

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-055880

05/19/2020

HONORABLE LISA DANIEL FLORES

CLERK OF THE COURT
A. Wood
Deputy

RANCHO CABRILLO MASTER
HOMEOWNERS ASSOCIATION INC

TROY B STRATMAN

v.

FREDY ORLANDO OLAYA, et al.

FREDY ORLANDO OLAYA
26556 N 132ND LN
PEORIA AZ 85383

JUDGE FLORES

MINUTE ENTRY

The Court received Plaintiff's Motion for Summary Judgment, filed March 23, 2020. The motion shows that a copy was sent to Defendants at the address which was shown on Defendants' answer, filed November 22, 2019. Defendants did not file a response

Summary judgment is appropriate where there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Rule 56(c), Ariz. R. Civ. P. In determining whether there are any factual issues to resolve, the Court views the matters of record in the light most favorable to the party opposing the summary judgment motion. *Espinoza v. Schulenburg*, 212 Ariz. 215, 129 P.3d 937 (2006). If the party with the burden of proof on the claim or defense cannot respond to the motion by showing that there is evidence creating a genuine issue of fact on the element in question, then the motion for summary judgment should be granted. *Orme School v. Reeves*, 166 Ariz. 301, 802 P.2d 1000 (1990).

The failure to respond to a motion may be treated as consent to it being granted. Ariz. R. Civ. P. 7.1(b). However, a plaintiff may only obtain summary judgment if it submits undisputed

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admissible evidence that would compel any reasonable juror to find in its favor on every element of its claim. *Comerica Bank v. Mahmoodi*, 224 Ariz. 289 (App. 2010). In *Wells Fargo Bank, N.A. v. Allen*, 231 Ariz. 209 (App. 2012), the court detailed the requirements for affidavits offered in support of motions for summary judgment. Among other things, an affidavit must be made on personal knowledge, and must affirmatively demonstrate that the affiant is competent to testify to the matters set forth therein. Where the affiant is acting as a records custodian, the records should be attached to the affidavit, and the affidavit should describe specifically why they fall within the business records exception. And, the affidavit should provide a means to evaluate the accuracy of the calculation of damages.

In this matter, Plaintiff (an HOA) sued Defendants (home owners in the HOA) for breach of contract and judicial foreclosure based on their alleged failure to pay assessments and other charges. Plaintiff sought summary judgment on both claims.

Deed restrictions – including the requirement to pay assessments and fees pursuant to the property’s declarations -- constitute a contract between the property owners as a whole and the individual lot owners. *Johnson v. Pointe Community Ass’n., Inc.* 205 Ariz. 485, 489 (App. 2003). Pursuant to A.R.S. § 33-1256(A), an HOA has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. The association’s lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may be foreclosed in the same manner as a mortgage on real estate but may be foreclosed only if the owner has been delinquent in the payment of monies secured by the lien, excluding reasonable collection fees, reasonable attorney fees and charges for late payment of and costs incurred with respect to those assessments, for a period of one year or in the amount of \$1,200 or more, whichever occurs first, as determined on the date the action is filed. [Emphasis added.]

Based on the record presented,

The Court finds that Plaintiff’s Exhibit D to its SOF (affidavit of the supervisor of account services for Plaintiff’s property management company) laid foundation for Plaintiff’s business record exhibits. Defendants purchased a home subject to HOA assessments and failed to pay assessments and other charges as required by the property’s declarations. Exhibit C (Plaintiff’s account ledger showing Defendants’ assessments and payment history) shows that Defendants had their monthly assessments of \$55.10 prepaid through February 2018, with a partial prepaid amount applied to the March 2018 assessment. Neither the remainder of the March 2018 monthly assessment, nor any other monthly assessment since, was paid by Defendants. Defendants also incurred substantial late fees, collection fees, and attorneys’ fees. Defendants only payments since April 1, 2018 were two payments, both made September 17, 2019, for a total of \$620.40. The total amount owed by Defendants as of March 1, 2020 is \$5,034.28.

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The Court further finds that by failing to pay the assessments and fees, Defendants breached their contract with Plaintiff.

As to the claim for judicial foreclosure, based on the record presented the Court finds that Defendants had unpaid assessments for a period of one year as determined on the date the action was filed (August 1, 2019). For that reason, Plaintiff is entitled to foreclose on the lien against Defendants' property.

IT IS ORDERED granting Plaintiff's Motion for Summary Judgment, filed March 23, 2020.

IT IS FURTHER ORDERED awarding Plaintiff \$5,034.28 for unpaid fees and assessments.

IT IS FURTHER ORDERED awarding Plaintiff its costs. A statement of costs shall be filed within 20 days of the entry of this order.

IT IS FURTHER ORDERED awarding Plaintiff its reasonable attorneys' fees. An application for attorneys' fees shall be filed within 20 days of the entry of this order.

IT IS FURTHER ORDERED that, within 20 days of the entry of this order, Plaintiff shall lodge a proposed judgment, with blanks in the spaces for costs and attorneys' fees. The proposed judgment shall contain all necessary language to pursue judicial foreclosure, if Plaintiff intends to foreclose on the property.