

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-018443

11/25/2014

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
T. DeRaddo
Deputy

ANDREW KUHN

JONATHAN A DESSAULES

v.

SOUTHERN VILLAGE ESTATES
CONDOMINIUM ASSOCIATION, et al.

NIKITA VERMA PATEL

RULING

The Court has received and considered the briefing submitted on *Defendant Pride Asset Management, Inc. 's (Defendant Pride) Motion For Summary Judgment*. Plaintiff previously requested oral argument. However, Court finds the briefing is sufficient, and that oral argument would not add to the Court's consideration of the issues presented. Accordingly, oral argument is waived pursuant to Ariz. R. Civ. P. rule 7.1[c][2] to expedite the business of the Court. The Court herein issues the following ruling.

General Background. Defendant Pride is a property management company retained by Defendant Southern Village Estates Condominium Association to manage the development and maintain and collect maintenance assessments and related charges from members. Plaintiff owns a condominium unit in Southern Village Estates Condominium. Briefly stated, Plaintiff alleges that Defendant Pride shut off the water to his unit as a means of collecting a previously secured judgment.¹ Plaintiff contends that these collection tactics violated the Fair Debt Collection Practices Act [FDCPA]. This act prohibits oppressive, harassing and abusive debt collection practices. Plaintiff takes the position that FDCPA applies and further, that Defendant Pride is a "debt collector" under this act. As a consequence, Plaintiff has brought this claim against Defendant Pride seeking damages under the act.

¹ This judgment was secured against Plaintiff for failing to pay monthly HOA assessments.

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Defendant Pride alleges that, as a management company, it is tasked with performing many services that are not related to the collection of monthly assessments. It seeks dismissal of this action as a matter of law alleging that it was not a “debt collector” for purposes of FDCPA. Specifically, it alleges that it falls within a statutory exception to the definition of “debt collector.” This Court concurs that Defendant Pride is not a “debt collector” under FDCPA and therefore that the act is not applicable to these circumstances.

Legal Standard. Summary judgment should be granted if the evidence shows there is no genuine dispute about any material fact and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. rule 56[a]. The moving party has the burden of showing that material facts are not genuinely disputed. *Celotex Corp. v. Catrett*, 477 U. S. 317 (1986). To meet this burden, the moving party must point out the lack of evidence supporting the nonmoving party’s claim, but need not produce evidence negating that claim. *Id.* at 325. When the moving party has carried its burden under Rule 56[c], the nonmoving party must show that there are genuine issues of material fact. A material fact is one that might affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). A factual issue is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* The nonmoving party must produce evidence to support its claim or defense by more than simply showing “there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenity Radio Corp.*, 475 U.S. 574 (1986). The Court must view this evidence in the light most favorable to the nonmoving party, must not assess its credibility, and must draw all justifiable inferences from it in favor of the nonmoving party. *Anderson*, 477 U.S. at 255. Where the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue of material fact for trial. *Matsushita*, 475 U.S. at 586.

On summary judgment, the nonmoving party’s evidence is presumed true, and all inferences from the evidence are drawn in the light most favorable to the nonmoving party. *Eisenbery v. Ins. Co. of North America*, 815 F.2d 1285 (9th Cir. 1987). But the evidence presented by the parties must be admissible or able to be produced in admissible form. Ariz. R. Civ. P. rule 56[c][2]. Conclusory and speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and to defeat summary judgment. *Thornhill Publ’g Co., Inc. v. GTE Corp.*, 594 F.2d 730 (9th Cir. 1979).

Discussion. The principle issue presented on this motion is whether the FDCPA applies to Defendant Pride. This Court agrees with Defendant Pride that it falls within the exception to the definition of a debt collector created by Section 1692 [a][6][f][iii]. As a result, the Court will not address the additional arguments made by the parties in this matter.

15 U.S.C. § 1692[A][6][F][iii] excepts from the definition of “debt collectors” those who had responsibility for collecting the debt prior to the time it went into default. The act itself

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provides, that the term “debt collector” does not include: “[F] any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity... [iii] concerns a debt which was not in default at the time it was obtained by such person.”

In this case, it is undisputed that Defendant Pride was responsible for collecting assessments on a monthly basis and further that it obtained the right to collect assessments several years before Plaintiff’s assessments became overdue. Under these circumstances Defendant Pride became the HOA’s managing agent July 1, 2008. Plaintiff did not become delinquent on payment of his monthly assessments until 2010 and thereafter the allegations related to collection activities occurred in 2012. As Defendant Pride was responsible for collecting the HOA’s monthly assessments before they became past due, it is exempted for application of the FDCPA. *Alexander v. Omega Management, Inc.* 67 F.Supp.2d 1052; *Franceschi v. Mautner-Glick Corp.*, 22 F.Supp.2d 250.

For the reasons stated, and those set forth in Defendant Pride pleadings,

IT IS ORDERED granting Defendant Pride’s Motion For Summary Judgment;

IT IS FURTHER ORDERED dismissing Plaintiff’s FDCPA claim against Defendant Pride.