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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-006725 11/09/2018

HONORABLE MARGARET R. MAHONEY

CLERK OF THE COURT
G. Verbil
Deputy

LANDINGS HOMEOWNERS ASSOCIATION

ALLISON T PRESTON

v.

JAMES ALBANESE

JAMES ALBANESE
2000 W CALLE DEL NORTE DR
CHANDLER AZ 85224

JUDGE MAHONEY

MINUTE ENTRY

The Court has considered Plaintiff Landings Homeowners Association's ("Plaintiff") Motion for Summary Judgment ("Motion"), Plaintiff's Separate Statement of Facts In Support thereof, and the Affidavit of Plaintiff's Community Manager Kara Cutler In Support of the Motion and Statement of Facts ("Cutler Affidavit"), all filed 8/9/18.

The Motion seeks summary judgment against Defendant James Albanese ("Defendant") on Plaintiff's Complaint for breach of contract and lien foreclosure. Defendant has not filed a response or opposition to the Motion for Summary Judgment.

Oral argument has not been requested on the Motion for Summary Judgment and is unnecessary.

Generally, a party must file a written response whenever a motion is filed. *Schwab v. Ames Const*., 207 Ariz. 56, 59 (App. 2004), citing *Choisser v. State ex rel. Herman*, 12 Ariz.App. 259, 260 (1970). If the party opposing a motion fails to respond in writing, the trial court may, in its discretion, dispose of the motion summarily. *Id.*; Ariz. R. Civ. P. 7.1(b)(2). When a motion is one

for summary judgment, Rule 56(c)(2) provides that a party opposing a summary judgment motion "must file its response and any supporting materials within 30 days after the motion is served."

Despite these rules, certain limitations exist on the exercise of the trial court's discretion if the motion is one for summary judgment. *Schwab*, 207 Ariz. at 59; see also *Choisser*, 12 Ariz.App. at 261. A failure to respond to a motion for summary judgment with a written memorandum or opposing affidavits does not, by itself, entitle the moving party to summary judgment. *Id*. Rule 56(a) provides, in pertinent part: "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."

And Rule 56(e) provides, in pertinent part:

> When a summary judgment motion is made and supported as provided in this rule, an opposing party may not rely merely on allegations or denials of its own pleading. The opposing party must, by affidavits or as otherwise provided in this rule, set forth specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment, if appropriate, shall be entered against that party.

"The admonition in Rule 56(e) simply means that a nonmoving party who fails to respond to a motion for summary judgment does so at his [or her] peril because the trial court will presume that any uncontroverted evidence favorable to the movant, and from which only one inference can be drawn, is true." *Schwab*, 207 Ariz. at 60; *Choisser*, 12 Ariz.App. at 261. "If that uncontroverted evidence would entitle the movant to a judgment as a matter of law, then the trial court must grant the summary judgment motion." *Id*. However, if a moving party's summary judgment motion fails to show an entitlement to judgment, by either omitting evidence of essential elements of its claim or by providing evidence which supports conflicting inferences on a material issue, then there is no basis for awarding summary judgment, even if a written response is not filed. *United Bank of Arizona v. Allyn*, 167 Ariz. 191, 196-97 (App. 1990).

Here, the Court has examined Plaintiff's uncontested filings, including the Cutler Affidavit and the underlying documents, and finds that Plaintiff has established that there is no genuine dispute as to any material fact and that Plaintiff is entitled to judgment as a matter of law as requested in the Motion for Summary Judgment and pursuant to the Declaration of Covenants, Conditions and Restrictions.

Accordingly,

IT IS ORDERED granting Plaintiff's unopposed Motion for Summary Judgment against Defendant James Albanese.

IT IS FURTHER ORDERED Plaintiff shall file its application for award of attorney's fees, affidavit in support thereof, and statement of costs, as well as lodge a proposed form of Judgment, within 14 days of the filing date of this minute entry. Defendant shall file any objections thereto within 14 days thereafter.

IT IS FURTHER ORDERED after attorney's fees and costs are settled, Judgment shall be entered pursuant to Rule 54(c) as no further matters remain pending.