

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-017523

08/22/2022

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

Defendant Casa Del Monte, Inc.'s Motion for Summary Judgment is under advisement after argument. For reasons that follow, the Motion is granted.

1. Background.

This is a homeowners' association dispute. Plaintiffs Pamela and Rowland Short live in the Casa Del Monte community, and Defendant Casa Del Monte, Inc. ("the Association") is the homeowners association. Pamela Short was previously a member of the Association's board.

The Shorts assert multiple claims against the Association arising mostly from its board's management of the Association. In its August 3, 2021 ruling, the Court dismissed all claims except for breach of contract, which includes statutory and common law duties the breach of which constitutes a breach of the CC&R's. The issue on summary judgment is whether the Shorts can prove a breach of contract.

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2. Legal Standard.

The purpose of summary judgment is to determine whether there is sufficient evidence to support the legal claims asserted, thus necessitating a trial. *Orme School. v. Reeves*, 166 Ariz. 301, 311, 802 P.2d 1000, 1010 (1990). A motion for summary judgment must be granted “if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” Ariz. R. Civ. P. 56(a).

As the Court noted in its August 3, 2021 ruling, homeowners association boards have certain duties, including to treat members fairly, to use ordinary care and prudence in managing the association’s financial affairs, and to act reasonably in the exercise of discretionary powers. Restatement (Third) of Property (Servitudes) § 6.13 (2000). But in deciding whether an association has complied with these duties, the Court must give deference to the association in areas in which it has discretion. To establish that the Association violated its duties, the Shorts bear the burden of proving that it acted unreasonably. *Tierra Ranchos Homeowners Ass’n v. Kitchukov*, 216 Ariz. 195, 201-02, 165 P.3d 173, 179-80 (App. 2007).

3. The Shorts Have Not Proven A Breach Of Contract.

The Association’s Motion addresses a number of alleged breaches, but the Shorts focus mainly on the Association’s communications regarding an approved assessment increase. They argue that the Association breached its duties by informing residents their monthly fees were increasing by 9.3% when, in fact, the increase was 15.4%. The Association presents evidence that its maintenance fees increased by 15.4%, while land lease payments did not increase at all, so the net total increase was approximately 9.3%. The Shorts call this calculation incorrect and misleading.

The Shorts cannot meet their burden of proving that the way the Association communicated the increase was unreasonable or violated any duty imposed by the CC&R’s, Arizona statute, or common law. The communication to residents told them the actual dollar amount they would be paying, so they knew what the increase was. How the Association characterized that increase was not a breach of the CC&R’s.

For the first time at oral argument, the Shorts argued that the Association board lacked authority under the CC&R’s and by-laws to vote for a fee increase. Rather, fee increases must be approved by two-thirds of the members. The Court ordinarily would not consider a legal argument raised for the first time in oral argument. But this argument fails on the merits. Nowhere in the Association’s governing documents is there a requirement that fee increases be

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approved by a two-thirds vote of the members. Rather, the by-laws expressly empower the Association board to establish monthly maintenance charges.

4. Other Alleged Breaches.

The Association's Motion addresses several other alleged breaches. The Shorts' Response briefly addresses some of them, but not all.

The Shorts state that "the Association committed a Breach of Duty to Plaintiffs by failing to properly maintain property including, but not limited to, roofs, wood, and sidewalk." But they offer no evidence to support that claim. Nor do they offer evidence showing, as they allege, that the Association mismanaged funds, improperly failed to disclose financial interests, or failed to maintain or provide financial records.

At oral argument, the Shorts stated that they only recently obtained evidence to support these claims. But none of those materials are in the record. Nor did the Shorts seek Rule 56(d) relief to obtain more information before responding to the summary judgment motion. The Court will not decide the Motion based on an argument made for the first time at oral argument, and based on evidence that is not in the record. *See Mitchell v. Gamble*, 207 Ariz. 364, 369-70, 86 P.3d 944, 949-50 (App. 2004) (issues raised for the first time at oral argument are untimely).

If a party moving for summary judgment satisfies its burden of showing there is no evidence to support a claim, the opposing party must show there is evidence creating a genuine issue of fact. *Orme School*, 166 Ariz. at 310, 802 P.2d at 1009. If the opposing party fails to do so, summary judgment is warranted. *Id.*, 802 P.2d at 1009; Ariz. R. Civ. P. 56(e). The Shorts have not presented evidence from which the trier of fact could find for them on the breach of contract claim.

If the Shorts believe reconsideration is warranted in light of newly disclosed evidence, they may file an appropriate motion.

5. Orders.

Based on the foregoing,

IT IS ORDERED granting the Motion.

IT IS FURTHER ORDERED vacating the Final Trial Management Conference set on September 23, 2022 at 10:00 a.m. in this division.

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IT IS FURTHER ORDERED vacating the 4-day Bench Trial set on October 17, 2022 at 9:30 a.m. in this division.

IT IS FURTHER ORDERED that Defendant lodge a form of judgment, and that any request for attorneys' fees or costs be filed, within 30 days.