

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2020-010651

01/26/2023

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 Third-Party Defendant Lakewood Estates Homeowners Association's (LEHA) Motion for Summary Judgment filed July 1, 2022, Third-Party Plaintiff Urbano's Response filed August 16, 2022, Third Party Defendant'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 an opportunity for HELA to file a supplemental Reply.

**Compliance with Court Orders**

The Court finds that the November 18, 2022 Response and Controverting Statement of Facts do not comply with prior court orders. The Court incorporates by reference its findings as to Plaintiff Lakewood Estate's Motion for Summary Judgment in the prior minute entry on this issue.

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**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.

**Matter Addressed in HELA's Motion for Summary Judgment**

This litigation stems from a dispute as to whether Mr. Urbano had a valid set of orders that precluded him from meeting any of his obligations as a member of the Homeowners' Association. The Court found in a related summary judgment ruling that the 2014 orders from Kyrene Justice Court are void.

**Legal Analysis**

HELA argues that summary judgment is warranted on all the claims in the Third-Party Complaint. The Court will address them separately.

**Count One: Breach of Contract**

Mr. Urbano alleges that the actions complained of violated a "confidential settlement agreement" but has not provided any credible evidence that such an agreement ever occurred. The Court will grant summary judgment on this count and wishes to clarify its ruling on HELA's request for summary judgment for breach on contract in its complaint.

The Court is not aware of HELA's specific efforts to enforce Mr. Urbano's contractual obligations to pay his fair share of the HOA dues required of every HOA member, and could not tell the time frame of nonpayment which HELA seeks to enforce. As to monies due and owing close in time to the void 2014 orders from the Justice Court, laches may occur. As to HELA seeking contractual recovery and the declaratory relief, the Court opines that the initiation of this action made obvious Mr. Urbano's contractual obligations to pay HOA dues, but is not clear on what happened between the void orders of the Kyrene Justice Court in 2014 and the initiation of these proceedings. That is the limited significance of referencing laches.

**Count Two: Breach of the Duty of Good Faith and Fair Dealing**

There is no credible evidence that a confidential settlement agreement ever existed. Defendant fails to articulate what damages, if any, stem from this allegation. Summary judgment is appropriate as to Count Two.

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**Count Three: Abuse of Process**

The Court finds that reasons for entry of judgment in favor of Lakewood Community Association (LCA) generally apply to HELA sufficient for entry of summary judgment.

**Count Four: Harassment**

Mr. Urbano fails to articulate an actionable claim factually and legally.

**Count Five: Defamation**

Mr. Urbano fails to respond to HELA's arguments on this count, fails to explain why the cited caselaw is distinguishable or otherwise applicable, and provides no legal authority to support his non-responsive position.

**Count Six: Negligent Infliction of Emotional Distress**

The Court finds no evidence of negligence, no evidence that the actions created an unreasonable risk of bodily harm, and no medical evidence regarding causation. Mr. Urbano fails to explain why HELA's cited case law is distinguishable or otherwise inapplicable.

**Count Seven: Intentional Infliction of Emotional Distress**

The Court has no evidence that the actions complained of were extreme or outrageous, lacks any evidence regarding medical causation, fails to explain why HELA's cited authorities are distinguishable or otherwise inapplicable.

**Count Eight: Accounting**

The Court has no facts or applicable for Mr. Urbano's purported cause of action for "accounting."

**Count Nine: Punitive Damages**

Punitive damages cannot not be a cause of action standing on its own. It is a type of damages that may attach to a cause of action if warranted by the evidence.

**IT IS ORDERED** granting the Motion for Summary Judgment on Counts One, Two, Three, Four Five, Six, Seven, Eight and Nine.