

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-001518

10/21/2020

HONORABLE DAVID W. GARBARINO

CLERK OF THE COURT
L. Brown
Deputy

PALM VALLEY COMMUNITY ASSOCIATION ALLISON T PRESTON

v.

RHONDA ORR

RHONDA ORR
13578 W CYPRESS ST
GOODYEAR AZ 85395

COMM. GARBARINO
JUDGE KEMP

MINUTE ENTRY

On May 27, 2020, this Division (Downtown Civil Commissioner Division – Garbarino) held a default judgment hearing in this matter (the “May 27th Hearing”). At the time of the May 27th Hearing, default against Defendant Rhonda Orr had been effective since April 27, 2020. *See* Ariz. R. Civ. P. 55(a). Nevertheless, on May 16, 2020, Ms. Orr filed a document titled “Breach of Contract” seeking to “set aside or dismiss this case” (the “Motion to Dismiss”). Accordingly, prior to the default judgment hearing, the record reflected an appearance by Ms. Orr and an attempt to defend against the Complaint, to have the matter dismissed, and/or to have something set aside. Neither the Court nor Plaintiff became aware of the Motion to Dismiss until just prior to the May 27th Hearing.

As a general practice, this Division refers all matters back to the assigned Judge if, after entry of default, but before entry of default judgment, a Defendant has filed a written answer, motion to dismiss, or motion to set aside entry of default. At the May 27th Hearing, the Court explained this practice to the parties. Plaintiff Palm Valley

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Community Association (the “Association”) made an oral motion to strike Ms. Orr’s filing. The Court denied the oral motion to strike without prejudice as the assigned Judge typically handles such motions, and informed the Association that it could file a written motion to strike. The Court gave the Association time to respond to the Motion to Dismiss. Finally, the Court denied the Association’s Motion for Entry of Default Judgment and Application for Attorneys’ Fees and Costs. The Court took no further action.

The Association did not file a motion for reconsideration or a motion to strike the Motion to Dismiss. Instead, on July 31, 2020,¹ the Association filed Response to the Motion to Dismiss (the “Response”) asking the Court to (1) deny the Motion to Dismiss and (2) reinstate entry of default against Ms. Orr. The Response does not ask the Court to strike the Motion to Dismiss. Ms. Orr did not file a reply in support of her Motion to Dismiss. In the meantime, Ms. Orr filed a second document titled “Home Exterior Colors Breach of Contract” on July 30th asking the Court for mediation or other remedy. The Association responded, asking the Court to deny the requested relief or to strike that document. The parties’ filings prompted review by the assigned Judge. Although Commissioners usually do not resolve prejudgment motions to dismiss, the assigned Judge requested the assigned Commissioner to do so in this case. This is the Court’s decision.

As to the request for dismissal, Ms. Orr has not demonstrated that the Complaint should be dismissed. Ms. Orr does not identify any factual or legal basis in support of her request. Further, the Motion to Dismiss was untimely. Accordingly, the Court denies Ms. Orr’s request that the Court dismiss the Complaint.

As to the Association’s request that the Court reinstate entry of default, the Court denies the request. The Association claims that “Commission [sic] Garbarino, *sua sponte*, set aside the Association’s entry of default, and referred the parties back to the trial court.” (Resp. at 2:9-10.) This is incorrect. There is no order of the Court that set aside default. The Court reviewed the FTR recording of the May 27th Hearing and confirmed that the Court did not set aside the default. In fact, Ms. Orr is still in default as of the date of this decision. The Court cannot undo what was never done. Accordingly, the Court denies the Association’s request that the Court reinstate entry of default.

¹ The parties’ stipulated to an extension of time for the Association to file its response.

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As to Ms. Orr's request to "set aside," Ms. Orr has not demonstrated what she wants set aside. Assuming arguendo that Ms. Orr is asking the Court to set aside default, Ms. Orr has not demonstrated any factual or legal basis that would justify setting aside the default. Accordingly, the Court denies Ms. Orr's request that the Court "set aside." The Court further finds that the Motion to Dismiss was untimely, and should be stricken from the record.

In addition to Ms. Orr's July 30th filing, Ms. Orr has since filed two additional documents: (1) titled "Civil Contract" on October 13, 2020, and (2) titled "Home Exterior Colors Breach of Contract" filed on October 14, 2020. Not one of these three documents asserts any factual or legal basis for relief. Accordingly, all requests for relief therein are hereby denied, and the documents are stricken from the record.

For the reasons stated above,

IT IS ORDERED denying Ms. Orr's request that the Complaint be dismissed.

IT IS FURTHER ORDERED denying Ms. Orr's request to "set aside."

IT IS FURTHER ORDERED denying the Association's request that default be reinstated.

IT IS FURTHER ORDERED striking the Motion to Dismiss as untimely.

IT IS FURTHER ORDERED denying the relief requested in these three documents filed by Ms. Orr: (1) the document titled "Home Exterior Colors Breach of Contract" filed on July 30th; (2) the document titled "Civil Contract" filed on October 13, 2020; and (3) the document titled "Home Exterior Colors Breach of Contract" filed on October 14, 2020.

IT IS FURTHER ORDERED striking these three documents filed by Ms. Orr: (1) the document titled "Home Exterior Colors Breach of Contract" filed on July 30th; (2) the document titled "Civil Contract" filed on October 13, 2020; and (3) the document titled "Home Exterior Colors Breach of Contract" filed on October 14, 2020.