

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-055942

05/11/2018

HONORABLE AIMEE L. ANDERSON

CLERK OF THE COURT
A. Wood
Deputy

GENE D WATSON, et al.

FREDERICK E DAVIDSON

v.

LEISURE WORLD COMMUNITY
ASSOCIATION

KATHERINE J MEROLO

MINUTE ENTRY

The Court has read and considered the following:

- Defendant's Motion for Summary Judgment (filed March 2, 2018)
- Defendant's Separate Statement of Facts in Support of Motion for Summary Judgment (filed March 2, 2018)
- Plaintiff's Response to Defendant's Motion for Summary Judgment (filed April 6, 2018)
- Plaintiff's Controverting Separate Statement of Facts in Support of Response to Defendant's Motion for Summary Judgment (filed April 6, 2018)
- Defendant's Reply in Support of Motion for Summary Judgment (filed May 10, 2018)

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law on all or any part of a claim or defense. Ariz. R. Civ. P. 56(a); *Western Corrections Croup, Inc. v. Tierney*, 208 Ariz. 583, 586, 96 P. 3d 1070, 1073 (App. 2004), *Samsel v. Allstate Ins.*, 204 Ariz. 1, 4, 59 P. 3d 281, 284 (App. 2002). The party moving for summary judgment has the burden of establishing the absence of a genuine dispute of fact. *Wells Fargo v. Allen*, 231 Ariz. 209, 213, 292 P. 3d 195, 199 (App. 2012).

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When the moving party makes the necessary showing that no material facts are genuinely in dispute, the adverse party cannot rest on the pleadings but must show by competent evidence the existence of a genuine dispute of material fact requiring a trial. Ariz. R. Civ. P. 56(e)(4); *Schwab v. Ames Const.* 207 Ariz. at, 60, 83 P.3d at 60 (App. 2004); *Kelly v. NationsBanc Mortgage Corp.*, 199 Ariz. 284, 287, 17 P.3d 790, 793 (App. 2000).

In considering the motion, the court must view all facts and reasonable inferences flowing from those facts in the light most favorable to the party against whom summary judgment is sought. *Gipson v. Casey*, 214 Ariz. 141, 142, 150 P.3d 228, 229 (2007); *Meyers v. City of Tempe*, 212 Ariz. 128, 130, 148 P.3d 751, 753 (2006); *Nat'l Bank of Ariz. V. Thruston*, 218 Ariz. 112, 116, 180 P.3d 977, 981 (app. 2008). The motion should only be granted "if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme School v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). In making this determination, the Arizona Supreme Court has cautioned that "[s]ummary judgment should not be used as a substitute for jury trials, simply because the trial judge may believe the moving party *will* probably win the jury's verdict, nor even when the trial judge believes the moving party *should* win the jury's verdict." *Id.* 166 Ariz. at 210, 802 P.2d at 1009 (emphasis in original). However, a motion for summary judgment should not be denied "simply 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." *Id.*

Therefore, considering all facts and reasonable inferences flowing from those facts in the light most favorable to the Plaintiffs, the court finds that there are genuine issues of material fact that are in dispute.

The Court finds the following to be among the material issues in dispute: whether the Consolidated Declaration is an Amendment; whether the Consolidated Declaration was required to be "adopted"; whether the 2014 Amendment was properly adopted; whether the 2014 Amendment required unanimous consent; whether the consent forms utilized were sufficient to amend the Plat Declarations (including the Plat 24 Declarations); whether the 2013 & 2014 Amendments should have been recorded. As these material issues remain in dispute, Defendant is not entitled to judgment as a matter of law.

Therefore,

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