

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-091584

05/01/2006

HON. MARK F. ACETO

CLERK OF THE COURT
M. Brady
Deputy

FILED: 05/02/2006

WIGWAM CREEK SOUTH COMMUNITY
ASSOCIATION

CHARLES E MAXWELL

v.

ALAN C QUIROS, et al.

RICHARD BELLAH

COURT ADMIN-CIVIL-ARB DESK

MOTION FOR SUMMARY JUDGMENT

On March 21, 2006, Plaintiff filed a Motion for Summary Judgment. The Court has reviewed the pleadings. Pursuant to Rule 7.1, the Court declines to schedule oral argument.

In its complaint, Plaintiff asserted both claims for injunctive relief and for money damages. The injunctive relief claim has been resolved through a settlement agreement.

In moving for summary judgment regarding the money damages claim, Plaintiff argues that the settlement agreement establishes Defendant's liability for money damages pursuant to the doctrine of *res judicata*. *Res judicata* and collateral estoppel apply only when an issue has been actually litigated. Restatement (Second) of Judgments §27. An issue resolved by consent has not been actually litigated. *Id.*, comment e.

Further, when ruling on a Motion for Summary Judgment, a court may consider only admissible evidence. Evidence of compromises is not admissible to prove liability. Rule 408, Arizona Rules of Evidence. Given all of the circumstances,

IT IS ORDERED denying Plaintiff's Motion for Summary Judgment.

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MOTION TO SET

In Maricopa County, compulsory arbitration applies when the amount in controversy does not exceed \$50,000. Local Rule 3.10. On March 20, 2006, Plaintiff filed a "Motion to Set". Plaintiff certified therein that the largest award sought is \$10,000. In their response to the motion to set, Defendants expressed the belief that this case is subject to compulsory arbitration. Because the claim for injunctive relief has been resolved, the Court agrees. Under the circumstances,

IT IS ORDERED denying Plaintiff's motion to set.

REFERRAL TO ARBITRATION DESK

Having found that this case is subject compulsory arbitration,

IT IS ORDERED referring the case to the arbitration desk for appointment of an arbitrator.

INACTIVE CALENDAR

On Court's own motion,

IT IS ORDERED continuing this case on the inactive calendar until December 1, 2006. If Rule 38.1 is not complied with before that date, the case will be dismissed without further notice.

DATED this 1st day of May, 2006.

/ s / HON. MARK F. ACETO

JUDICIAL OFFICER OF THE SUPERIOR COURT