

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-010651

01/26/2023

HONORABLE TIMOTHY J. RYAN

CLERK OF THE COURT
D. Charbagi
Deputy

LAKESWOOD 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 Community Association's (LCA) Motion for Summary Judgment filed July 2, 2022, Third-Party Plaintiff Urbano's Response filed August 12, 2022, Third Party Defendant's Reply filed September 1, 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 LCA 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 LCA'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

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

Counts One, Two and Eight

LCA argued that Count One: Breach of Contract, Count Two: Breach of the Duty of Good Faith and Fair Dealing, and Count Eight: Accounting warrant entry of summary judgment given the insufficiency of the evidence supporting those allegations. Mr. Urbano made no responsive argument or analysis as to Counts One, Two and Eight in his Response filed August 12, 2022, and the Court did not recall Mr. Urbano's counsel offering clarification to the Court that these did not apply to LCA at the time of oral argument. In the November 18, 2022 Response, Mr. Urbano indicated that Count One, Two and Eight do not apply to LCA. Since they do not apply to LCA summary judgment is not appropriate.

Count Three: Abuse of Process

Mr. Urbano made a claim that LCA, under the theory of *respondeat superior* for its agent Ms. Smith engaged in conduct constituting Abuse of Process when multiple notices were forwarded to Mr. Urbano that he was in violation of his CC&R responsibilities for nonpayment of his HOA obligations. Mr. Urbano also alleged that Ms. Smith calling police in response to Mr. Urbano's behavior toward Ms. Smith, and when LCA initiated prior litigation against Mr. Urbano. The conduct complained of occurred in July 2014.

LCA argues summary judgment should be entered on this claim for several reasons: 1) it is time barred under A.R.S. §12-542, and 2) calling and interacting law enforcement about

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disruptive behavior cannot constitute abuse of process, citing *Fappani v. Bratton*, 243 Ariz. 306, 407 P.3d 78 (App. 2017). Mr. Urbano fails to respond to either argument, fails to explain why the cited statute and caselaw are distinguishable or otherwise inapplicable, and provides to legal authority in support of his non-responsive position.

Count Four: Harassment

Mr. Urbano concedes that Count Four cannot stand as an actionable claim.

Count Five: Defamation

Mr. Urbano fails to respond to LCA'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. It appears that Mr. Urbano has conceded that this can no longer stand as an actionable claim.

Count Six: Negligent Infliction of Emotional Distress

In support of his opposition to entry of summary judgement on this count, Mr. Urbano cites the RAJI (Civil)5th Negligence 8 in support of his opposition to entry of summary judgment on this count. The Court agrees with LCA that this instruction would not apply to the allegation found in Mr. Urbano's Amended Third Party Complaint, nor to the argument Mr. Urbano makes on this point. 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 LCA's cited case law is distinguishable or otherwise inapplicable and cites an inapplicable jury instruction in support of his opposition to entry of summary judge on this count.

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 LCA's cited authorities are distinguishable or otherwise inapplicable.

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 FURTHER ORDERED granting the Motion for Summary Judgment on Counts Three, Four Five, Six, Seven, and Nine.

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IT IS FURTHER ORDERED striking the Cross-Motion for Summary Judgment contained in Mr. Urbano's original Response.