

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-008406

09/18/2023

HONORABLE KATHERINE COOPER

CLERK OF THE COURT
T. Aird
Deputy

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

v.

TROON VILLAGE ASSOCIATION, et al. QUINTEN T CUPPS

GEOFFREY G COLLINS
TESSA HUSTEAD
SHARI L WEINTRAUB
25586 N 104TH WAY
SCOTTSDALE AZ 85255
TODD D WEINTRAUB
25586 N 104TH WAY
SCOTTSDALE AZ 85255
SCOTT CARPENTER
JOSHUA TAYLOR GREER
NATALYA TER-GRIGORYAN
COLE CUMMINS
JUDGE COOPER

RULING RE TVA AND CORNERSTONE MOTION TO DISMISS

Pending is the fully-briefed Motion to Dismiss filed by Defendants Troon Village Association (“TVA”) and Cornerstone Properties, Inc. (“Cornerstone”). The Court has reviewed the Motion, Response, Reply, and the Complaint.

In considering a motion to dismiss for failure to state a claim, the Court construes well-pled factual allegations and their inferences favorably for the non-moving party. Dismissal is

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appropriate only if “as a matter of law []plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of proof.” *Coleman v. City of Mesa*, 230 Ariz. 352, 356 (2012).

Defendants argue that the “Complaint is devoid of any factual allegation which imparts a duty upon TVA or Cornerstone” to maintain Common Areas and to install and maintain the gates to the community where Plaintiffs live. Motion, p. 6.

The Court finds that the Complaint adequately alleges that the source of TVA’s/Cornerstone’s duty to Plaintiffs is the TVA CC&Rs. It alleges that Defendants owe contractual duties of care to Plaintiffs based on TVA’s CC&Rs. It alleges that Plaintiffs’ property is part of TVA and subject to the TVA CC&Rs; and that, per the CC&Rs, TVA (and the Fairways HOA are responsible in part for Common Areas, including the gates at issue. Compl. 22-27, 31-33.

IT IS ORDERED denying the TVA/Cornerstone Motion to Dismiss.