

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-016994

09/01/2023

HONORABLE JOAN M. SINCLAIR

CLERK OF THE COURT
N. Johnson
Deputy

LEONA LYNN NELSON

OSBALDO M BARRAGAN

v.

FLYNN LANE BILTMORE ASSOCIATION
INC, et al.

CAROL M ROMANO

DEREK J WARNER
JUDGE SINCLAIR

MINUTE ENTRY

East Court Building – Courtroom 911

8:55 a.m. This is the time set for a virtual Oral Argument regarding Defendants Flynn Lane Biltmore Association and Golden Valley Property Management's Motion for Summary Judgment, filed June 26, 2023. Plaintiff, Leona Lynn Nelson, is present and is represented by counsel, Osbaldo M. Barragan. Defendants, Flynn Lane Biltmore Association and Golden Valley Property Management, LLC, are represented by counsel, Derek J. Warner. The parties appear virtually.

A record of the proceedings is made digitally in lieu of a court reporter.

Oral argument is presented.

For the reasons stated on the record,

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IT IS ORDERED taking this matter under advisement.

9:01 a.m. Matter concludes.

LATER:

The Plaintiff argues that the issue of whether the Defendant had notice of the condition of the walkway where she fell is one for the jury's determination. However, she has provided no evidence to support her allegation that she notified the HOA board of any dangerous condition on the sidewalk near the mailboxes as was argued. The Plaintiff's deposition indicates that she "may have mentioned it in a board meeting..." Exhibit 2 to Defendant's Statement of Facts. The defense expert report indicated that there was no rock spillage, no curb or other defect in the area by the mailboxes. Exhibit 4 to Defendant's Statement of Facts. This evidence does not create a genuine issue of material fact for the jury to determine. The evidence here demonstrates that no reasonable factfinder could determine that the Defendant had notice of any defective or dangerous condition on its property.

Moreover, Plaintiff argues that additional investigation and discovery "may reveal whether Defendants adequately addressed potential hazards on the property and whether they fulfilled their duty to ensure the property was safe for use by invitees." Plaintiff's Response, p. 3. This case is two years old. Discovery closes on September 29, 2023, and the Plaintiff did not ask for Rule 56(d) relief or claim that she needed more time to respond substantively to this motion for summary judgment. She did not indicate whether she has an expert and the deadline to do so has since passed. The Court is left with essentially no evidence from the Plaintiff upon which to find any dispute of material fact exists other than the Plaintiff's deposition testimony noted above. That is insufficient to send this matter to a jury. Therefore,

IT IS ORDERED granting the Defendant's Motion for Summary Judgment. The Defendant shall file a proposed judgment with the Court by **September 22, 2023**. Any objections shall be filed by **September 29, 2023**.