

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-050577

07/10/2023

HONORABLE MICHAEL D. GORDON

CLERK OF THE COURT
C. Ladden
Deputy

WESTWIND HOMEOWNERS ASSOCIATION

THOMAS MELFORD NICHOLS

v.

MOMBO HAKIZIMANA

MOMBO HAKIZIMANA
3914 N 105TH LN
AVONDALE AZ 85392

JUDGE GORDON

MINUTE ENTRY

The Court has considered Plaintiff's Motion for Summary Judgment filed on May 16, 2023. Defendant did not file a Response nor a request for additional time to submit a response.

The failure to respond to a motion may be treated as consent to its being granted. Ariz. R. Civ. P. 7.1(b). Moreover, an unopposed motion for summary judgment will be granted unless the moving party fails to present facts showing the absence of any materially disputed issue of fact. *E.g., Biondo v. General Motors Corp.*, 5 Ariz. App. 286, 291, 425 P.2d 856, 861 (1967) (affirming summary judgment); *see also Siner v. Stewart*, 9 Ariz. App. 101, 103, 449 P.2d 635, 637 (1969) (same). When, as here, the party against whom the motion is directed fails to respond, the facts asserted by the moving party are assumed to be true. *E.g., Sato v. Van Denburgh*, 123 Ariz. 225, 599 P.2d 181 (1979) (affirming summary judgment); *Schuldes v. National Surety Corp.*, 27 Ariz. App. 611, 617, 557 P.2d 543, 549 (App. 1976) (same). However, the Court still must review the Motion to ensure that it is at least factually well-founded. *Schwab v. Ames Const.*, 207 Ariz. 56 (App. 2004).

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In *Wells Fargo Bank, N.A. v. Allen*, 231 Ariz. 209, 292 P.3d 195 (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.

There has been no affidavit provided and there is insufficient admissible evidence supporting the Motion for Summary Judgment.

Accordingly, the Motion for Summary Judgment is denied.