

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-092725

05/23/2011

HONORABLE KAREN POTTS

CLERK OF THE COURT
M. Scott
Deputy

SUN GROVES HOMEOWNERS
ASSOCIATION, THE

JASON N MILLER

v.

PAIGE DAUSCHA, et al.

PAIGE DAUSCHA
4549 E INDIAN WELLS DR
CHANDLER AZ 85249-7072

M E R S
NO ADDRESS ON RECORD

MINUTE ENTRY

The Court has considered Plaintiff's Motion for Summary Judgment filed March 16, 2011. As a matter of procedural history, Plaintiff filed its first Motion for Summary Judgment on November 10, 2010. This Court denied that Motion and itemized the factual and legal deficiencies in its Minute Entry Order dated January 13, 2011. Plaintiff thereafter filed a Motion for Reconsideration and attempted, in said Motion, to offer new facts. The Court rejected this effort given that the addition of new facts is improper in a motion for reconsideration. Thus, Plaintiff now brings its second Motion for Summary Judgment.

The Court cannot find that Plaintiff is entitled to judgment as a matter of law given the facts presented. Specifically, Plaintiff seeks a variety of fees, all having a variety of puzzling names, without contractual authority to assess those fees. Within its Statement of facts, Plaintiff seeks monthly assessments, late charges, pre-judgment interest, demand fees, management company demand fees, lien fees, legal assessment fees, attorney's fees, and fines for the violation of the CC&Rs, citing to Sections 8.2 and 8.3 of the CC&Rs. Yet Section 8.2 only authorizes assessments (defined in Section 1.6 only as Annual Assessments and Special Assessments), interest, late fees established by the Board, and costs and reasonable attorney's fees incurred by the Board to collect assessments. There is no evidence of costs or attorney's fees incurred in the

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Statement of Facts. Likewise, there is no evidence that the Board ever established any late fees. Section 8.3 does not authorize any other fees, but rather merely sets forth the procedure for securing a lien against an Owner/Occupant. The Court could find no authority in the CC&Rs for the assessment of fines, nor did Plaintiff offer any evidence that Defendants violated the CC&Rs other than by not paying Assessments. Given the rather substantial gap between what Plaintiff seeks, the legal authority it has for the relief it seeks, and the evidence it has presented, Plaintiff is not entitled to judgment as a matter of law. Under Ariz.R.Civ.P. 7.1(b), the Court has the discretion to grant the relief requested if a party fails to respond; the Court declines to exercise that discretion in this case.

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

ALERT: eFiling through AZTurboCourt.gov is mandatory in civil cases for attorney-filed documents effective May 1, 2011. See Arizona Supreme Court Administrative Orders 2010-117 and 2011-010. The Court may impose sanctions against counsel to ensure compliance with this requirement after May 1, 2011.