

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-052094

10/18/2024

HONORABLE MELISSA IYER JULIAN

CLERK OF THE COURT
T. DeRaddo
Deputy

SUSAN M MARCELLA

MARK BAINBRIDGE

v.

LEGEND TRAIL COMMUNITY
ASSOCIATION, THE, et al.

TESSA KNUEPPEL

EDITH I RUDDER
JUDGE JULIAN

UNDER ADVISEMENT RULING

Re: Plaintiff's Motion for Partial Summary Judgment

Pending before this Court is Plaintiff's Motion for Partial Summary Judgment, filed July 15, 2024.

The motion is fully briefed and this Court heard oral argument from the parties on October 18, 2024, at which time the motion was taken under advisement.

The Court has considered the filings and arguments of the parties, the relevant authorities and applicable law, as well as the entire record of the case, and—considering all facts and reasonable inferences therefrom in the light most favorable to the non-movant party—hereby finds as follows regarding the Motion.

ANALYSIS

This case arises from a dispute between Plaintiff, a homeowner in the Legend Trail Community and Defendant The Legend Trail Community Association (the "Association"), a

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home owner's association responsible for enforcing the community's CC&Rs. Plaintiff seeks "partial summary judgment" on various issues without tying the motion to any of her specific claims or the elements of her claims. With respect to her claims for breach of contract and breach of the implied covenant of good faith and fair dealing, the Court finds that the record reflects disputed issues of material fact. Namely, there is conflicting evidence regarding whether the parties had a meeting of the minds sufficient to form a binding contract and the parties' intent in reaching the agreement allowing Plaintiff to erect a temporary fence "during" construction on her neighbor's property. As the agreement is reflected only in a very basic description set forth in the ACC's meeting minutes, the parties' intent and any alleged breach must be evaluated by a jury.

Further, Plaintiff has not identified any authority that supports the proposition that the Association's failure to promptly produce records as required under A.R.S. § 33-1805 creates a private right of action for damages, nor does she provide any evidence of damages suffered as a result of the alleged statutory violations.

Finally, promissory estoppel is an alternative remedy and only available in the absence of a binding contract. *Del Hayes & Sons, Inc. v. Mitchell*, 304 Minn. 275, 283 (1975) ("Promissory estoppel is the name applied to a contract implied in law where no contract exists in fact."). In this case, because Plaintiff alleges the existence of a binding contract, she is not entitled to summary judgment on the estoppel theory unless her contract claim is unsuccessful.

IT IS THEREFORE ORDERED denying Plaintiff's Motion for Partial Summary Judgment, filed July 15, 2024.

IT IS FURTHER ORDERED resetting a trial setting conference in this case for **November 22, 2024 at 9:30 a.m.** (Time allotted: 15 minutes)

Judge Melissa Iyer Julian's Virtual Courtroom

Please join the hearing via:

<https://tinyurl.com/Courtroom108>

You can also dial in using your phone.

Phone: **[1 917-781-4590](tel:19177814590)** and Conference ID: **929 847 029#**

Use of the above link can be made easier by downloading the Microsoft Teams application first; for more on the new platform, including an introduction video and participant guide, please visit: **<https://superiorcourt.maricopa.gov/court-connect>**

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Counsel/parties are encouraged to visit Judge Julian's online profile for information on the Court's expectations regarding motion practices and requirements, discovery disputes, and hearing/trial procedures at the following website:

<http://www.superiorcourt.maricopa.gov/JudicialBiographies/profile.asp?jdgID=531&jdgUSID=13868>

IT IS FURTHER ORDERED that, no less than **five (5) days** before the conference set above, the parties shall file a joint status report containing (1) a very brief description of the case; (2) a statement of the status of discovery and other pertinent matters; (3) a list of pending motions or other matters, whether at issue or not; (4) the status of alternative dispute resolution; (5) when the parties anticipate the case will be ready for trial; and (6) how many trial days the parties estimate will be needed.

NOTE: All Court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.