

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-053595

08/03/2015

HONORABLE SUSAN M. BRNOVICH

CLERK OF THE COURT  
K. Hartley  
Deputy

RALPH BIANCO, et al.

ERIN SELENE IUNGERICH

v.

TERRAVITA COUNTRY CLUB INC, et al.

JOSHUA M BOLEN

CURTIS S EKMARK

UNDER ADVISEMENT RULING

This matter was taken under advisement after oral argument on July 31, 2015. The Court has considered Defendant Terravita Community Association, Inc.'s Motion for Summary Judgment, the filings of the parties, oral argument, and the authorities cited.

Summary judgment is appropriate if, after reviewing the facts in the light most favorable to the non-moving party (the Plaintiff here), no genuine issues of material fact remain. *See, e.g., Joseph v. Markovitz*, 27 Ariz. App. 122, 551 P.2d 571 (App. 1976). "A 'genuine' issue of material fact is one that a reasonable jury, on the record before the court, could resolve in favor of either party." *See, e.g., Southwest Pet Products, Inc. v. Koch Ind.*, 273 F.Supp. 1041, 1050 (D.Ariz. 2003) (citations omitted). Even where the facts are undisputed, a genuine dispute as to conflicting inferences to be drawn from them precludes an award of summary judgment. *See, e.g., Executive Towers v. Leonard*, 7 Ariz. App. 331, 439 P.2d 303 (1968).

The Court finds genuine issues of material fact exist that preclude the Court from granting the Motion for Summary Judgment. Specifically, the question of whether Tract G is a common area in Terravita Country Club, whether the plaintiffs' have use rights over that area. If the plaintiffs' have voting rights over changes in Tract G, then there is a legitimate question as to

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-053595

08/03/2015

whether Terravita Community Association has an obligation to enforce the covenants, conditions or restrictions affecting their property rights.

Therefore,

**IT IS ORDERED** that Defendant Terravita Community Association, Inc.'s Motion for Summary Judgment is DENIED.