

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-013865

12/07/2017

HON. ROSA MROZ

CLERK OF THE COURT
L. Brown/B. Randhawa
Deputy

U S BANK NATIONAL ASSOCIATION

CRAIG CARSON HOFFMAN

v.

BETH FINDSEN, et al.

BARBARA J FORDE

MARC J FINDSEN
24424N 80TH PL
SCOTTSDALE AZ 85255

RULING

The Court has considered Plaintiff's Motion for Rule 11 Sanctions filed on November 7, 2017, Defendant Beth Findsens' Response filed on December 1, 2017, and Plaintiff's Reply filed on December 6, 2017. Defendant Marc Findsen did not file a Response. The Court does not need oral argument to decide this issue.

While the Court agrees with Plaintiff that Defendants' Motion for Expedited Relief in Advance of November 19, 2017 Strike Date is essentially a repetition of arguments Defendants made in their Response to Plaintiff's Motion to Enforce Settlement Agreement, the Court does not find that Beth Findsen intentionally violated Rule 11. Part of the problem is that Judge Gentry's ruling on Plaintiff's Motion to Enforce Settlement Agreement was not explicit. At the May 5, 2017 oral argument on Plaintiff's Motion to Enforce Settlement Agreement, Judge Gentry stated:

THE COURT: Okay, Well, my inclination is to hold the parties to the December 20th settlement. Whether you can flesh it out anymore or not, it sounds like there's at least a binding

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agreement. And I'll order that however many of these pleadings need to be sealed so that we can minimize any damage.

The minute entry of the hearing did not reflect Judge Gentry's ruling regarding Plaintiff's Motion to Enforce Settlement Agreement. However, it did state that the "Court directs counsel for Plaintiff to speak to the Plaintiff about extending the Strike Date by 60 days." The Strike Date is in fact one of the terms of the settlement agreement. If Judge Gentry did not intend to grant Plaintiff's Motion to Enforce Settlement Agreement, there would be no need for the parties to discuss extending the Strike Date. That directive, plus Judge Gentry's statement, is indicative that Judge Gentry implicitly granted Plaintiff's Motion to Enforce Settlement Agreement. Although Plaintiff and this Court find Judge Gentry's ruling to be clear, it is possible that Defendants did not find the ruling to be clear. On this record, this Court cannot sanction Ms. Findsen for a Rule 11 violation.

IT IS ORDERED denying Plaintiff's Motion for Rule 11 Sanctions filed on November 7, 2017.

This Court has independently considered Plaintiff's Motion to Enforce Settlement Agreement, Defendants' Response and Plaintiff's Reply. The Court would also have granted Plaintiff's Motion to Enforce Settlement Agreement. To make it abundantly clear to all parties, the Court agrees with Plaintiff's arguments contained in that Motion and rejects the arguments asserted by Defendants in their Response. This Court specifically rejects Defendants' argument that the settlement agreement was not enforceable because it did not list the "entire amount determined due" for the judgment for judicial foreclosure under A.R.S. § 33-725. At the time of Plaintiff's Motion to Enforce Settlement Agreement, that argument was premature. A judicial foreclosure may never happen if Defendants sold the property by the Strike Date. Furthermore, the Settlement Agreement specifies what amount Plaintiff should receive if the property sold by the Strike Date, and does not state that it would be a different amount if Plaintiff was to acquire a judgment for judicial foreclosure.

IT IS ORDERED affirming that Plaintiff's Motion to Enforce Settlement Agreement filed on February 17, 2017 is granted.