

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-092817

12/12/2023

HONORABLE RODRICK COFFEY

CLERK OF THE COURT
L. Mooney
Deputy

SUMMER PLACE TERRACE HOMEOWNERS
ASSOCIATION INC

CHAD M GALLACHER

v.

CAMILLE Y MORRIS, et al.

CAMILLE Y MORRIS
2455 E BROADWAY RD UNIT 69
MESA AZ 85204

CAPITAL ONE BANK U S A, N A
100 SHOCKOE SLIP FL 2
RICHMOND VA 23219
NEILENDRA SINGH
JUDGE COFFEY

MINUTE ENTRY

The Court has considered Plaintiff's Motion for Summary Judgment and the accompanying Statement of Facts; Defendants' Response to that Motion and Plaintiff's Reply in support of its Motion.

Motions for summary judgment "should be granted if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme School v. Reeves*, 166 Ariz. 301, 309 (1990). When considering a motion for summary judgment, all evidence of the non-moving party is to be believed, and all justifiable inferences are to be drawn in the non-movant's favor. *Id.* at 309-10. Summary judgment should

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not be used as a substitute for a trial simply because the Court may believe the moving party will probably prevail or that the moving party should prevail at trial. *Id.*

The party moving for summary judgment must produce evidence that it believes demonstrates the absence of a genuine issue of material fact and must explain why summary judgment is warranted. *Nat'l Bank of Ariz. v. Thruston*, 218 Ariz. 112, 115 (App. 2008). If the non-moving party has the burden of proof of the claim or defense at trial, the moving party need not disprove the nonmoving party's claim or defense, but need only point out the lack of evidence on an essential element of the claim or defense. *Id.* at 117. If the moving party meets its burden, the burden shifts to the nonmoving party to present sufficient evidence demonstrating the existence of a disputed fact. *Id.* at 119. The nonmoving party cannot then rest on its pleadings, but must call to the Court's attention evidence to explain why the motion should be denied. *Id.* The opponents of a motion for summary judgment do not raise a genuine issue of fact by merely stating in the record that such an issue exists. Rather, they must show that competent evidence is available which will justify a trial on the issue. *Flowers v. K-Mart Corp.*, 126 Ariz. 495, 499 (App. 1980). "If the party with the burden of proof on the claim or defense cannot respond to the motion by showing that there is evidence creating a genuine issue of fact on the element in question, then the motion for summary judgment should be granted." *Orme School* at 310.

Based upon the parties' filings, there are no genuine issues of material fact on the issue of Plaintiff having breached the relevant contract between the parties by failing to pay monthly assessments and late fees that have accrued. However, the attachments to the Motion are inconsistent and include requests that the Court will not grant. For example, in Paragraph 13 of Exhibit A, Shelly Phan states, under oath, "[t]he amount due and owing as of the day of the filing of the Complaint was \$14,969.79. This amount is accurately reflected on the Account Summary attached as Exhibit D." Exhibit D shows \$9,740.00 due and owing through June 1, 2023. Then, without any explanation through sworn testimony, Plaintiff attached Exhibit E, which shows the \$9,740.00 but then adds an additional \$1,350.00 in monthly assessments that purportedly accrued between July and December 2023. Notably, the Motion to which that document was attached was filed in September 2023, so there was no basis to contend that Defendant owed assessments for October through December when the Motion was filed. So, in addition to Exhibits A and D being inconsistent, Exhibit E included assessments that had not even come due when that Motion was filed.

Plaintiff then seeks to add \$2,663.01 for attorneys' fees that it was already awarded in a separate lawsuit. The Court is not going to award that amount to Plaintiff again in a new judgment. Plaintiff purportedly already has a judgment for that amount, and it is not entitled to have that awarded to it again in another judgment. Plaintiff then presumptuously claims entitlement to an additional \$1,221.78 in attorneys' fees incurred before this action was filed. Plaintiff's request for damages appears to be quite overreaching. For all of those reasons,

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IT IS ORDERED granting in part Plaintiff's Motion for Summary Judgment, solely on the issue of Plaintiff having breached the relevant contract.

IT IS FURTHER ORDERED denying in part Plaintiff's Motion for Summary Judgment with regard to the amount of damages that Plaintiff has requested. Based upon the filings the Court has considered, the Court is willing to enter a judgment against Defendant in the amount of \$9,740.00 only.