

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-000042

11/28/2017

HON. TERESA SANDERS

CLERK OF THE COURT  
P. Culp  
Deputy

JOYTSNA MORJARIA

KEVIN J TUCKER

v.

OPTIMA CONSTRUCTION INC, et al.

JASMINA RICHTER

JAMES MINHA CHONG  
WALTER GROCHOWSKI

RULING

The Court has read and considered Defendant European Pavers' *Motion for Summary Judgment: Re Accepted Work Doctrine* and Separate Statement of Facts, filed September 11, 2017, Plaintiff's response and Statement of Facts, Defendants Optima, Inc., Optima Camelview Village, LLC and Optima Camelview Village Condominium Association's *Joinder in Plaintiff's Response to European Pavers' Motion for Summary Judgment Re: Accepted Work Doctrine and In Plaintiff's Response to Defendant European Pavers' Statement of Fact and Plaintiff's Statement of Facts in Opposition to Defendant European Pavers' Statement of Fact (With Qualification)*, Defendant Optima Construction's *Partial Joinder in Plaintiff's Opposition to Defendant European Pavers' Motion for Summary Judgment*, and Defendant European Pavers' reply.

It its motion, Defendant contends that it is entitled to summary judgment in this matter because there are no genuine issues of material fact and that "the accepted work doctrine applies to relieve European Pavers of any liability." In support of this argument, Defendant sets forth several examples of how the accepted work doctrine applies, including the following:

- (1) It did not design the driveway.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-000042

11/28/2017

- (2) It performed all work in conformity with the plans and specifications provided, as well as in conformity with the requests and instructions of the co-defendants.
- (3) Optima Construction accepted and paid it for the paving work.
- (4) Optima Camelview Village Condominium Association did not reject the driveway or request repairs after it was completed.
- (5) It does not own the subject property, manage the property, and is not responsible for its upkeep and maintenance.
- (6) It followed the architect's design and blueprints when installing the pavers. This plan specified the type of paver to be used and the pattern in which the pavers were to be installed.
- (7) The contract between it and Optima required that all work be installed in accordance with the subcontract documents.
- (8) It was instructed to, and performed in accordance with the architect's blueprints, the subcontract documents, and manufacturer standards and recommendations.
- (9) Plaintiff provided no evidence that the condition of the pavers at the time of the accident was the same condition as the time of completion.

Defendant submits that the accepted work doctrine must apply because it had no discretionary decision-making with respect to its installation of the subject pavers. In response to Defendant's motion, Plaintiff sets forth several examples of areas in which Defendant had substantial discretion, including the following:

- (1) Defendant selected the pavers, ordered them, accepted delivery of them, and installed them.
- (2) Defendant determined what type of, and how much sand to use in the installation of the pavers.
- (3) Defendant used its discretion in deciding what method to use to compact the sand.
- (4) Defendant used its discretion with regard to the spacing between the pavers.
- (5) Defendant used its discretion with regard to the application of sand, the amount of sand, and whether to force the sand between the pavers.
- (6) Defendant used its discretion in determining how to prevent the pavers from moving after installation.
- (7) Defendant determined whether a moisture barrier was required.

As noted by both Defendant and Plaintiff, Arizona courts have narrowly restricted the scope of the accepted work doctrine. An essential element of the accepted work doctrine is that

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-000042

11/28/2017

the contractor has no discretion regarding the manner in which the work is done, and is merely following the directives of its employer.

Pursuant to Ariz. R. Civ. P. Rule 56(a), “the court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” Evidence is viewed in the light most favorable to the nonmoving party. *Sanchez v. City of Tucson*, 191 Ariz. 128, 953 P.2d 168 (1998). “Motions for . . . summary judgment serve the . . . purpose of expediting the business of the court by removing meritless claims.” *Orme School v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (Ariz. 1990). “It is only the existence of uncontroverted competent evidence favorable to a movant, from which only one inference can be drawn, that entitles a party to summary judgment.” *Nemec v. Rollo*, 114 Ariz. 589, 592, 562 Pl.2d 1087, 1090 (Ariz. Ct. App. 1977) (citing *Choisser v. State ex rel. Herman*, 12 Ariz. App. 259, 469 P.2d 493 (1970)). “Where the evidence or inferences would permit a jury to resolve a material issue in favor of either party, summary judgment is improper.” *United Bank of Ariz. v. Allyn*, 167 Ariz. 191, 195, 805 P.2d 1012, 1016 (App. 1990).

A review of the pleadings in this matter shows that there is a genuine issue of material fact regarding the discretion that was exercised by Defendant during the installation of the subject pavers.

**IT IS THEREFORE ORDERED** denying Defendant’s *Motion for Summary Judgment: Re Accepted Work Doctrine* filed September 11, 2017.