

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-017523

08/03/2021

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
A. Meza
Deputy

ROWLAND SHORT, et al.

ROWLAND SHORT
4525 N 66TH ST UNIT 117
SCOTTSDALE AZ 85251

v.

CASA DEL MONTE INC

NICOLE PAYNE

PAMELA SHORT
4525 N 66TH ST UNIT 117
SCOTTSDALE AZ 85251
JUDGE WARNER

MINUTE ENTRY

Before the Court and fully briefed is Defendant's Motion to Dismiss or in the Alternative Motion for More Definite Statement. Oral argument is not necessary.

Plaintiffs allege wrongdoing by the Association in its management, and also allege improper actions taken against them individually. The relationship between a homeowner's association and a member is contractual, not fiduciary. *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 its members). Consequently, Plaintiffs cannot assert a breach of fiduciary duty claim, but they can assert a breach of contract claim.

The Association's contractual duties include those specified in statute and those in the CC&R's or other governing documents. They also include common law duties as specified in the Restatement and adopted by *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 201, 165 P.3d 173, 179 (App. 2007). These are:

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(1) In addition to duties imposed by statute and the governing documents, the association has the following duties to the members of the common-interest community:

(a) to use ordinary care and prudence in managing the property and financial affairs of the community that are subject to its control;

(b) to treat members fairly;

(c) to act reasonably in the exercise of its discretionary powers including rulemaking, enforcement, and design-control powers;

(d) to provide members reasonable access to information about the association, the common property, and the financial affairs of the association.

(2) A member challenging an action of the association under this section has the burden of proving a breach of duty by the association. Except when the breach alleged is ultra vires action by the association, the member has the additional burden of proving that the breach has caused, or threatens to cause, injury to the member individually or to the interests of the common-interest community.

Restatement (Third) of Property (Servitudes) § 6.13 (2000). Breaches of these duties by the Association are breaches of contract. To the extent Defendant's alleged actions—if proven—violate these duties, Plaintiffs may have a claim for breach of contract.

There is no common law cause of action in Arizona against a homeowner's association for abuse of authority, malfeasance, whistleblower, SLAPP, retaliation, harassment, intimidation, or discrimination. Rather, if the actions that form the basis for these allegations violate the duties under Section 6.13 of the Restatement (or other duties specified in statute or the CC&R's), they could be breaches of contract. It does not appear that Plaintiff is asserting any federal or statutory cause of action. If they are, such statutory claims have not been sufficiently pled.

To the extent Plaintiff alleges that the Association did not comply with statutory or CC&R requirements, those allegations could give rise to a claim for injunctive relief.

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Finally, Defendant argues that some of Plaintiffs' claims are derivative claims. The Court disagrees. The Complaint does not purport to and does not in substance assert derivative claims.

IT IS ORDERED granting the Motion in part and denying the Motion in part. Plaintiffs' breach of contract claim against Defendant, including the request for damages and injunctive relief, may proceed. Plaintiff's claim for injunctive relief to enforce statutory or CC&R requirements may proceed. All other causes of action are dismissed.