

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-009295

01/29/2013

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
K. Carter
Deputy

SUPERSTITION MOUNTAIN HOMEOWNERS ASSOCIATION JON R HULTGREN

v.

JACOB SIMONTON

MICHAEL J SHERIDAN

THERESA BUDENHOLZER KEELEY

RULING MINUTE ENTRY

The Court has received and reviewed Plaintiff Superstition Mountain Homeowners Assoc.'s [Plaintiff] *Motion for Summary Judgment* filed against Defendant Jacob Simonton [Defendant]. Defendant has failed to file a responsive pleading.

General Background:

Plaintiff has filed a complaint alleging a contractual dispute arising from real property subject to restrictive covenants. Briefly stated, Defendant's property is subject to the restrictive covenants imposed by a homeowners association. The allegation is that Defendant has failed to pay quarterly assessments and related fees and fines as required by these restrictive covenants.

Plaintiff asserts various counts in which it is alleged Defendant is separately in arrears and delinquent on the payment of assessments. To date, Defendant has failed to cure the default or non-payment of these assessments.

Plaintiff has made a prima facie showing that it is entitled to judgment against Defendant. Defendant may not simply rest on the pleadings, but must show by competent evidence specific

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facts that create a genuine issue of fact for trial. A.R.C.P., Rule 56 [e] clearly provides that when a motion for summary judgment has been filed and appropriately supported, "...an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits...must set forth specific facts showing that there is a genuine issue for trial."

Under these circumstances, Defendants have failed to do so. By failing to do so, Defendants have waived any procedural or evidentiary arguments or objections that could have been made in response to the Motion.¹

The Court having reviewed the Motion does find that there is no genuine issue as to any material fact and, further, that the Plaintiff, the moving party, is entitled to judgment as a matter of law.

IT IS ORDERED granting Plaintiff's *Motion for Summary Judgment* against Defendant Jacob Simonton.

IT IS FURTHER ORDERED that should Plaintiff request attorney fees and costs, a request for fees, affidavit and statement of costs shall be submitted in a timely manner.

IT IS FURTHER ORDERED that Plaintiff shall submit a proposed form of judgment in conformity with this Court's prior order and in conformity with A.R.C.P., Rule 58.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

¹ Johnson by Johnson v. Svidergol, 157 Ariz. 333, 335 [App. 1988]; Kelly v. NationsBanc Mortgage Corp., 199 Ariz. 284, 287[Sup. 2000].