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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-003636 09/26/2014

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT
S. Brown
Deputy

CHAUNCEY RANCH OFFICE CONDOMINIUM ASSOCIATION

AUGUSTUS H SHAW IV
LYDIA P LINSMEIER

v.

NORTH SCOTTSDALE PAIN CENTER L L C, et al.

JOHN A BURIC

UNDER ADVISEMENT RULING

Plaintiff Chauncey Ranch office Condominium Association ("Chauncey Ranch") filed a Motion for Summary Judgment on March 3, 2014, to which Defendant North Scottsdale Pain Center, LLC ("NSPC") responded on May 30, 2014; Chauncey Ranch filed their Reply on June 20, 2014. The Court has considered the papers, related pleadings, and the argument of counsel.
A court may enter summary judgment only if "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Rule 56(a), Ariz. R. Civ. P. See also *Delmastro & Eells v. Taco Bell Corp*, 228 Ariz. 134, 137-38, ¶ 7, 263 P. 3d 683, 686-87 (App. 2011).

In deciding a motion for summary judgment, the Court must view the facts and the reasonable inferences to be drawn from those facts in the light most favorable to the non-moving party. See, e.g., *Espinoza v. Schulenburg*, 212 Ariz. 215, 216, ¶ 6, 129 P.3d 937, 938 (2006). "[W]here the evidence or inferences would permit a jury to resolve a material issue in favor of either party, summary judgment is improper." *National Bank of Arizona v. Thurston*, 218 Ariz. 112, 116, ¶ 17, 180 P.3d 977, 981 (App. 2008), quoting *United Bank of Arizona v. Allyn*, 167 Ariz. 191, 195, 805 P.2d 1012, 1016 (App. 1990).

In this case, Chauncey Ranch seeks a finding that NSPC breached its contractual obligation to obtain written authorization from Chauncey Ranch before installing a door through the common element wall. NSPC counters that genuine issues of material fact preclude summary judgment, as do the doctrines of estoppel and laches, as well as the Arizona Civil Rights Act. Chauncey Ranch argues that NSPC is bound by the "judicial admission," made in NSPC's initial disclosure statement, and in argument regarding the Motion for Judgment on the Pleadings, that NSPC did not seek approval before installing the door at issue. NSPC responds that the prior statements were due to a mistake made by prior defense counsel, and that numerous facts support its contention that it received permission before moving the door.

Judicial admissions in pleadings conclusively bind a party; that party is estopped from later denying them. *Black v. Perkins*, 163 Ariz. 292, 293, 787 P.2d 1088, 1089 (App. 1989). But the parties may change facts through amendment of a pleading. *Id.* Here, NSPC filed a motion to amend its answer on August 1, 2014.

Moreover, the definition of "pleading" under the Rules of Civil Procedure does not include a motion for judgment on the pleadings brought under 12(c). See Rule 7(a), Ariz. R. Civ. P. Nor does a disclosure statement qualify as a judicial admission. *Clark Equipment Co. v. Arizona Property and Cas. Ins. Guar. Fund*, 189 Ariz. 433, 440, 943 P.2d 793, 800 (App. 1997). Therefore, neither the statements made in litigating the motion for judgment on the pleadings nor the statement included in the initial disclosure statement are "judicial admissions" that bind NSPC.

Even if the statements can be considered an admission, the Court may relieve a party of an admission when that admission is made through inadvertence, excusable neglect, or mistake of fact (among other reasons). *Rutledge v. Arizona Bd. of Regents*, 147 Ariz. 534, 549-50, 711 P.2d 1207, 1222-23 (App. 1985). Here, even if the statements were admission, they were made early on in the litigation, and well before trial (in fact, no trial date has been set at this time). And NSPC has both impliedly and explicitly retracted its previous statements about whether it obtained permission to move the door.

For all those reasons, the Court finds that NSPC is not precluded from arguing that it did in fact have permission to move the door. The Court further finds, based on the information contained in the papers, that whether NSPC obtained approval to relocate the door is a genuine issue of material fact that cannot be resolved on summary judgment. For those reasons,

IT IS ORDERED denying the Motion for Summary Judgment

Motion to Amend Answer

As noted above, NSPC filed a Motion for Leave to Amend Answer on August 1, 2014, seeking to (1) clarify the admissions and denials of its Answer; and (2) specify with greater detail its affirmative defenses. Chauncey Ranch filed a Response and NSPC replied. Although Chauncey Ranch requested oral argument, the Court finds that oral argument would not assist its determination of the matter.

Chauncey Ranch opposes amendment on the bases that: (1) NSPC has delayed its request to amend; (2) NSPC has engaged in bad faith; and (3) the proposed amendment will prejudice Chauncey Ranch.

The Court notes that leave to amend pleadings "shall be freely given when justice requires." Rule 15(a)(1)(B). Moreover, "[d]elay alone is not usually cause to deny a request to amend." *Uyleman v. D.S. Rentco*, 194 Ariz. 300, 303, ¶ 11, 981 P.2d 1081, 1084 (App. 1999). Here, the Court finds that Chauncey Ranch has not established bad faith on the part of NSPC, nor that Chauncey Ranch will be unduly prejudiced by amendment. Therefore,

IT IS ORDERED granting the Motion for Leave to Amend Answer. The Amended Answer shall be filed and served by October 10, 2014.