

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2022-050559

08/25/2022

HONORABLE ALISON BACHUS

CLERK OF THE COURT  
C. Lett  
Deputy

FLETCHER HEIGHTS COMMUNITY  
ASSOCIATION

EMILY H MANN

v.

CECILIA C HERNANDEZ

CECILIA C HERNANDEZ  
20971 N 80TH LN  
PEORIA AZ 85382

JUDGE BACHUS

MINUTE ENTRY

The Court is in receipt of the following: (1) Plaintiff's Rule 16(b) Report, filed June 27, 2022; (2) Plaintiff's Motion for Summary Judgment, filed June 29, 2022; and (3) Plaintiff's Motion for Summary Disposition Regarding Motion for Summary Judgment, filed August 4, 2022. Defendant did not file a response to any of the three documents, nor did she request additional time to submit a response to any of the filings. The Court notes that Defendant filed an Answer in March 2022, but no filings by Defendant followed.

The Court may summarily grant an unopposed motion. Ariz. R. Civ. P. 7.1(b). Further, 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 (1979) (affirming summary judgment); *Schuldes v. National Surety Corp.*, 27 Ariz. App. 611, 617 (App. 1976) (same). On a motion for summary judgment brought by a plaintiff, the question is whether the plaintiff has "presented sufficient undisputed admissible evidence to establish its entitlement to judgment." *Wells Fargo Bank, N.A. v. Allen*, 231 Ariz. 209, 213 (App. 2012). The plaintiff carries the burden of persuasion on its motion for summary judgment if they submit "undisputed admissible evidence that would compel any reasonable juror to find in its favor on every element

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of its claim.” *Id.* (quoting *Comerica Bank v. Mahmoodi*, 224 Ariz. 289, 293 (App. 2010)). “It is not the law that where the plaintiff does establish a case that would warrant submission to the jury it is necessarily entitled to judgment as a matter of law in the absence of rebuttal evidence by the defense.” *Mahmoodi*, 224 Ariz. at 292. The motion for summary judgment and its accompanying statement of facts establish that Plaintiff has carried its burden of persuasion.

In light of the above ruling, the issue of scheduling raised in Plaintiff’s Rule 16(b) Report is moot. The Court notes Plaintiff indicated in that Report that Defendant did not respond with alternative dates or agreement on dates that were proposed by Plaintiff.

Based on the foregoing,

**IT IS ORDERED** granting Plaintiff’s Motion for Summary Judgment, filed June 29, 2022. The sought injunctive relief is granted as a matter of law, based on the unopposed motion.

**IT IS FURTHER ORDERED** granting Plaintiff’s Motion for Summary Disposition Regarding Motion for Summary Judgment, filed August 4, 2022, as good cause appears.

This is an action arising out of a contract, which entitles Plaintiff to apply for an award of attorney’s fees. *Lacer v. Navajo County*, 141 Ariz. 392, 394 (App. 1984) (“A party is entitled to an award of its attorney's fees under A.R.S. § 12-341.01 if judgment in its favor is based upon the absence of the contract sued upon by the adverse party”).

**IT IS ORDERED** that not later than 20 calendar days after the entry of this order, Plaintiff may submit an application for an award of attorney’s fees and statement of costs. If an application or statement is submitted that Defendants wish to oppose, a response must be filed not later than 20 calendar days after service. No reply shall be filed unless prior leave of court is obtained.

**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, leaving blank spaces for attorney’s fees and taxable costs. That form of judgment may incorporate by reference this minute entry, but otherwise should be confined to the requested injunctive relief, the amounts being awarded, and Rule 54(c) language. Defendant may object to the form of judgment no later than 20 calendar days after service. No reply shall be filed unless prior leave of court is obtained.

**IT IS FURTHER ORDERED** deeming moot Plaintiff’s Rule 16(b) Report, filed June 27, 2022.