

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-055714

08/10/2017

HONORABLE AIMEE L. ANDERSON

CLERK OF THE COURT
A. Wood
Deputy

TERRAMAR HOMEOWNERS ASSOCIATION KATHRYN A BATTOCK

v.

DOUGLAS C RHOADS, et al.

DOUGLAS C RHOADS
7162 W BUCKSKIN TRL
PEORIA AZ 85383

MINUTE ENTRY

The Court is in receipt of Motion for Summary Disposition filed by Counterdefendant Terramar Homeowners Association (“Association”) on August 7, 2017, in which the Association requests this Court to rule summarily on its Motion for Summary Judgment, filed on November 30, 2016—as it pertains to the Counterclaimant’s counterclaims only.

The Court is also in receipt of Motion for Voluntary Dismissal with Prejudice filed by Counterdefendant Terramar Homeowners Association on August 7, 2017, as the Association’s affirmative claims are now moot.

As a matter of housekeeping, in light of Defendant/Counterclaimant Douglas Rhoad’s Chapter 7 Bankruptcy petition being reinstated on January 18, 2017, the Court finds that this Court’s minute entry order dated January 20, 2017 (file stamped January 30, 2017) previously granting the November 30, 2016 Motion for Summary Judgment is void.

Therefore,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-055714

08/10/2017

IT IS ORDERED that this Court's minute entry order dated January 20, 2017 (file stamped January 30, 2017) be struck from the record.

Pursuant to the Association's Voluntary Dismissal with Prejudice,

IT IS ORDERED dismissing the Association's Complaint (affirmative claim) with prejudice.

As to the Counterclaimant's Counterclaim only:

The Court has read and considered Plaintiff's/Counter Defendant's Motion for Summary Judgment (filed November 30, 2016), Plaintiff's/Counter Defendant's Separate Statement of Facts in Support of Motion for Summary Judgment and exhibits thereto (filed November 30, 2016), Plaintiff's Motion for Summary Disposition (filed August 7, 2017)

Defendant/Counterclaimant has not filed a written memorandum in opposition to the Motion for Summary Judgment.

"A failure to respond to a motion for summary judgment with a written memorandum or opposing affidavits cannot, by itself, entitle the moving party to summary judgment. The trial court must consider the entire record before deciding a summary judgment motion." *Schwab v. Ames Const.*, 207 Ariz. 56, 60, 83P.3d 56, 60 (App. 2004).

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law on all or any part of a claim or defense. Ariz. R. Civ. P. 56(a); *Western Corrections Croup, Inc. v. Tierney*, 208 Ariz. 583, 586, 96 P. 3d 1070, 1073 (App. 2004), *Samsel v. Allstate Ins.*, 204 Ariz. 1, 4, 59 P. 3d 281, 284 (App. 2002). The party moving for summary judgment has the burden of establishing the absence of a genuine dispute of fact. *Wells Fargo v. Allen*, 231 Ariz. 209, 213, 292 P. 3d 195, 199 (App. 2012). When the moving party makes the necessary showing that no material facts are genuinely in dispute, the adverse party cannot rest on the pleadings but must show by competent evidence the existence of a genuine dispute of material fact requiring a trial. Ariz. R. Civ. P. 56(e)(4); *Schwab v. Ames Const.* 207 Ariz. at, 60, 83 P.3d at 60 (App. 2004); *Kelly v. NationsBanc Mortgage Corp.*, 199 Ariz. 284, 287, 17 P.3d 790, 793 (App. 2000).

In considering the motion, the Court must view all facts and reasonable inferences flowing from those facts in the light most favorable to the party against whom summary judgment is sought. *Gipson v. Casey*, 214 Ariz. 141, 142, 150 P.3d 228, 229 (2007); *Meyers v. City of Tempe*, 212 Ariz. 128, 130, 148 P.3d 751, 753 (2006); *Nat'l Bank of Ariz. V. Thruston*, 218 Ariz. 112, 116, 180 P.3d 977, 981 (app. 2008). The motion should only be granted "if the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-055714

08/10/2017

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 School v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). In making this determination, the Arizona Supreme Court has cautioned that “[s]ummary judgment should not be used as a substitute for jury trials, simply because the trial judge may believe the moving party *will* probably win the jury’s verdict, nor even when the trial judge believes the moving party *should* win the jury’s verdict.” *Id.* 166 Ariz. at 210, 802 P.2d at 1009 (emphasis in original). However, a motion for summary judgment should not be denied “simply 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.” *Id.*

Therefore, considering all facts and reasonable inferences flowing from those facts in the light most favorable to the Defendant/Counterclaimant, the court finds that there are no genuine issues of material fact.

The Court finds that Summary Judgment is appropriate. The Association’s governing documents provide for payment of assessments, late fees, costs of collection and attorneys’ fees incurred in collecting assessments. There is no dispute that Defendant/Counterclaimant did not pay all of the amounts that he owed to the Association, thus necessitating the filing of the Association’s Complaint that has now been voluntarily dismissed as a result of the bankruptcy proceedings. The Court further finds that Defendant/Counterclaimant has failed to produce or disclose any evidence to support his counterclaims, and the evidence developed by the Association directly refutes the counterclaims that Defendant/Counterclaimant has filed in this Court.

Therefore,

As there are no issue of material fact, and the Association is entitled to judgment as a matter of law.

IT IS ORDERED granting counterdefendant’s (the Association’s) Motion for Summary Judgment as it pertains to Counterclaimant’s counterclaims.

IT IS FURTHER ORDERED that the counsel for Counterdefendant (the Association) submit a proposed judgment consistent with this ruling no later than September 5, 2017.