

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-091574

02/21/2006

HON. MARK F. ACETO

CLERK OF THE COURT
K. Stone
Deputy

FILED: 02/23/2006

CRESCENT BUTTE HOMEOWNERS
ASSOCIATION

ELISE SAADI

v.

LILY A HWA

STEVEN W CHEIFETZ

MINUTE ENTRY

Summary judgment practice is difficult and time consuming for both the Court and the parties. It is also often expensive for the litigants. Summary judgment practice becomes even more difficult when the party filing a Motion for Summary Judgment complicates matters by a lack of patience. Such is the situation in the case at bar.

Plaintiff filed a Motion for Summary Judgment on December 23, 2005. This Motion was supported by Exhibit C. Exhibit C is the beginning of an affidavit. However, the "affidavit" is not signed and does even provide the name of the "affiant". Under the circumstances, Defendant was forced to file both a response and a "Motion for Additional Time Pursuant to Rule 56(f)". Defendant filed these pleadings on January 12, 2006. One day later, on January 13, the original affidavit being relied on by Plaintiff was finally filed. This forced Defendant to file a "Motion to Strike".

On the surface, this situation is similar to a not uncommon practice. In Maricopa County, Motions for Summary Judgment must be filed no later than 60 days before trial. In an effort to meet the 60 day deadline, copies of affidavits (usually obtained by fax) are sometimes submitted at the time of the filing of a Motion for Summary Judgment. Then, when the original affidavit reaches counsel, it is filed under a notice.

The practice described in the forgoing paragraph is benign. Attorneys are officers of the court. Opposing counsel can rely on the implied promise of the attorney who filed the Motion for Summary Judgment that the original affidavit will soon be filed. Under such circumstances, neither the party opposing the Motion for Summary Judgment nor the effective administration of justice are prejudiced.

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Although similar, the situation presented in this case is analytically distinguishable from the scenario described above. First, the trial date has not yet been set in this case. Therefore, Plaintiff's counsel was not facing a deadline before which Plaintiff's summary judgment motion had to be filed.

Second, Plaintiff did not simply submit a copy of an affidavit. Rather, Plaintiff submitted an unsigned affidavit. Further, the "affidavit" did not even provide the name of a person who might ultimately sign the affidavit.

Third, the filing of Plaintiff's Motion for Summary Judgment started the clock ticking toward a deadline for the filing of Defendant's Response to the Motion. Failing to respond to a summary judgment motion can result in a Court summarily granting the motion. Further, the work involved in addressing a 20 page summary judgment motion¹ is a significant endeavor, both for counsel and for the Court. It is time consuming enough to address the real issues. Unfortunately, haste sometimes obscures the real issues and unnecessarily creates extra work for all of those involved. Such is the case here. By prematurely filing Plaintiff's Motion for Summary Judgment before obtaining a true affidavit, Plaintiff's counsel caused much unnecessary work. For example, in response to the situation created by Plaintiff, Defendant reasonably (1) included argument in its response to the Motion for Summary Judgment regarding the insufficiency of the "affidavit", (2) filed a Motion for a Rule 56(f) extension, and (3) ultimately filed a "Motion to Strike" the "affidavit".

Under the circumstances and on Court's own motion,

IT IS ORDERED striking Plaintiff's Motion for Summary Judgment. This renders moot Defendant's "Motion for Additional Time Pursuant to Rule 56(f)" and Defendant's "Motion to Strike".

In the event an attorney fee award is ultimately sought at the end of the case, counsel should feel free to remind the Court of the unnecessary work done regarding Plaintiff's Motion for Summary Judgment.

DATED the 21st day of February, 2006.

/s/ HON. MARK F. ACETO

JUDICIAL OFFICER OF THE SUPERIOR COURT

¹ In this case, Plaintiff's Motion was not only 20 pages long, but it also was supported by 20 voluminous exhibits.