

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-007263

07/23/2015

HON. RANDALL H. WARNER

CLERK OF THE COURT
K. Ballard
Deputy

JEFFREY SALLUS, et al.

JAMES ROBERT ECKLEY

v.

SUNRISE DESERT VISTAS PROPERTY
OWNERS ASSOCIATION INC, et al.

GUY W BLUFF

LARRY D LANGLEY

HEARING

Courtroom: ECB-512

8:34 a.m. This is the time set for oral argument regarding Defendants' April 30, 2015 Amended Motion for Summary Judgment or, in the Alternative Partial Summary Judgment. Plaintiffs Jeffrey Sallus and Suzanne Sallus are present and represented by Counsel John Harris (appearing in place of J. Robert Eckley). Defendants Bernard Potof, Joyce Strole, Ronald Holewinski, and Rosie Holewinski are represented by Counsel Kathleen M. Langley and Larry D. Langley, who also represent Defendants Sunrise Desert Vistas Property Owners Association, Grace Violette, Liz Potof, and Ron Strole.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Oral argument is presented.

IT IS ORDERED taking this matter under advisement.

9:08 a.m. Matter concludes.

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Later

Plaintiff Trust owns property in the Sunrise Desert Vistas development and is a member of Defendant Sunrise Desert Vista Property Owners Association (“the Association”). Plaintiff Suzanne Sallus was previously a member of the Association’s Board. The individual Defendants are Board members.

This lawsuit arises from disputes between Plaintiffs and the Association and its Board. Plaintiffs assert various claims. Defendants seek summary judgment on each of them.

Summary judgment must be granted on Plaintiffs’ fiduciary duty and negligence claims. Neither a homeowner’s association nor the members of its board owe a fiduciary duty to members of the association. *See Rohde v. Beztak of Arizona, Inc.*, 164 Ariz. 383, 388, 793 P.2d 140, 145 (App. 1990) (homeowners association does not owe a fiduciary duty to a member of the association). And Plaintiffs do not identify a duty of care that would give rise to tort liability. A member of a homeowner’s association has no tort claim against the association or its board members for negligence in managing the association’s affairs or enforcing the CC&R’s.

Plaintiffs point to Sections 6.13 and 6.14 of the Restatement of Servitudes, which state that an association and its directors owe members a duty to use ordinary care in managing the community’s affairs. But they cite no case from Arizona or elsewhere holding that breach of that duty can be enforced by a tort claim for damages against the Association or its Board members.

Plaintiffs’ defamation and false light claims are based on the Association’s publication of a May 7, 2012 letter from Chase Bank. Fact questions preclude summary judgment on whether this letter is defamatory and whether its republication on the Association’s web site is privileged or actionable. Because the claim arises out of Defendants’ May 18, 2012 republication of the letter, it is not time-barred.

Summary judgment cannot be granted on punitive damages pertaining to the defamation and false light claims.

Finally, Plaintiffs assert a breach of contract claim arising out of Defendants’ alleged selective enforcement of the CC&R’s. If the allegation is true, the Association’s selective enforcement of the CC&R’s can be a breach of contract, including a breach of the implied duty of good faith and fair dealing. Summary judgment must therefore be denied on that claim. But Plaintiffs have no contract claim against individual Board members because they have no contract with them.

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IT IS ORDERED granting the Motion in part. Summary judgment is granted on the negligence and fiduciary duty claims, and on the contract claim as to individual Board members. In all other respects, summary judgment is denied.