

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2023-050577

09/05/2023

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 7/24/23). 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).

The case law directs that "[s]ummary judgment is appropriate when the record shows that there is no real dispute as to any material facts and the moving party is entitled to judgment as a matter of law." *United Bank of Ariz. v. Allyn*, 167 Ariz. 191, 194-95 (App. 1990) (citing Rule 56, Arizona Rules of Civil Procedure; *Nicoletti v. Westcor, Inc.*, 131 Ariz. 140, 142 (1982); *State ex rel. Corbin v. Sabel*, 138 Ariz. 253, 255 (App.1983)). If a genuine issue of material fact exists upon which reasonable people might reach different conclusions, summary judgment is not

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appropriate. *Orme Sch. V. Reeves*, 166 Ariz. 301, 309-10 (1990); *see also Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). “Even if no factual dispute exists, summary judgment is inappropriate when reasonable jurors could draw conflicting inferences from the circumstances.” *Bishop v. State Dep’t of Corrections*, 172 Ariz. 472, 475 (App. 1992) (citing *N. Contracting Co. v. Allis-Chalmers Corp.*, 117 Ariz. 374, 376 (1977)).

The party moving for summary judgment must produce evidence that it believes demonstrates the absence of a genuine issue of material fact and must explain why summary judgment is warranted. *Nat’l Bank of Ariz. v. Thruston*, 218 Ariz. 112, 115 (App. 2008); If the nonmoving party has the burden of proof of the claim or defense at trial, the moving party need not disprove the nonmoving party’s claim or defense but need only point out the lack of evidence on an essential element of the claim or defense. *Thruston*, 218 Ariz. at 117; *see also Vig v. Nix Project II P’ship*, 221 Ariz. 393, 396 (App. 2009). If the moving party meets its burden, the burden shifts to the nonmoving party to present sufficient evidence demonstrating the existence of a disputed fact. *Thruston*, 218 Ariz. at 119.

The Court has carefully reviewed the Motion for Summary Judgment to ensure that it is well-founded. *Schwab v. Ames Const.*, 207 Ariz. 56 (App. 2004). On the record before it, the Court finds that Plaintiff has sufficiently addressed the liability issues and has demonstrated an absence of material facts with respect to the breach of contract. Further, Plaintiff has demonstrated and that there are no material questions of fact with respect to defenses listed in the Answer. The record demonstrates service was appropriate and the tort doctrine of contributory negligence is inapplicable. While the Defendant also checked the box next to “illegality,” Plaintiff’s motion demonstrates that there is no evidence of an illegality and, therefore, Defendant was required to provide admissible evidence demonstrating a material question of fact exists---which was not done.

Finally, the record fully supports the relief requested in terms of damages. The supporting affidavit and evidence demonstrate the amounts due and owing of \$5,704.50.

Accordingly, the Motion for Summary Judgment is granted. Plaintiff shall lodge a form of judgment along with any application for attorney’s fees and costs no later than **20 days** from the filing date of this minute entry.