

DISTRICT COURT, LAKE COUNTY, COLORADO 505 Harrison Ave.; PO Box 55 Leadville, CO 80461 Phone: (719) 293-8100	DATE FILED: August 20, 2020 10:39 AM CASE NUMBER: 2019CV30016 ▲ COURT USE ONLY ▲
LARREE MORGAN, et al., Plaintiffs, v. EMPIRE LODGE HOMEOWNERS ASSOCIATION, Defendant.	Case Number: 19CV30016 Div. C
ORDER DENYING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT	

THIS MATTER comes before the court on *Defendant’s Motion for Summary Judgment* filed by Defendant, Empire Lodge Homeowner’s Association (“Defendant” or the “Association”), on July 6, 2020 (“Motion”). Plaintiffs, Larree and Katherine Morgan (“Plaintiffs”), filed a response on July 27, 2020 (“Response”). Thereafter, Defendant filed a reply on August 10, 2020 (“Reply”). The court, after reviewing the Motion, Response, Reply and applicable law, hereby DENIES the Motion for the reasons that follow:

I. BACKGROUND

In this matter, Plaintiffs are homeowners within the common interest community of Beaver Lakes Estates. Am. Compl. at 1, Sept. 5, 2019. Plaintiffs assert three claims for relief: (1) Declaratory Judgment; (2) Injunctive Relief; and (3) Breach of Fiduciary Duty. Id. at 7-8. Plaintiffs’ claims arise from a recent amendment to the community’s declaration (“Declaration”) that purports to prohibit short-term rentals. Id. at 1. Plaintiff seeks to invalidate the amendment and enjoin Defendant from enforcing the prohibition on short-

term rentals. Id. at 9. Defendants now seek summary judgment as to all three claims for relief.

II. STANDARD OF REVIEW

The purpose of summary judgment is to “permit the parties to pierce the formal allegations of the pleadings and save the time and expense connected with a trial when, as a matter of law, based on undisputed facts, one party could not prevail.” A-1 Auto Repair & Detail, Inc. v. Bilunas-Hardy, 93 P.3d 598, 603 (Colo. App. 2004) (quoting Mt. Emmons Mining Co. v. Town of Crested Butte, 690 P.2d 231, 238 (Colo. 1984)). Summary judgment should be granted only if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Peterson v. Halsted, 829 P.2d 373, 375 (Colo. 1992). A material fact is a fact that will affect the outcome of a case. Id. (citing Mt. Emmons Mining Co. v. Town of Crested Butte, 690 P.2d 231, 239 (Colo. 1984)).

The burden of establishing the nonexistence of a genuine issue of material fact is on the moving party. Civil Serv. Comm’n v. Pinder, 812 P.2d 645, 649 (Colo. 1991) (citing C.R.C.P. 56(c); Continental Airlines, Inc. v. Keenan, 731 P.2d 708 (Colo.1987)). Once the moving party has met this initial burden, the burden shifts to the non-moving party to establish a triable issue of fact. Id. In making this showing, the party opposing the motion for summary judgment may not rest upon the mere allegations or denials of his or her pleading, but must demonstrate by admissible evidence that a real controversy exists. Smith v. Mehaffy, 30 P.3d 727, 730 (Colo. App. 2000). A genuine issue cannot be raised simply by means of argument. A-1 Auto Repair & Detail, Inc., at 603 (citing Hauser v. Rose Health Care Sys., 857 P.2d 524, 527 (Colo.App.1993)).

III. FINDINGS

Defendant seeks summary judgment in their favor on all three of Plaintiffs' claims for relief. The court has, in its *Order Granting Plaintiffs' Motion for Summary Judgment on First Claim for Relief* issued simultaneous to this Order, granted summary judgment on Plaintiffs' first claim for relief after finding the amendment to the Declaration invalid. Thus, Defendant's request for summary judgment in their favor on Plaintiffs' first claim for relief is now moot.

Defendant though also seeks summary judgment in their favor on Plaintiffs' second claim for relief, merely arguing that Plaintiffs' request for injunctive relief has not been ruled on by this court. Though Defendant's assertion that the request for a preliminary injunction has not yet been ruled on is accurate, that does not speak to Plaintiffs' right to seek a preliminary injunction or the soundness of the bases therefor. Regardless, the court's invalidation of the amendment at issue in this matter renders the amendment void *ab initio*. Thus, any efforts to enforce the invalid amendment up to this point were done so without authority. The court finds the issue of a preliminary injunction is now moot.

Finally, Defendant seeks summary judgment on Plaintiffs' third claim for relief, arguing that there is no authority to find that the Association has any fiduciary duty to the homeowners. In so arguing, Defendant seeks to distinguish this matter from Plaintiffs' cited authority, Woodmoor Imp. Ass'n v. Brenner, 919 P.2d 928, 933 (Colo. App. 1996), and assert that there is no authority within Colorado that permits a breach of

fiduciary duty claim by a homeowner against their homeowner's association. The court disagrees.

First, the court notes that despite Plaintiffs' failure to address this issue in their Response, the issue is not confessed pursuant to C.R.C.P. 121 § 1-15(3). Second, the court finds that the question of whether a homeowner's association has a fiduciary duty toward its members is a question of law appropriately decided under CRCP 56. Finally, the court finds that homeowners associations do owe a fiduciary duty to its members. See Woodward v. Bd. of Directors of Tamarron Ass'n of Condo. Owners, Inc., 155 P.3d 621, 624 (Colo. App. 2007) (finding homeowners associations have a fiduciary duty to homeowner members to enforce protective covenants in a fair and reasonable manner); Colorado Homes Ltd. v. Loerch-Wilson, 43 P.3d 718, 771-772 (acknowledging the existence of a fiduciary duty of a homeowners association to homeowners in recognition of the quasi-governmental functions the homeowners association serves); Van Schaack Holdings, Ltd. v. Van Schaack, 867 P.2d 892, 897 (Colo. 1994) (noting past precedent establishing that corporate directors owe a fiduciary duty toward shareholders in exercising their responsibilities). Accordingly, the court finds that the Association owes a fiduciary duty to its members.¹

¹ The court does not make any findings regarding the particular duty or duties owed nor whether there was a breach of any such duties. See Woodward, 155 P.3d at 625 ("The determination of whether the exercise of power by a homeowners' association has been reasonable or arbitrary is a factual question. Moreover, issues of reasonableness and good faith are particularly unsuitable for summary judgment.") (citations omitted).

IV. ORDER

Based upon the above findings, the Court DENIES *Defendant's Motion for Summary Judgment*.

SO ORDERED this August 20, 2020.

BY THE COURT:

Catherine J. Cheroutes



Catherine J. Cheroutes
District Court Judge