Clerk of the Superior Court
*** Electronically Filed ***
11/13/2023 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-010115 11/09/2023

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT
P. McKinley
Deputy

MICHAL REILLY, et al.

JASON A CLARK

v.

JACKSON BUILDERS OF ARIZONA L L C, et al.

JACKSON BUILDERS OF ARIZONA L L C
37852 N SANDY DR
SAN TAN VALLEY AZ 85140

WESLEY M COX
STEWART JACKSON
37852 N SANDY DR
SAN TAN VALLEY AZ 85140
JAMES J OSBORNE
EDITH I RUDDER
MARCUS D TAPPE
JUDGE BLANEY

RULING

The Court has reviewed and considered the following:

1. Defendants Ryan Sieker and Katie Rogers' Motion to Dismiss Counts Five and Six of Plaintiffs' Complaint;
2. Plaintiffs' Response to Defendants Ryan Sieker and Katie Rogers' Motion to Dismiss Counts Five and Six of Plaintiffs' Complaint;
3. Defendants Ryan Sieker and Katie Rogers' Reply in Support of Defendants' Motion to Dismiss Counts Five and Six of Plaintiffs' Complaint; and

4. The limited record in this case.

This case arises from a dispute between two homeowners in a two-story condominium complex called "Orchard House Condominiums." The complex and the homes included therein are subject to, *inter alia*, the By-Laws for the Orchard House Condominium. Plaintiff's unit sits directly above Defendants Sieker and Rogers' unit. Defendants engaged in renovation of their unit, which Plaintiffs allege negatively impacted the structural integrity of Plaintiffs' unit. Plaintiffs brought claims against Defendants Sieker and Rogers, as well as additional claims against Defendants' contractor and the homeowners association for Orchard House Condominium. This ruling only addresses claims against Defendants Sieker and Rogers.

Defendants move to dismiss Plaintiffs' fifth and sixth claims for breach of contract and breach of the implied covenant of good faith and fair dealing. Defendants argue that Plaintiffs have failed to plead the existence of a contract between Plaintiffs and Defendants, an element that is essential to both contract claims. Defendants further argue that Plaintiffs may not base their contract claims on the association's governing documents, such as the By-Laws, and that only the Board of Directors has the authority to sue.

As a general policy matter, "motions to dismiss for failure to state a claim are not favored under Arizona law." *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 594 (1983). When considering a motion to dismiss under Rule 12(b)(6), the Court will look only to the pleading itself and consider the well-pleaded factual allegations contained therein. *Cullen v. Auto-Owners Ins. Co.,* 218 Ariz. 417, 419 (2008). The Court must assume the truth of the well-pleaded factual allegations and indulge all reasonable inferences therefrom, "but mere conclusory statements are insufficient." *Coleman v. City of Mesa,* 230 Ariz. 352, 356 (2012) (*quoting Fid. Sec. Life Ins. Co. v. State Dep't of Ins.*, 191 Ariz. 222, 224 (1998). "Dismissal is appropriate under Rule 12(b)(6) only if 'as a matter of law []plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of proof.'" *Id.*

The Court notes that Defendants attached a copy of the By-Laws to their *Motion*, but the By-Laws were not attached to the *Complaint*. The Court will review and consider the By-Laws in this ruling without converting Defendant's *Motion to Dismiss* into a motion for summary judgment. The By-Laws are central to the issues in this case. *See Strategic Development and Const., Inc. v. 7th & Roosevelt Partners, LLC*, 224 Ariz. 60, 64 ¶ 14 (App. 2010) (court may consider documents not attached to the complaint but central to the claim in the complaint without converting motion to dismiss into summary judgment motion).

Plaintiffs are correct that deed restrictions in a planned community run with the land. They constitute covenants that form a contract between the property owners as a whole and the individual lot owners. *Arizona Biltmore Estates Association v. Tezak*, 177 Ariz. 447, 448 (App.

1993). But an action for breach of such covenants is typically brought as an action in equity to enforce the covenants or an action for declaratory relief. Plaintiffs have not identified, nor has the Court been able to find, any Arizona case in which a homeowner sued another homeowner in a planned community for breach of contract based upon by-laws or CC&Rs. Nor have Defendants identified any case affirmatively precluding such an action.

THE COURT FINDS support for Plaintiffs' breach of contract action in the By-Laws themselves, which state:

> Every owner must perform promptly all maintenance and repair work within his own apartment, which if omitted would affect the condominium in its entirety or in a part belonging to other owners, being expressly responsible for the damages and liabilities that his failure to do so may engender. **Each apartment owner shall be responsible for all damages to any other apartment unit** and to the common elements **resulting from his failure to effect such maintenance and repairs**. *** All the repairs of internal installations of the apartment, such as water, light, gas, power, sewage, telephone, air conditioners, sanitary installations, doors, windows, lamps and other accessories belonging to the apartment area shall be at the owner's expense. *** **An owner shall reimburse the Board of Directors for any expenditures incurred in repairing or replacing any common area and facility damages through his fault**.

By-Laws, Article V, Section 4 (emphasis added). Thus, the By-Laws expressly state that a homeowner is responsible for damages that he causes to another homeowner's unit. The By-Laws, again, are a form of contract to which all homeowners are bound. A breach of contract claim would be an appropriate vehicle for a homeowner to recover damages caused to his privately-owned unit when the damages arise from another homeowner's failure to comply with the terms of the contract. A claim for breach of contract requires well-pleaded allegations of: (1) the existence of a contract; (2) breach thereof; and (3) resulting damages. *Steinberger v. McVey*, 234 Ariz. 125, 141 (App. 2014). All three elements are present here. Notably, the By-Laws conspicuously address damage to "any other apartment unit" differently from damage to "the common areas" or "any common area." According to the By-Laws, costs specifically arising from damage to any common area are to be paid to the Board of Directors. *Id*.

The Court rejects Defendants' argument that the By-Laws grant exclusive authority to the Board of Directors to bring an action for damages to a privately-owned unit. The Board clearly has the authority to bring an action for damages to common areas. *See id*. But the By-Laws do not state that the Board of Directors is the only entity that can bring an action to recover monetary damages pursuant to Article V, Section 4, above. Indeed, it is unclear whether a provision depriving individual homeowners of a common law remedy would be enforceable. It is also

unclear whether the Board of Directors would have standing to bring such an action in lieu of an individual homeowner. This type of restriction would also place the Board of Directors in a position where it could unilaterally determine that a homeowner has not suffered *sufficient* damage to his privately-owned unit to justify litigation. The Court will not read such a veto into Article 2, Section 2, para. k, when it is not clearly stated.

THE COURT FINDS that Plaintiffs have sufficiently pleaded their breach of contract claim to survive a Rule 12(b)(6) challenge. Further, because Plaintiffs have properly pleaded the existence of a contract between the parties, Plaintiffs' claim for breach of the implied covenant of good faith and fair dealing also survives.

IT IS THEREFORE ORDERED denying Defendants' *Motion to Dismiss*.