

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-094721

01/30/2019

HONORABLE DAVID J. PALMER

CLERK OF THE COURT
I. Ostrander
Deputy

WOODMAR I V ASSOCIATION INC

CLINT G GOODMAN

v.

PAUL S RUBIN INC

JAMES A ROBLES JR.

JUDGE PALMER

UNDER ADVISEMENT RULING

The Court is in receipt of the Motion for Reconsideration filed by Defendant Paul S. Rubin (“Rubin”). Upon order of this Court, Woodmar IV Association, Inc., (“Woodmar IV”) filed a Response to the Motion for Reconsideration. Oral argument was held on the Motion on January 28, 2019.

Defendant asks the Court to reconsider its order dated September 19, 2018, which granted Woodmar IV’s June 28, 2018, Motion to Compel. Rubin filed a Response to that Motion and Woodmar IV a Reply to that Response.

Woodmar IV is a homeowner’s association; Defendant Rubin is a property management company that previously managed Woodmar IV. Woodmar IV alleges that while Rubin managed the property, it stole approximately \$244,000.00 from the homeowner’s association.

Woodmar IV filed its Motion to Compel when after a year into this litigation Rubin failed to comply with discovery requests; specifically, it failed to allow Woodmar IV to enter land and do forensic computer inspections on its computers relative to the claims made in the Complaint.

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There was some discussion between the parties regarding protective orders relative to the examination, but the parties did not agree to the parameters of any such order, nor did either side move this Court to enter such a protective order.

In the order this Court signed, it cited to Ariz. R.Civ. P. 37(a)(3)(B), which provides that a party may move the Court for an order to compel a discovery response when a party fails to respond to appropriate requests.

In arguing that it need not respond to discovery requests in its original Response to the Motion to Compel, and then again in the Motion for Reconsideration, Rubin argues that Defendant did comply with some discovery requests; that the parties failed to agree on an appropriate confidentiality/protective order due primarily to the “bad faith” of the Plaintiff; that their concerns about the discovery of proprietary information were borne out by someone sending copies of this Court’s Order to Compel, with the implication being that Woodmar IV was the culprit, a claim Woodmar IV denies.

Rubin also claims that the information that is sought is privileged pursuant to the fiduciary duty owed by Rubin to individual homeowners in the Association. Woodmar IV denies that the information is privileged, arguing that the Association has no fiduciary duty to individual members and that as agent of the Association, Rubin has no duty either. The Court finds the Association’s argument to be correct.

Rubin also claims that the Court failed to provide “substantial support” for its ruling and is thus not within the Court’s discretion. In making that claim, they improperly cite an unpublished opinion of the Court of Appeals, *Manzutto v. Gass*, 2018 WL 3731006, relative to the release of medical information of an incapacitated person, which is clearly different than the situation at issue here.

Ignoring for the moment the effect of the decision being unpublished, *Manzutto* deals with medical records that are protected by the patient-physician privilege. The records at issue in the instant case are not so protected. *Manzutto* is therefore easily distinguishable and the Court finds it unpersuasive to the issue at hand.

The Court finds no error in its granting of Plaintiff’s Motion to Compel. Its basis is found in the record before the Court. Therefore,

IT IS ORDERED denying Defendant Paul S. Rubin, Inc.’s, Motion for Reconsideration of Order Granting Motion to Compel.