

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-055714

01/20/2017

HONORABLE AIMEE L. ANDERSON

CLERK OF THE COURT
A. Wood
Deputy

TERRAMAR HOMEOWNERS ASSOCIATION KATHRYN A BATTOCK

v.

DOUGLAS C RHOADS, et al.

DOUGLAS C RHOADS
7162 W BUCKSKIN TRL
PEORIA AZ 85383

RULING

The Court has read and considered Plaintiff's/Counter Defendant's Motion for Summary Judgment (filed November 30 2016), Plaintiff's/Counter Defendant's Separate Statement of Facts in Support of Motion for Summary Judgment and exhibits thereto (filed November 30, 2016), Plaintiff's Motion for Summary Disposition (filed January 18, 2017) and Coutner Defendant's Notice of Dismissal of Bankruptcy Filing and Request for Summary Judgment and Motion for Summary Disposition (filed January 18, 2017) Defendant/Counterclaimant has not filed a written memorandum in opposition to the Motion for Summary Judgment.

"A failure to respond to a Motion for Summary Judgment with a written memorandum or opposing affidavits cannot, by itself, entitle the moving party to summary judgment. The trial court must consider the entire record before deciding a summary judgment motion." *Schwab v. Ames Const.*, 207 Ariz. 56, 60, 83P.3d 56, 60 (App. 2004).

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law on all or any part of a claim or defense. Ariz. R. Civ. P. 56(a); *Western Corrections Croup, Inc. v. Tierney*, 208 Ariz. 583, 586, 96 P. 3d

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1070, 1073 (App. 2004), *Samsel v. Allstate Ins.*, 204 Ariz. 1, 4, 59 P. 3d 281, 284 (App. 2002). The party moving for summary judgment has the burden of establishing the absence of a genuine dispute of fact. *Wells Fargo v. Allen*, 231 Ariz. 209, 213, 292 P. 3d 195, 199 (App. 2012). When the moving party makes the necessary showing that no material facts are genuinely in dispute, the adverse party cannot rest on the pleadings but must show by competent evidence the existence of a genuine dispute of material fact requiring a trial. Ariz. R. Civ. P. 56(e)(4); *Schwab v. Ames Const.* 207 Ariz. at, 60, 83 P.3d at 60 (App. 2004); *Kelly v. NationsBanc Mortgage Corp.*, 199 Ariz. 284, 287, 17 P.3d 790, 793 (App. 2000).

In considering the motion, the Court must view all facts and reasonable inferences flowing from those facts in the light most favorable to the party against whom summary judgment is sought. *Gipson v. Casey*, 214 Ariz. 141, 142, 150 P.3d 228, 229 (2007); *Meyers v. City of Tempe*, 212 Ariz. 128, 130, 148 P.3d 751, 753 (2006); *Nat'l Bank of Ariz. V. Thruston*, 218 Ariz. 112, 116, 180 P.3d 977, 981 (app. 2008). The motion should only be granted "if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme School v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). In making this determination, the Arizona Supreme Court has cautioned that "[s]ummary judgment should not be used as a substitute for jury trials, simply because the trial judge may believe the moving party *will* probably win the jury's verdict, nor even when the trial judge believes the moving party *should* win the jury's verdict." *Id.* 166 Ariz. at 210, 802 P.2d at 1009 (emphasis in original). However, a Motion for Summary Judgment should not be denied "simply on the speculation that some slight doubt...some scintilla of evidence or some dispute over irrelevant or immaterial facts might blossom into a real controversy in the midst of trial." *Id.*

Therefore, considering all facts and reasonable inferences flowing from those facts in the light most favorable to the Defendant/Counterclaimant, the court finds that there are no genuine issues of material fact.

The Court finds that Summary judgment is appropriate as A.R.S. Sec. 33-1807 and the homeowners association's governing documents provide for payment of assessments, late fees, costs of collection and attorneys' fees incurred in collecting assessments, and there is no dispute that Defendant has not paid all of the amounts that he owes to the homeowners association. The Court further finds that Defendant has failed to produce or disclose any evidence to support his counterclaims, and the evidence developed by the homeowners association directly refutes the counterclaims that Defendant has filed in this Court.

Therefore,

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As there are no issue of material fact, and the homeowners association is entitled to judgment as a matter of law.

IT IS ORDERED granting Plaintiff's and Counter Defendant's Motion for Summary Judgment.

IT IS FURTHER ORDERED that the counsel for Plaintiff submit a proposed judgment consistent with this ruling no later than February 3, 2017.

IT IS FURTHER ORDERED awarding Plaintiff and Counter Defendant attorney's fees incurred in this matter.

IT IS ORDERED that counsel for Plaintiff and Counter Defendant submit a proposed form of order and supporting affidavit to this Court no later than February 3, 2017.