

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2004-005254

10/14/2004

HONORABLE PETER C. REINSTEIN

CLERK OF THE COURT
M. L. Smith
Deputy

FILED: 10/15/2004

TROY KRAFT

JAMES L TANNER

v.

GRACE A PALAIA, et al.

JONATHAN D SCHNEIDER

SCOTT CARPENTER

MINUTE ENTRY

The court has considered Defendant Grace Palaia's Motion to Dismiss Breach of Contract Claim, the Plaintiff's Response, and the Reply. The court has also heard arguments of counsel. Based upon the court's consideration of the above, the court makes the following findings and ruling.

The court finds that the Arizona Supreme Court's decision in Barmat v. John and Jane Doe Partners A-D, 155 Ariz 519 (1987), is dispositive of the issue at bar. In Barmat at 533, the court made it clear that:

"Where the implied contract does no more than place the parties in a relationship in which the law then imposes certain duties recognized by public policy, the gravamen of the subsequent action for breach is tort, not contract."

Therefore, applying that reasoning to the present case, given the relationship of Mr. Kraft and Ms. Palaia as members of a community association, any duty breached would sound in tort rather than contract.

Accordingly,

IT IS ORDERED granting the Defendant's Motion to Dismiss