Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-003271 05/11/2026

HONORABLE SUSANNA C. PINEDA

CLERK OF THE COURT
T. Williams
Deputy

VAL VISTA CLASSIC COMMUNITY ASSOCIATION

NIKITA VERMA PATEL

v.

LEVI ROSENBAUM

LEVI ROSENBAUM
1639 E CHELSEA LN
GILBERT AZ 85295

EMBER ANN VAN VRANKEN
JUDGE PINEDA

UNDER ADVISEMENT RULING

On February 20, 2024, Plaintiff, Val Vista Classic Community Association filed its Complaint against Defendant alleging Breach of Contract and Foreclosure based on unpaid HOA fees that have accumulated on Defendant's property. Plaintiff has placed a lien on the property and seeks to foreclose on the lien.

On November 18,2025, Plaintiff filed their Motion for Summary Judgment indicating that it is undisputed that Defendant has failed to pay the HOA fees due to the association. As a result of the failure to pay, late fees were assessed. Additionally, when payments were returned for insufficient funds, a "NSF Fee" was assessed. Pursuant to the CC&R's for the community, collection fees also were assessed, as well as attorneys' fees. Normally, the monthly HOA fees are $195.00. Plaintiff indicates that while Defendant made payments from August 2021 through February 2022, those payments were returned due to insufficient funds. Defendant's last actual

payment was made in March of 2022 for $145.00. Defendant's account remained delinquent due to the HOA commencing collections.

In June of 2022, Defendant inquired about a payment in the amount of $1,516.91 made on his behalf. The check was apparently credited to another, unrelated account; Val Vista Classic-P1[1] vs. Val Vista Classic. Defendant asked that Plaintiff apply the check to Val Vista Classic and that Plaintiff open the payment portal and remove the case from collections. Plaintiffs declined to open the normal payment portal and Defendant's requests to remove the case from collections.

In January 2025, after litigation had commenced, Defendant sent a check to Plaintiff in the amount of $8,302.00. Defendant intended this payment to be "payment in full" for all monies owed, including past due assessments, collection fees and attorneys' fees authorized by the CC&R's. Plaintiff rejected the payment due to the outstanding balance having grown beyond just the monthly assessments owed by Defendant.

In response to Plaintiff's Motion for Summary Judgment, Defendant seeks summary judgment, alleging that Plaintiff misapplied a payment to the "sub account P-1" instead of the Classic account, and arguing that he was unaware of the need to reapply for the assistance program that was assisting him in paying his HOA assessments. Defendant has also expressed his displeasure with Plaintiff's counsel, specifically, their refusal to settle the matter for monthly assessment and their refusal to allow payments to take place through the portal, rather than through collections.

In reply, Plaintiff notes that the third-party payment was sent to the P-1 account and credited to that account. Payment was not mailed to the Classic account.

MOTION FOR SUMMARY JUDGMENT

A motion for summary judgment should 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 Sch. v. Reeves*, 166 Ariz. 301, 309 (1990); Ariz. R. Civ. P. 56(c)(1).

[1] Defendant submitted the payment ledger for the P-1 account showing that he was in arrears in June of 2022, and that the account was credited $1,214.41 which brought his balance down to $94.91 on this account. Subsequently, Defendant has made no further payments on the P-1 account and the balanced had risen to $2,577.94 as of April 1, 2024. The P1 account is not subject of this litigation but, it appears that the account is in collections.

The party moving for summary judgment must produce evidence that it believes demonstrates the absence of a genuine issue of material fact and must explain why summary judgment is warranted. *Nat'l Bank of Ariz. v. Thruston*, 218 Ariz. 112, 115 (App. 2008). If the nonmoving party has the burden of proof of the claim …at trial, the moving party need not disprove the nonmoving party's claim … but need only point out the lack of evidence on an essential element of the claim. *Thruston*, 218 Ariz. at 117; *see also Vig v. Nix Project II P'ship*, 221 Ariz. 393, 396 (App. 2009) (Emphasis added, irrelevant language omitted). If the moving party meets its burden, the burden shifts to the nonmoving party to present sufficient evidence demonstrating the existence of a disputed fact. *Thruston*, 218 Ariz. at 119. The nonmoving party cannot then rest on its pleadings but must call to the court's attention evidence to explain why the motion should be denied. Id. "If the party with the burden of proof on the claim … 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 Sch. v. Reeves*, 166 Ariz. 301, 310 (1990).

"If the moving party on a motion has made *prima facie* showing that no genuine issue of material fact exists, the opponent of the motion has the burden to produce sufficient evidence that there is indeed an issue." *W.J. Kroeger Co. v. Travelers Indem. Co.*, 112 Ariz. 285, 286 (1975). A motion for summary judgment should not be denied simply on the speculation that some doubt, scintilla of evidence, or dispute over irrelevant or immaterial facts might blossom into a controversy in the middle of trial. *Shaw v. Petersen*, 169 Ariz. 559, 560-61 (App. 1991) *quoting Orme Sch*., 166 Ariz. at 309. "The court does not try issues of fact, but only whether [facts] are genuine and in good faith disputed. The mere general statement in a pleading, when attacked by such motion supported by proof of specific facts in the form of affidavit or deposition, places on the author of the statement the obligation to present something which will show that when the date of trial arrives, he will have some proof to support the allegation in the pleading." *Stevens v. Anderson*, 75 Ariz. 331, 334 (1953). They must show that competent evidence is available which will justify a trial on the issue." *Flowers v. K-Mart Corp*., 126 Ariz. 495, 499 (App. 1980).

Admittedly, determining credibility, weighing the evidence, and drawing legitimate inferences from the facts are functions for a jury, not the judge. *Allstate Indem. Co. v. Ridgely*, 214 Ariz. 440, 444 ¶ 19, 153 P.3d 1069, 1073 (App. 2007) (declining to apply sham affidavit rule; reversing summary judgment).

"Summary judgment is inappropriate where the facts, even if undisputed, would allow reasonable minds to differ." *Nelson v. Phx. Resort Corp*., 181 Ariz. 188, 191 (App. 1994), *citing Orme Sch*., 166 Ariz. at 310. "[I]f a material issue concerns the state of mind or intent of one of

the parties, summary judgment normally is not appropriate." *Mid-Century Ins. Co. v. Duzykowski*, 131 Ariz. 428, 429 (1982).

This Court must "view the evidence in the light most favorable to the party opposing the motion for summary judgment and draw all inferences fairly arising from the evidence in that party's favor." *Phoenix Baptist Hosp. & Med. Ctr., Inc. v. Aiken*, 179 Ariz. 289, 293, 877 P.2d 1345, 1349 (App.1994).

Here, there is no question that the CC&R's are a contractual agreement between the homeowner and the association. Defendant has not disputed that beginning in 2021, his payments were returned for insufficient funds. Defendant acknowledges that due to his disability, he had applied for and obtained assistance to pay his assessments. Defendant acknowledged that a payment was provided and mailed by the third-party payor to "the association." His own records show that that payment was sent to the P-1 account and credited to the delinquency on that account. The Classic account shows no payment. Plaintiff also indicates that he was not aware that he had to "reapply" for assistance, and as a result, he has lost his eligibility to apply for additional assistance. Defendant provides no evidence showing that Plaintiff misapplied this assistance payment, that they were required to accept his subsequent settlement offer to pay the past due assessments only, or that "counsel" engaged in any kind of fraudulent activity. In reality, Defendant acknowledges that he has been unable to make his assessment payments (Classic and P-1) and that he sought assistance through a third-party payor. He also acknowledges that he failed to reapply for assistance and does not have the funds to pay the arrearages, fees or attorneys' fees contractually required. While Plaintiff believes Plaintiff improperly/fraudulently placed a lien on the property, he has provided no evidence in support of this claim.

The evidence provided to the Court shows a contract, a breach of that contract including a contractual agreement to pay assessments, and collections fees and attorneys' fees resulting from non-payment of monthly assessment. By statute, foreclosure on the HOA lien is permissible.

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

IT IS ORDERED denying Defendant's Motion for Summary Judgment as requested in his Response.

IT IS FURTHER ORDERED that not later than **20 calendar days** after the entry of this order, Plaintiff must also submit a proposed form of judgment for the Court's signature. That form of judgment may incorporate by reference what is said here but otherwise should be confined to the amount being awarded along with appropriate Rule 54(C) language.

As a result of the Court’s ruling,

IT IS ORDERED vacating the Trial Management Conference set to commence on December 11, 2026, and the 2-day Jury Trial set to commence on January 21, 2027.

IT IS FURTHER ORDERED that all remaining motions are deemed moot.