

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-010126

04/08/2024

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT
P. McKinley
Deputy

DESERT PEAK HOMEOWNERS
ASSOCIATION

JOHN HALK

v.

GLADYS JAHN, et al.

GLADYS JAHN
2625 E JJ RANCH RD
PHOENIX AZ 85024

T P I, L L C
1302 E BLUEFIELD AVE
SCOTTSDALE AZ 85260
ADAM B NACH
J C P ENTERPRISES INC
802 N ELK HORN CIR
PAYSON AZ 85541
FIRST CORPORATE SOLUTIONS
300 W CLARENDON AVE STE 240
PHOENIX AZ 85013
SUNSHINE CLEANING SYSTEMS L L
C
107 N TONTO ST
PAYSON AZ 85541
JUDGE BLANEY

RULING

The Court has reviewed and considered Plaintiff's *Motion for Summary Judgment re: Lien Foreclosure*, filed January 8, 2024, together with Plaintiff's *Statement of Facts* and exhibits, filed

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January 8, 2024. Defendant failed to timely respond. Pursuant to Rule 7.1(b), *Arizona Rules of Civil Procedure*, the Court may summarily grant a motion based upon an opposing party's failure to timely respond. However, to grant the present *Motion for Summary Judgment* even in the absence of a response, the record in this case must establish that Plaintiff is entitled as a matter of law to the relief it is seeking. Oral argument was not requested, and the Court does not believe it would be helpful.

Summary judgment is appropriate only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *See* Rule 56(a), *Arizona Rules of Civil Procedure*; *Orme School v. Reeves*, 166 Ariz. 301, 305 (1990); *Hourani v. Benson Hosp.*, 211 Ariz. 427, 432 (App. 2005). All facts must be viewed in the light most favorable to the nonmoving party. *See* *Grain Dealers Mutual Insurance Co. v. James*, 118 Ariz. 116 (1978); *Farmers Ins. Co. v. Vagnozzi*, 138 Ariz. 443, 448 (1983). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts" are not proper on summary judgment. *Orme School*, 166 Ariz. at 309-10 (citing *Anderson v. Liberty Lobby*, 477 U.S. 242, 255, 106 S.Ct. 2505, 2513, 91 L.Ed.2d 202 (1986)). But the Court will not deny a motion for summary judgment on the speculation "that some slight doubt ..., some scintilla of evidence, or some dispute over irrelevant or immaterial facts might blossom into a real controversy in the midst of trial." *Orme School*, 166 Ariz. at 311.

When a plaintiff moves for summary judgment, the question before the Court is not whether the defendant has succeeded in presenting genuine disputes of material fact. Rather, the question is whether the plaintiff has "presented sufficient undisputed admissible evidence to establish its entitlement to judgment." *Wells Fargo Bank, N.A. v. Allen*, 231 Ariz. 209, 213 (App. 2012). The plaintiff carries the burden of persuasion on its motion for summary judgment if they submit "undisputed admissible evidence that would compel any reasonable juror to find in its favor on every element of its claim." *Id.* (quoting *Comerica Bank v. Mahmoodi*, 224 Ariz. 289, 293 (App. 2010)).

THE COURT FINDS AS FOLLOWS:

1. Plaintiff has established that Defendant is the owner of real property that is subject to Desert Peak Homeowners Association's recorded Declaration of Covenants, Conditions, and Restrictions (CC&Rs);
2. Plaintiff has established that Defendant materially breached the CC&Rs by not paying assessments to the Association;
3. Plaintiff has established that it obtained a judgment against Defendant in the Maricopa County Justice Court for the delinquent assessments;

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4. Plaintiff has established that it possesses a secured and perfected assessment lien against Defendant's property in the amount of \$9,201.50;
5. There are no genuine issues of material fact precluding summary judgment;
6. Plaintiff has presented sufficient undisputed admissible evidence to establish its entitlement to judgment;
7. Plaintiff has established that Plaintiff may recover its attorney's fees and court costs in the event of default; and
8. This contested action arises out of contract and Plaintiff is the prevailing party.

Good cause appearing,

IT IS ORDERED granting Plaintiff's *Motion for Summary Judgment*.

IT IS FURTHER ORDERED directing Plaintiff to prepare and lodge a form of judgment on or before **April 19, 2024**. Plaintiff shall file any application for attorney's fees and statement of taxable costs by this deadline as well. Defendant shall file any objections or responses to the form of judgment or to the request for attorney's fees and costs within **ten (10) days** thereafter.

If you are not represented by a lawyer, you must keep the Court updated regarding your current mailing address, email address and telephone number. If your mailing address, email address or phone number changes at any time, you must file a notice of change of address/phone number with the Clerk of Court. That form (general form – GN91f – Update Information on Address and/or Name with the Court) can be downloaded at no charge from the following website: https://superiorcourt.maricopa.gov/llrc/fc_gn9/