

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-003636

04/14/2015

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT
S. Brown
Deputy

CHAUNCEY RANCH OFFICE
CONDOMINIUM ASSOCIATION

AUGUSTUS H SHAW IV

v.

NORTH SCOTTSDALE PAIN CENTER L L C,
et al. JOHN A BURIC

LYDIA P LINSMEIER

UNDER ADVISEMENT RULING

Motion to Suppress Deposition Transcript, filed December 24, 2014

Plaintiff Chauncey Ranch Office Condominium Association (“the Association”) seeks to suppress the deposition of Renee Hanson for purposes of the motion for summary judgment. The Court has considered the Motion, Response, and Reply.

As NSPC points out, Ms. Hanson reviewed and signed her deposition, and changed nothing of substance. Notably, none of the cited excerpts of Ms. Hanson’s deposition transcript were changed. Moreover, it is undisputed that Defendant North Scottsdale Pain Center (“NSPC”) attempted to depose Ms. Hanson prior to the dispositive motion deadline, but could not because of scheduling issues. Finally, Ms. Hanson’s explanation of page 184 of her deposition testimony has been provided to and considered by the court. For all those reasons,

IT IS ORDERED denying the Motion to Suppress.

IT IS FURTHER ORDERED denying the request for attorneys’ fees regarding the Motion to Suppress.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-003636

04/14/2015

Defendant's Motion for Summary Judgment, filed October 15, 2015

NSPC filed a Motion for Summary Judgment on December 15, 2014, to which the Association filed its Response on November 14, 2014. NSPC replied on December 11, 2014.

The Court has considered the papers, related pleadings, as well as the argument of counsel and applicable law.

A court may enter summary judgment only if “there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” Rule 56(a), Ariz. R. Civ. P. See also *Delmastro & Eells v. Taco Bell Corp.*, 228 Ariz. 134, 137-38, ¶ 7, 263 P. 3d 683, 686-87 (App. 2011).

In deciding a motion for summary judgment, the Court must view the facts and the reasonable inferences to be drawn from those facts in the light most favorable to the non-moving party. See, e.g., *Espinoza v. Schulenburg*, 212 Ariz. 215, 216, ¶ 6, 129 P.3d 937, 938 (2006).

NSPC seeks summary judgment, arguing that the Association cannot, as a matter of law, prove the elements of its claims for Breach of Contract and Injunctive Relief. (Motion at 1.)

Breach of Contract

To bring its breach of contract claim, the Association must prove “the existence of the contract, its breach and the resulting damages.” *Graham v. Asbury*, 112 Ariz. 184, 185, 540 P.2d 656, 657 (1975).

In response to NSPC's argument that the Association cannot establish damages, the Association asserts that it “is in the process of conducting further discovery and will argue its damages at trial.” (Response at 8.) However, with the exception of depositions, all discovery concluded on December 31, 2014. (See Scheduling Order, entered June 2, 2014; Order Extending Cutoff Date for Depositions, entered November 18, 2014.) The date for the Association to provide a computation and measure of damages and the documents or testimony on which the computation and measure of damages is based has come and gone. See Rule 26.1(a)(7), Ariz. R. Civ. P.

At oral argument, the Association disclosed, for the first time, a theory of “nominal damages” based on the tax value of the “stolen” portion of the Common Elements. But that disclosure is neither timely nor sufficient.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-003636

04/14/2015

Injunctive Relief

The Association also seeks injunctive relief, which would require NSPC to move the door which is the subject of the action, at an undisputed expense of approximately \$245,000, and then seek permission to move the door back to its current location. It is also undisputed that this process would require the closing of NSPC, a medical facility, for months.

For specific performance to be appropriate, five elements must be met. *The Power P.E.O., Inc. v. Employees Ins. Of Wausau*, 201 Ariz. 559, 563, ¶ 22, 38 P.3d 1224, 1229 (App. 2002). Most pertinent here is the fourth requirement: “specific performance must not inflict hardship on the other party or public that outweighs the anticipated benefit to the party seeking specific performance . . .” *Id.*

Based on the undisputed facts in this matter, no reasonable factfinder could find that specific performance would not inflict hardship on either NSPC and/or the public. Nor could any reasonable factfinder find that the anticipated benefit to the Association would outweigh the hardship inflicted by requiring relocation of the door.

For the foregoing reasons,

IT IS ORDERED granting the Motion for Summary Judgment.

IT IS FURTHER ORDERED directing Defendant to submit a proposed Form of Judgment, along with any request for attorneys’ fees and/or costs, within thirty (30) days of this order.

Motion to Consolidate, filed March 4, 2015

Based on the Court’s ruling on the Motion for Summary Judgment, the Court deems the Motion to Consolidate to be moot. Therefore,

IT IS ORDERED denying Defendant’s Motion to Consolidate.

Motion for Entry of Protective Order, filed January 14, 2015

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-003636

04/14/2015

The Court has considered the Association's Motion for Protective Order, filed January 14, 2015, the Response filed by NSPC on January 23, 2015, and the Association's Reply, filed January 28, 2015.

The Court previously ordered that the depositions of Renee Hanson and Gladys Effio not be posted on the website set up by Defendant, pending a final resolution of this Motion by the court.

First, given that the Court has granted summary judgment in this matter, many of the concerns raised by the Association are now moot. Second, most of the material which the Association seeks to protect is available in the public record, because it has been included in documents filed with the court.

Under Rule 26(c), Ariz. R. Civ. P., the Association bears the burden of showing good cause for a protective order, and any order restricting the release of information to nonparties must use "the least restrictive means to maintain any needed confidentiality."

After consideration of the arguments, review of the redacted transcripts, which were provided to the court, and the requirements of Rule 26(c), the court finds: (1) the deponents have a legitimate need to maintain the privacy of their personally identifying information; (2) any nonparty has no identifiable need to obtain the deponents personal information; and (3) release of the deponents' personal identifying information constitutes a risk to the deponents' personal safety and/or financial welfare. Therefore,

IT IS ORDERED granting the Motion for Protective Order to the following extent: any depositions posted to the website at issue must be redacted. The information to be redacted includes: personal or confidential information such as spouse's name, home address, email address, phone number, date of birth, or any other personally identifying information.

IT IS FURTHER ORDERED that this order does not supersede or in any way affect orders entered in CV 2015-051049. If the judicial officer in that matter enters an order regarding the information in this matter that is more restrictive than the order entered by this court, the parties must abide by it.

IT IS FURTHER ORDERED denying the request for attorneys' fees as to the Motion for Protective Order.