

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-018443

07/29/2013

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
J. Polanco
Deputy

ANDREW KUHN

ERICA J SHOAF

v.

SOUTHERN VILLAGE ESTATES
CONDOMINIUM ASSOCIATION, et al.

NIKITA VERMA PATEL

RULING

The Court received and considered Plaintiff Andrew Kuhn's [Plaintiff], Plaintiff's Motion To Strike Answer and Enter Default Judgment as to Defendant Pride Asset Management, Inc. [Defendant Pride] or, In the Alternative, For Other Rule 37 Sanctions; the responsive pleading submitted by Defendant Pride and the corresponding reply brief submitted by Plaintiff.

Plaintiff has requested oral argument. The Court finds the briefing sufficient, and that oral argument would not add to the Court's consideration of the issues presented. Accordingly, oral argument is waived pursuant to Ariz. R. Civ. P. rule 7.1[c][2] to expedite the business of the Court. The Court issues the following ruling.

Plaintiff seeks discovery sanctions alleging that Defendant Pride failed to provide a knowledgeable Rule 30[b][6] witness for disposition. The principle sanction requested is dismissal of Defendant Pride's formal Answer and the right to proceed and secure a default judgment in this matter. Plaintiff argues that Defendant Pride essentially provided a "warm body" at the deposition and thereby breached its affirmative obligation to present a witness vested with corporate knowledge and otherwise prepared to answer questions on the topics designated in the Notice of Deposition.

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Having reviewed the questions asked, this Court finds that the questions were material to the claims presented by Plaintiff. Further, it appears undisputed that Defendant Pride was advised of the subject matter of the questions before the deposition and provided with sufficient time and opportunity to prepare for the deposition.¹

This Court concurs with Plaintiff that providing an evasive or incomplete answer to a discovery request is tantamount to a failure to respond. Having reviewed the responses provided by Defendant Pride's Rule 30[b][6] witness, this Court concurs with Plaintiff that the information provided in response to many of the questions asked amounted to a failure to respond. Providing a witness who is uninformed is akin to providing no one at all. At best the responses provided by this witness were incomplete answers and do border on evasiveness. Plaintiff is entitled to responsive answers which represent the best corporate knowledge on the topics asked.

By failing to provide a knowledgeable Rule 30[b][6] corporate witness, Defendant Pride has failed to meaningfully comply with the rules of discovery, caused unnecessary delay in the discovery process and exacerbated the cost of litigation.

The trial court is vested with board discretion in imposing sanctions for the failure to make discovery.² However, under these circumstances, the Court considers the sanctions requested by Plaintiff as too severe. This Defendant's behavior does not amount to a demonstration of flagrant bad faith. The Court would rather consider this severe a sanction only after a party has failed to comply with an existing discovery order and when the behavior displayed by the offending party displays a willfulness and bad faith.

The Court thus grants Plaintiff's request compelling adequate responses to the discovery sought. In addition, as a sanction the Plaintiff is awarded all costs and expenses, including reasonable attorney fees, incurred in connection with this motion.

IT IS ORDERED granting in part Plaintiff's request compelling adequate responses and for Rule 37 Sanctions. The Rule 30[b][6] deposition shall be rescheduled, at a time convenient to all parties, and Defendant shall provide a knowledgeable corporate witness and ensure that the witness provided can testify on matters not only in his/her own personal knowledge but also respond on all matters with the corporate knowledge reasonably possessed by the entity.

¹ In fact, this was essentially the second deposition scheduled for a corporate representative. The initial deposition was not secured as a Rule 30[b][6] deposition and thus it was rescheduled once this same witness appeared and advised he was unprepared to provide answers to many of the requested questions.

² *State Farm Ins. Co. v. Roberts*, 97 Ariz. 169 [1965].

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IT IS FURTHER ORDERED awarding Plaintiff all costs and expenses associated with this motion, including reasonable attorney fees. Plaintiff may submit an Affidavit of Fees and Statement of Costs associated with this motion, in a timely manner. In addition Defendant shall pay all costs and expenses associated with the ordered deposition.

IT IS FURTHER ORDERED granting leave to Plaintiff to re-urge its request for sanctions should Defendant Pride fail to provide an adequate Rule 30 [b][6] witness or otherwise fail to adequately respond to the requested recovery.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.