

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-017259

10/23/2007

HONORABLE JOHN A. BUTTRICK

CLERK OF THE COURT
C. Castro
Deputy

MEL MILLSAP, et al.

JONATHAN A DESSAULES

v.

VENTANA LAKES PROPERTY OWNERS
ASSOCIATION

J ROGER WOOD

MINUTE ENTRY

Courtroom 704 – Central Court Building

8:57 a.m. This is the time set for oral argument. Plaintiff is represented by counsel, Jonathan A. Dessauls. Defendant is represented by counsel, Jason E. Smith.

A record of the proceedings is made by CD/videotape in lieu of a court reporter.

Oral argument is presented.

IT IS ORDERED taking this matter under advisement.

9:25 a.m. Matter concludes.

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LATER:

Defendant Ventana Lakes Property Owner's Association (the "Association") filed a Motion to Join Indispensable Parties or to Dismiss, on August 1, 2007. The Association brings its Motion pursuant to Ariz. Rs. Civ. P. 12(b)(7) and 19 as well as Ariz. Rev. Stat. §12-1841(A) arguing that Plaintiffs Mel Millsap, et al. ("Millsap") have improperly failed to join as Defendants each Ventana Lakes property owner. The Association asserts the unnamed owners are indispensable parties under the cited rules and statute regarding Count I of the Complaint which seeks a declaratory judgment regarding the Association's duties under the CC & Rs at issue.

Millsap responds that Ariz. Rev. Stat. §10-3304 (B)(2) allows "any member" to judicially challenge the acts of a planned community association such as the Association and, in any event, the required indicia of indispensability under Rule 19 are missing in this case.

Neither party has cited an Arizona case directly on point regarding the use of declaratory judgment actions in this factual setting.

The Association argues that many homeowners who are not parties must be joined or the Count 1 must be dismissed because a "substantial risk" of "inconsistent obligations" may be incurred by the existing parties if they are not, citing the language of Rule 19.

Based upon the record presently before the court, there is no such "substantial risk." In addition, joinder of all 1700 homeowners, as urged by the Association, is not feasible. Finally, the absent property owners are not indispensable. It is not true that no final judgment could be entered that does justice between the existing parties without injuriously affecting the absent parties' rights. Ivanovich v. Meier, 122 Ariz. 346 (1979).

The Association's Motion is denied.