

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-014792

05/13/2023

HONORABLE SCOTT BLANEY

CLERK OF THE COURT  
P. McKinley  
Deputy

SUN GROVES HOMEOWNERS  
ASSOCIATION

ROBERT H WILLIS

v.

JOHN MORENO

ASHLEY C HILL

STEPHEN JOSEPH VAN GOOR  
JUDGE BLANEY

**RULING**

The Court has reviewed and considered the following:

1. Defendant's *Motion for Summary Judgment*;
2. Defendant's *Separate Statement of Facts in Support of Motion for Summary Judgment and Supplement*;
3. The Association's *Response to Defendant's Motion for Summary Judgment*;
4. The Association's *Opposing and Supporting Statement of Facts* and related *Declarations*; and
5. Defendant's *Reply in Support of Motion for Summary Judgment*.

This case arises from a dispute between a homeowner and the governing homeowner's association. The Association brought this lawsuit asking the Court to order the Defendant homeowner to paint his house. After the initiation of the lawsuit, Defendant painted his house as requested. The Association then amended its *Complaint* to assert a breach of contract claim, seeking to recover its attorney's fees and costs pursuant to the governing documents. Defendant moves for summary judgment, arguing that Arizona does not recognize a stand-alone cause of

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action for attorney's fees. The Association argues in response that it is entitled to recover its fees and costs pursuant to the Association's governing documents.

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.

**THE COURT FINDS** that genuine issues of material fact preclude summary judgment. For example, it is for the arbitrator – as finder of fact – to decide whether a failure to paint one's home after a certain number of years is a form of "misconduct," and whether that requirement is sufficiently clear to homeowners in the governing documents. The arbitrator may also inquire as to whether the Association has strictly applied the same standard to other homeowners. The arbitrator must additionally decide whether the Association made reasonable efforts to contact Defendant before filing the present lawsuit and incurring its attorney's fees and costs; put another way, were the "common expenses" for which the Association seeks reimbursement actually necessary and did the Association reasonably mitigate its damages? And the arbitrator must weigh the credibility of the witnesses in determining whether the Association met its due process requirements pursuant to the CC&Rs, something that the Court is not permitted to do on summary judgment. *See Orme School*, 166 Ariz. at 309-10.

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

**IT IS FURTHER ORDERED** referring this matter back to the arbitrator so that he may schedule and conduct an arbitration hearing.