

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-090922

09/26/2018

JUDGE DAVID J. PALMER

CLERK OF THE COURT
I. Ostrander
Deputy

PALM VALLEY COMMUNITY ASSOCIATION MARK W WALDRON

v.

STELLA BENTON

STELLA BENTON
13122 W WINDSOR AVE
GOODYEAR AZ 85395

JUDGE PALMER

UNDER ADVISEMENT RULING

The Court convened oral argument on September 19, 2018, on the June 14, 2018, Motion for Summary Judgment (with accompanying Statement of Facts) filed by the Plaintiff Palm Valley Community Association (“Association”). Defendant Stella Benton filed a Request to Deny Motion for Summary Judgment in response to the Motion, and the Plaintiff filed a Reply to Defendant’s pleading, which this Court is treating as a Response.

The Plaintiff was represented by attorney Samuel Richardson. Defendant was self-represented. At the conclusion of the hearing, the Court took the issue under advisement.

In their Complaint and in their Motion for Summary Judgment, the Association alleges that Ms. Benton owned a home in the Palm Valley Community that is subject to the duly recorded Covenants, Conditions, and Restrictions (“CC&Rs”) that pertain to that development. Pursuant to the provisions in the CC&Rs, the Defendant was obligated to pay monthly fees assessed by the Association. She became delinquent in those obligations to a significant degree, and the Association filed a Complaint seeking foreclosure on their contractual lien rights that they hold

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pursuant to the CC&Rs, as well as their statutory lien rights held pursuant to applicable Arizona statutory provisions.

The principal balance at the time of the filing of the Complaint on May 3 2018, was \$4,622.64, which included unpaid assessments, plus interest, and other late charges and other fees imposed due to the Defendant's failure to keep current on her obligations.

In her Response, Defendant alleges that she made a significant payment of \$4,095.50 on May 31, 2018, which was pointed out by the Association as four months late and as less than the full amount owed.

“Summary judgment is appropriate only if no genuine issues of material fact exist and the moving party is entitled to Judgment as a matter of law.” *Johnson v. Earnhardt's Gilbert Dodge, Inc.*, 212 Ariz. 381, 385, 132 P.3d 825, 829 (2006) (quoting *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 482, 38 P. 3d12, 20 (2002)). Thus a motion for summary judgment should only “be granted if the 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 clam or defense.” *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). The facts must be viewed in a light most favorable to the party against whom it was directed and . . . [summary judgment is inappropriate if there is any doubt as to whether an issue of material fact exists.” *Joseph v. Markovitz*, 27 Ariz. App. 122, 125, 551 P2d 571, 574 (1976).

In their Complaint and their Motion for Summary Judgment, the Association has firmly established that the Defendant, Ms. Benton, has an ongoing binding and absolute legal obligation to make timely payments of assessments as a property owner in the Palm Valley Community. Failure to make those payments carries with it very strict penalties, including, but not limited to, late fees, fines, and other financial sanctions, up to and including foreclosure by the Association on the property in order to collect on Defendant's unpaid financial obligations.

The Plaintiff has further established convincingly that Ms. Benton has failed to remain current on her assessments.

Unfortunately, the Defendant's own written Response, as well as her oral argument, fails to state any factual or legal defense to the Plaintiff's Complaint or to its summary judgment motion.

Based upon the Court's review of the relevant documents and pleadings in this matter and having considered the oral arguments made,

THE COURT FINDS that there are no genuine issues of material fact.

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THE COURT FURTHER FINDS that the Association is entitled to judgment as a matter of law under the established facts.

Therefore,

IT IS ORDERED granting Plaintiff's Motion for Summary Judgment in the amount of \$4,622.64, less payment made since the inception of this matter in amount of \$4,095.50, plus any subsequently incurred assessments, late charges, or fees incurred since the filing of the complaint to the date of judgment.

IT IS FURTHER ORDERED directing Plaintiff to lodge with the Court by no later than **October 12, 2018**, a proposed form of judgment consistent with the orders and findings made herein, with Defendant having the opportunity to file any objections to such form of judgment on a timely basis.

IT IS FURTHER ORDERED that Plaintiff is entitled to collect any attorney's fees reasonably incurred in its attempts to collect past due amounts owed by the Defendant. Plaintiff may submit an Application for Attorney's Fees upon entry of Judgment.