

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-010651

01/23/2023

HONORABLE TIMOTHY J. RYAN

CLERK OF THE COURT
D. Charbagi
Deputy

LAKWOOD ESTATES HOMEOWNERS
ASSOCIATION

QUINTEN T CUPPS

v.

MICHAEL A URBANO

ERNEST COLLINS JR.

CHRISTOPHER L ENOS
JUDGE RYAN

MINUTE ENTRY

The Court previously read and considered Plaintiff Lakewood Estates Homeowners Association's (LEHA) Motion for Summary Judgment filed July 1, 2022, Defendant Urbano's Response filed August 12, 2022, Plaintiff's Reply filed September 2, 2022, the accompanying Statements of Fact, and the argument of counsel. The Court struck Mr. Urbano's Response and Statements of Fact in this and two other pending motions, for the reasons set forth in its minute entry filed November 7, 2022. Notwithstanding the non-compliance, the Court gave Mr. Urbano another opportunity to file a new Response and Controverting Statement of Fact, and LEHA and opportunity to file a supplemental Reply.

Compliance with Court Orders

The Court finds that the November 18, 2022 Response and Controverting Statement of Fact do not comply with prior court orders. First it did not comply with the orders set forth in the minute entry filed November 7, 2022 minute entry. The Court was not inviting a cut-and-paste of substantial portions of the stricken pleadings, which the Court found confusing and nonresponsive. Mr. Urbano filed a "cross-motion" within the body of his Response, which Judge Smith expressly

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prohibited in his minute entry filed November 6, 2020, in the fourth full paragraph on page 4. Separate and apart from being prohibited, even if treated as a valid motion, it was untimely and not filed within the deadline for filing a Motion for Summary Judgment.

Compliance with the Arizona Rules of Civil Procedure

The Court finds that the November 18, 2022 Response and Controverting Statement of Fact do not comply with the Arizona Rules of Civil Procedure. Specifically, Mr. Urbano failed to comply with Rule 56(c)(3)(B) of the Arizona Rules of Civil Procedure.

Material Facts that Defendant does not Address or Dispute

Mr. Urbano did not address or dispute the facts set forth in Plaintiff LEHA's Statement of Facts. They include: a) Defendant is a member of the Association and is bound by a contract in the form of the Declaration of Covenants, Conditions and Restrictions ("CC&Rs"), as referenced in Plaintiff's SOF ¶1-6; b) The CC&Rs create a a lien obligation and a personal obligation for Each Owner, as referenced in Plaintiff's SOF ¶5; c) Defendant is personally and contractually obligated to pay the Association assessments and other related charges, as referenced in Plaintiff's SOF ¶5; d) No owner may be exempt from the payment of Assessments, as referenced in Plaintiff's SOF ¶5; and Defendant has failed to pay the Association the Assessments and other related charges.

Mr. Urbano believes that in spite of the facts set forth above, he has an Order from the Kyrene Justice Court that relieves him of his obligations under the *CC&Rs*. The Court sees no such language that would lead one to reach that conclusion. Even if such language were to be found in the Order, the Kyrene Justice Court does not have jurisdiction to issue an Order that fits Mr. Urbano's interpretation of the Order.

Legal Analysis

Mr. Urbano places weight on a series of orders entered in 2014 in Kyrene Justice Court but does not address the arguments raised by opposing counsel.

A Justice Court's jurisdiction is only as affirmatively conferred on them by law, per A.R.S. §22-201(A). If there is no statute to confer jurisdiction, then the Justice Court's orders would be void, not merely voidable. *Secure Ventures, LLC v. Gerlach in and for County of Maricopa*, 249 Ariz. 97, 466 P.3d 97 (App. 2020). In this case, the applicable statute, A.R.S. §22-201(D) should have prompted the Justice of the Peace to either limit the orders to monetary damages, or should have forwarded it to the superior court if the parties were to address liens and assessments. A judgment or order is void if the court lacked jurisdiction over the subject matter, over the person,

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or over the particular judgment entered. *Master Financial Inc. v. Woodburn*, 208 Ariz. 70, 90 P.3d 1236(App. 2004). Subject matter jurisdiction, or lack thereof, may be raised at any time to set aside a void judgment. *Secure Ventures LLC v. Gerlach*, 249 Ariz. 97, 101, 466 P.3d 874, 878 (App. 2020).

Mr. Urbano references a settlement agreement that allegedly corroborates the excessive orders erroneously entered at the Kyrene Justice Court, but no such document has ever been presented. From the record, it is not at all clear whether the Justice of the was trying to track language from a settlement agreement, or just winging it. In any event, those orders are void.

As to breach of contract, the Court finds that there are disputed issues of fact regarding the defense of laches. This ruling does not impact present and future obligations under the CC&Rs, as the void judgments will be set aside.

IT IS ORDERED denying the Motion for Summary Judgment on the Breach of Contract claim.

IT IS FURTHER ORDERED granting the Motion for Summary Judgment seeking Declaratory Relief, setting aside the orders entered May 15, 2014 by the Kyrene Justice Court in CC2013-202252RC, which was transmitted to the Court and is part of the record in this case.

IT IS FURTHER ORDERED striking the Cross-Motion for Summary Judgment.