must, among other things, establish that the defendant owed a duty to the plaintiff. Defendants argue that they owed no duty to any Plaintiff.

Duties arise from special relationships, public policy, agreements between parties, and certain behaviors and interactions between parties. *See Gipson v. Kasey*, 214 Ariz. 141 (2007). Foreseeability no longer establishes a duty. *Id.* at 144.

Plaintiffs Merrick Avenue Management, Mr. Albarracin, and Ms. Zamjahn (the “Albarracin Plaintiffs”) assert that the HOA owed a duty through their role as a homeowner’s association and the contraction obligations under the CC&Rs. The Court agrees.

The CC&Rs, which apply to the Albarracin Plaintiffs and the HOA, states that the HOA:

[S]hall take appropriate action to manage, maintain, repair, replace, and improve the Common Areas, together with all improvements located thereon, to perform related activities, and to perform all other functions and duties assigned to the Association by this Declaration, or set forth in the Articles or Bylaws.

Merrick CSOF at ¶ 8. Section 6.01 continues:

The Assessments levied by the Association shall be sued for the purpose of promoting the recreation, health, safety and welfare of the Owners . . . including, without limitation, the improvement and maintenance of the Common Areas, services and facilities devoted to this purpose and the discharge of the Association’s duties under this Declaration

Id. at ¶ 9.

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As in *Gfeller v. Scottsdale Vista N. Townhomes Ass'n*, 193 Ariz. 52 (1998), this Court finds that the allocation of duties in the CC&Rs results in a duty for purposes of a negligence claim. *Id.* at 54. Specifically, the HOA has a duty to the Albarracin Plaintiffs, as property owners within the HOA, to maintain the common areas, which includes the gate at the entrance from Happy Valley Road.

Defendants argue against a duty, framing the duty as one to “prevent the shooting of a stranger by a stranger on a private driveway” or one “to prevent an unforeseeable targeted attempted murder that occurred on a private driveway.” But the issue of an intervening actor or whether the ultimate shooting occurred on a private driveway does not eliminate the basic duty owed to maintain the gate as part of the common areas. Defining the duty more specifically, as Defendants ask, invites the Court to engage with breach and causation analyses. Parties may argue about breach or causation, certainly, but the Court cannot intertwine an analysis of those issues with the initial determination of duty. *Perez v. Circle K Convenience Stores, Inc.*, ___ Ariz. ___, 564 P. 3d 623, 630 (2025). The appropriate approach, as in *Perez*, is for the Court to determine whether the basic duties defined in the CC&Rs exist, not whether those duties extend to shootings and attempted murders. That is a jury question.

As to Mr. Cordano, he is not a party to the CC&Rs, so any duty to him must derive from elsewhere. He argues that he was a business invitee or visitor of a resident and this “special relationship” affords him a duty. The Court disagrees.

Mr. Cordano cites multiple cases to establish that “[a] business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land.” Cordano Resp. at 5 (citing *Nicoletti v. Westcor, Inc.*, 131 Ariz. 143 (1982)). He cites *McCaw v. Arizona Snowbowl Resort* to assert that “a business owner has a duty to both maintain its premises in a reasonably safe condition and conduct its business in a reasonably safe manner to avoid causing injury to invitees.” 254 Ariz. 221 (Ct. App. 2022). The Court does not disagree with these principles.

But Mr. Cordano ignores that the HOA did *not* invite him to the Residence for the purpose of business. The above citations show that any duty owed is one by the business with whom the invitee is dealing and no evidence suggests that Mr. Cordano was asked to come to the HOA’s property by the HOA. This is not a case where a larger property owner, such as a mall, has a separate business interest in facilitating other businesses and therefore is maintaining common space for those invitees. Indeed, the CC&Rs quoted above state that the HOA’s goal is “promoting the recreation, health, safety and welfare of the Owners.” Merrick CSOF at ¶ 9 (emphasis added).

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Mr. Cordano next argues that, “[a] possessor of land generally has a duty to inspect and make safe areas over which it retains control.” This is true in certain situations. For example, in *Siddons v. Bus. Props. Dev. Co.*, the landlord had a duty to invitees of a lessee to keep areas safe that were under the landlord’s control. This principle would clearly, then, create a duty to repair a faulty gate if, for example, Mr. Cordano had been injured when the gate unexpectedly closed on him. But that is not what happened here; the gate is not the instrument inflicting the damage.

Still, the Court is weary of conflating a breach assessment with the determination of duty. The Court therefore finds that the HOA had a duty to maintain the gate, as part of the common areas, in safe order not only to the residents, but also to their invitees. Whether the HOA breached that duty because it was inoperable or left open is a different issue.

Summary judgment would not be appropriate for lack of duty against any Plaintiff.

Causation

Defendants argue that Plaintiffs cannot establish any causal link between the gate being open and the tragic and felonious acts of Mr. Gruchala. They point to the lack of foreseeability of an extraordinary event. Plaintiffs cite ample case law stating that causation is a factual issue for the jury and that the HOA was aware of prior incidents.

But this Court has already determined that Plaintiffs cannot establish that Mr. Gruchala went through the gate. Plaintiffs therefore cannot establish that the open gate caused any damages. Summary judgment is appropriate for the Defendants.

If Plaintiffs had a reasonable basis to conclude that Mr. Gruchala came through the gate, then the Court would agree that causation should be left to the jury. Yes, a shooting and attempted murder is unexpected generally, but evidence has been presented to suggest that the HOA knew of prior security incidents potentially related to the open gate. Evidence has also been presented to show that the HOA was aware of the added security created by a working gate.

Defendants argue that even if the gate was closed, Mr. Gruchala could have still entered through the golf cart opening or over the short wall. And while that may be true, the Court would decline to substitute its factual judgment for the jury.

Individual Defendants

Even if the Defendants were not granted summary judgment for the reasons stated above, at least some of the Individual Defendants are entitled to resolution. Only Mr. Kinney and Ms.

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Weintraub served on the Board on February 18, 2023. Neither Plaintiff has established that any other Individual Defendant had anything to do with the facts underlying this case.

Evidence presented links Mr. Kinney to the decision to leave the gate open. No evidence links Ms. Weintraub to any action.

Summary judgment would therefore be appropriate for all Individual Defendants except Mr. Kinney (and Ms. North as his spouse). Neither Plaintiff disputes this result.

Damages

Defendants argue that some damages claimed by the Albarracin Plaintiffs are not recoverable because Plaintiffs did not witness the shooting and were not in the zone of danger. Those are all elements of a claim for negligent infliction of emotional distress. The Court has reviewed the pleadings and does not find a negligent infliction of emotional distress claim in any complaint. If Plaintiffs seek that claim, they will need to plead it.

Defendants also argue that some damages exceed the scope of tort recovery. The Court declines to conclude on this record that the sought damages are inappropriate. A motion *in limine* or a motion for an in-trial ruling may be more appropriate, especially given the summary judgment rulings already contained here.

Conclusion

Summary judgment is appropriate for Troon Fairways Homeowners' Association, Mr. Kinney, Ms. North, Mr. and Ms. Friedman, Ms. and Mr. Weintraub, Mr. and Mrs. Jaffe, and Mr. and Ms. Gold because Plaintiffs cannot establish a factual basis to allow a jury to infer or conclude that Mr. Guchara entered the HOA through the gate off Happy Valley Road. That means that Plaintiffs also cannot establish any causation. Otherwise, this Court finds that the HOA would have a duty to the Plaintiffs and that causation should be heard by a jury if, for whatever reason, summary judgment were reversed. The same is true for damages sought by the Albarracin Plaintiffs.

Regardless, summary judgment is appropriate for Mr. and Ms. Friedman, Ms. and Mr. Weintraub, Mr. and Mrs. Jaffe, and Mr. and Ms. Gold because no facts have presented tying them to the allegations of this case.

IT IS THEREFORE ORDERED granting the January 29, 2025 *Motion for Summary Judgment* in favor of Troon Fairways Homeowners' Association, Mr. Kinney, Ms. North, Mr. and

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Ms. Friedman, Ms. and Mr. Weintraub, Mr. and Mrs. Jaffe, and Mr. and Ms. Gold on all counts against them.