

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-011279

02/07/2019

HON. TERESA SANDERS

CLERK OF THE COURT
A. Durda
Deputy

OPTIMA CAMELVIEW VILLAGE
CONDOMINIUM ASSOCIATION

JAVIER B DELGADO

v.

MARK D MADKOUR

BLAKE D GUNN

JUDGE SANDERS

RULING

The Court has read and considered the following:

- (1) Plaintiff's *Motion for Summary Judgment* filed October 12, 2018.
- (2) Plaintiff's *Separate Statement of Facts in Support of Motion for Summary Judgment* filed October 12, 2018.
- (3) Defendant's *Response to Summary Judgment* filed November 21, 2018.
- (4) Defendant's *Controverting Statement of Facts* filed November 21, 2018.
- (5) Plaintiff's *Reply in Support of Plaintiff's Motion for Summary Judgment* filed December 11, 2018.
- (6) Plaintiff's *Response to Defendant's Controverting Statement of Facts* filed December 11, 2018.

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The Court has also considered the arguments of counsel made on January 31, 2019.

In its motion, Plaintiff contends that it is entitled to summary judgment in the amount of \$19,098.20, plus accrued pre-judgment interest, accruing assessments, attorneys' fees and costs due to Defendant's failure to pay his monthly HOA assessments. In support of its motion, Plaintiff has provided (1) a copy of Defendant's special warranty deed, (2) a copy of the HOA's declaration, (3) a copy of Defendant's payment ledger dating from April 16, 2015 through October 1, 2018 that reflect a total balance owed of \$18,029.20. There is an addendum to item #3, which adds attorneys' fees and reflects an amended total balance of \$19,098.20. Plaintiff has also supplied an affidavit from the HOA's managing agent, dated October 10, 2018, that attests to \$19,098.20 being the total amount owed as of the date of the affidavit.

In his *Controverting Statement of Facts*, Defendant does not contest any of Plaintiff's alleged facts except for those contained in paragraph 6, which alleges the total amount owed. Defendant contends that summary judgment is not appropriate "because genuine issues of material fact exist concerning the amount owed to Plaintiff and concerning Plaintiff's entitlement to recover such amounts."

Pursuant to Ariz. R. Civ. P. Rule 56(a), "[t]he court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Evidence is viewed in the light most favorable to the nonmoving party. *Sanchez v. City of Tucson*, 191 Ariz. 128, 953 P.2d 168 (1998). "[M]otions for . . . summary judgment serve the . . . purpose of expediting the business of the court by removing meritless claims." *Orme School v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (Ariz. 1990). "It is only the existence of uncontroverted competent evidence favorable to a movant, from which only one inference can be drawn, that entitles a party to summary judgment." *Nemec v. Rollo*, 114 Ariz. 589, 592, 562 Pl.2d 1087, 1090 (Ariz. Ct. App. 1977) (citing *Choisser v. State ex rel. Herman*, 12 Ariz. App. 259, 469 P.2d 493 (1970)). "[W]here the evidence or inferences would permit a jury to resolve a material issue in favor of either party, summary judgement is improper." *United Bank of Ariz. v. Allyn*, 167 Ariz. 191, 195, 805 P.2d 1012, 1016 (App. 1990).

Through its evidence presented, Plaintiff has established that Defendant is obligated to pay monthly HOA assessments, and that he has not done so since July, 2016. Defendant has produced no controverting evidence regarding these facts. Although Defendant argues in his response that Plaintiff "has not established a legal entitlement to anything other than late charges", the Declaration provides, in Section 7, that Plaintiff may recover late fees, interest, collection costs, and attorneys' fees.

Based upon the matters presented, the Court finds, pursuant to Rule 56(a)(1), that there are no genuine issues of material fact and that Plaintiff is entitled to judgment as a matter of law.

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It is ordered granting Plaintiff's *Motion for Summary Judgment* filed October 12, 2018.

Plaintiff is directed to submit a form of order no later than 30 days from the date of this minute entry.

Any request for attorneys' fees and costs must be submitted pursuant to a separate verified application and accompanying *China Doll* affidavit.