

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-014970

02/03/2014

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

DIETMAR HANKE, et al.

MARK BAINBRIDGE

v.

ALTA MESA RESORT VILLAGE
HOMEOWNERS ASSOCIATION INC, et al.

WALTER GROCHOWSKI

HEATHER A CORNWELL
ADNAN HORAN
JONATHAN D SCHNEIDER

UNDER ADVISEMENT RULING

The Court took Defendant Alta Mesa Resort Village Homeowners Association's Motion for Summary Judgment and Plaintiffs Dietmar and Linda Hanke's Cross-Motion for Partial Summary Judgment under advisement following oral argument on January 27, 2014. Upon further consideration, the Court finds as follows.

Section 8.0(A)(1) of the CC&Rs unambiguously requires the Association to maintain "[p]roperty insurance on the Common Elements and Units." That the Association chose not to purchase insurance on the units, and so informed the unit owners, did not remove its obligation to do so. Neither does the rule cited by the Association. Apart from the legal precedence of the CC&Rs, the rule makes the owners of effected [sic] units responsible for damage that is "not the responsibility of the HOA, or not covered by the HOA's insurance." Since property insurance on the units *was* the responsibility of the Association, the rule does not shift that responsibility. The Association clearly breached its obligation under the CC&Rs, and summary judgment on that is appropriate.

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Plaintiffs have not established a prima facie case that the Association's breach of the CC&Rs constituted a breach of fiduciary duty. A fiduciary relationship is "a confidential relationship whose attributes include great intimacy, disclosure of secrets, or intrusting of power," one in which the fiduciary holds "superiority of position" as demonstrated by "a substitution of the fiduciary's will." *Standard Chartered PLC v. Price Waterhouse*, 190 Ariz. 6, 24 (App. 1996) (some internal punctuation omitted). The relationship between the Hanks and the Association bears none of these indicia.

There is enough evidence in the record to create a genuine issue of material fact as to the covenant of good faith and fair dealing.

IT IS THEREFORE ORDERED granting the Association's motion for summary judgment as to the claim for breach of fiduciary responsibility, and denying the remainder.

IT IS FURTHER ORDERED granting the Hanks' cross-motion for partial summary judgment as to the breach of contract claim against the Association. With respect to the claim for breach of the covenant of good faith and fair dealing, both motions are denied.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.