

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-001518

10/07/2020

HONORABLE MARGARET R. MAHONEY

CLERK OF THE COURT
K. Ballard
Deputy

PALM VALLEY COMMUNITY ASSOCIATION ALLISON T PRESTON

v.

RHONDA ORR

RHONDA ORR
13578 W CYPRESS ST
GOODYEAR AZ 85395

COMM. GARBARINO
JUDGE MAHONEY

RULING

The Court has considered Defendant Rhonda Orr's ("Defendant") filing entitled *Breach of Contract*, filed 5/16/2020, which is in substance a Motion to Set Aside or Dismiss The Case (see first sentence of the filing) (hereinafter, the "Motion"), and Plaintiff Palm Valley Community Association's ("Plaintiff") Response to same ("Response"), filed 7/31/2020. No Reply has been filed.

The Response is in large part a motion for reconsideration of matters that were presented to and heard by another Judicial Officer, Commissioner David Garbarino. Commissioner Garbarino held a default hearing on 5/27/2020, at which the parties appeared telephonically. At the default hearing, Plaintiff was represented by Counsel Allison Preston, while Defendant represented herself.

In the Response, Plaintiff repeatedly (on 6 of the 7 pages of the Response) argues that Commissioner Garbarino incorrectly set aside Plaintiff's entry of default, as he did so *sua sponte*,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-001518

10/07/2020

with no Rule 60(b) motion from Defendant pending, and therefore the entry of default should be reinstated and Plaintiff is entitled to a default judgment against Defendant.

This Court has read the Minute Entry from the 5/27/2020 default hearing but cannot determine what occurred as the Minute Entry does not provide sufficient or specific details as to who argued what, how and when, nor could this Court know what Commissioner Garbarino was thinking in making his ruling. It is unclear why Plaintiff did not file a Motion for Reconsideration with Commissioner Garbarino. However, in any event, another Judicial Officer cannot entertain the types of arguments Plaintiff makes in its Response as this Court was not the Court presiding over the proceeding with which Plaintiff takes issue in the Response.

Accordingly, **this Court respectfully requests that Commissioner Garbarino rule on the Motion and Response identified above for the reasons discussed.**

The Court has also considered Defendant's separate filing entitled *Home Exterior Colors Breach of Contract*, filed 7/30/2020, and Plaintiff's Response to same, filed 8/3/2020. Plaintiff argues in this Response that Defendant is conflating two separate disputes as the Complaint in this cause relates only to an alleged violation of the CC&R's and Design Guidelines relative to the color Defendant painted her house. Plaintiff states that it is not seeking to recover in this lawsuit an unpaid balance on Defendant's account with the HOA but that issue is in fact being handled by a different law firm separate and apart from this lawsuit.

No Reply has been filed and thus the Court accepts Plaintiff's uncontested description of the two matters. On that basis, **IT IS ORDERED** denying Defendant's filing entitled *Home Exterior Colors Breach of Contract*, filed 7/30/2020.

PLEASE NOTE: This Division requires that all motions, responses, replies and other Court filings in this case must be submitted individually. Counsel shall not combine any motion with a responsive pleading. All motions are to be filed separately and designated as such. **No filing will be accepted if filed in combination with another. Additionally, all filings shall be fully self-contained and shall not "incorporate by reference" other, separate filings for review and consideration as part of the pending filing.**

ALERT: Due to the spread of COVID-19, the Arizona Supreme Court Administrative Order 2020-79 requires all individuals entering a Court facility to wear a mask or face covering at **all times** while they are in the Court facility. With limited exceptions, the Court will not provide masks or face coverings. Therefore, any individual attempting to enter the Court facility must have an appropriate mask or face covering to be allowed entry to the Court facility. Any person who refuses to wear a mask or face covering as directed will be denied entrance to the Court facility or asked to leave. In addition, all individuals entering a Court facility will be subject to a health

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-001518

10/07/2020

screening protocol. Any person who does not pass the health screening protocol will be denied entrance to the Court facility.

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Before the Judge can consider anything you send her, you must show her that you have given a copy of your request:

1. To the Clerk of the Court. The Clerk of the Court is a separately elected official. It is the Clerk's job to keep an independent record of everything that happens at the Court. The Court cannot act on a document that has not been made a part of that record; and
2. To every other party involved in the case. This allows all parties a fair chance to tell the Judge what they think before the Judge makes a decision.

Because of that, if you want the Judge to consider something you send her, you must file the original document with the Clerk of the Superior Court, mail or deliver a copy directly to this Division (that is, to the Judge, using her specific courtroom address), and mail or deliver a copy to all opposing parties. In addition, on each document, you must include a signed certificate that says whether you mailed or hand-delivered each copy, when you did so, and states the specific people and the specific addresses to which you mailed or hand-delivered each copy. If a party is represented by a lawyer, you must send or deliver the copy to the lawyer, not to the party. All proposed Orders submitted to this Division in hard copy form must include copies of the Order with self-addressed, stamped envelopes for all parties/counsel.

Do not mail or send papers for the Clerk or other parties to the Judge.

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Information on eFiling documents with the Clerk of Court can be found at:
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-001518

10/07/2020

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Mesa, AZ 85210-6201

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18380 N. 40th Street
Phoenix, AZ 85032

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