

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2021-000286-001 DT

01/18/2022

HONORABLE JULIE A. LAFAVE

CLERK OF THE COURT
S. Motzer
Deputy

LAS BRISAS COMMUNITY ASSOCIATION

PHILIP N BROWN

v.

MICHAEL LAWRENCE FRANKLIN (001)

JONATHAN A DESSAULES

COMM. LAFAVE
REMAND DESK-LCA-CCC
WHITE TANK JUSTICE COURT

RECORD APPEAL RULING – REVERSED & REMANDED

Defendant/Appellant, **MICHAEL LAWRENCE FRANKLIN** appeals from a civil judgment entered against him in the White Tank Justice Court. The trial court granted summary judgment in favor of Plaintiff/Appellee, **LAS BRISAS COMMUNITY ASSOCIATION**. This Court has jurisdiction pursuant to Ariz. Const. art. VI, § 16 and A.R.S. §§ 12-124, 22-261. For the following reasons, this Court reverses.

I. FACTUAL BACKGROUND & PROCEDURAL HISTORY

Appellant is the homeowner of a property located within Appellee’s Community Association. *See* Complaint at ¶4. On September 29, 2020, Appellee filed a breach of contract action alleging Appellant had failed to pay “dues assessments, late fees, late charges and interest”.¹ *Id.* at ¶10. Appellee alleged it was owed \$1,125 plus additional fees and costs as they accrued. *Id.* at ¶11. Attached to the Complaint was Appellant’s transaction history with the Appellee, beginning on May 25, 2019 and ending on September 1, 2020. *Id.* at Exhibit “A” (hereinafter “ledger”). The ledger tracked payments and assessments for the time period stated. *Id.* It indicated payments from Appellant via check as follows:

¹ Appellee did not seek items as “rebill fees”, “demand fees” and “collection account maintenance fees”.

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Check No.	Amount	Date
1423	\$104.00	July 3, 2019
1435	\$208.00	July 26, 2019
1460	\$312.00	October 1, 2019
1460	\$312.00	December 24, 2019
Reverse	\$312.00	December 24, 2019
1510	\$312.00	December 30, 2019
1599	\$312.00	June 24, 2020

Id. Each entry has the code: Payment-Mutual of Omaha.

On February 25, 2021, Appellee filed its Motion for Summary Judgment (“MSJ”). Appellee argued Appellant was obligated to pay assessments under the contract in the amount of \$112 monthly. *See* MSJ at 4:12. It stated Appellant owed “monthly assessments, fines and collection fees and costs”. *Id.* at 2:20-22. Appellee’s Statement of Facts indicated Appellant was provided “previous past due notices”. *See* Statement of Facts ¶7. However, it attached only the ledger as support for its claim. *Id.* No notices were attached.

In response, Appellant stated “Upon request, I emailed not only checks sent but also bank statements showing checks cashed” to Appellee’s counsel. *See* Response to Motion (“Response”), dated March 17, 2021. The Response referenced check no. 1673 which was not part of the ledger and which had been “returned”. *Id.* It also contained a letter dated December 26, 2019 regarding check number 1460. *Id.* It provided documentation that check number 1510 had been processed. *Id.* The Response also attached a letter dated January 17, 2021 referencing check number 1659 in the amount of \$312.00 and check number 1673 in the amount of \$24.00. *Id.* Finally, it contained a copy of returned check number 1673 with the memo line indicating it was the “remaining dues for March 2021” as well as the letter from Appellee’s counsel returning check 1673 which it categorized as a partial payment rather than a supplemental one to check 1659.

Appellee’s Reply in support of Motion for Summary Judgment (“Reply”) indicated check numbers 1460 and 1510 were reflected in the ledger and confirmed that check 1673 was returned. *See* Reply at 2:7-12. The Reply was silent as to check 1659. It was silent as to

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whether Appellant had in fact provided those additional materials to counsel.² Appellee concluded “[T]here is no dispute as to any material facts”. *Id.* at 2:14-15.

On April 8, 2021, the trial court granted Summary Judgment in favor of Appellee. On May 6, 2021, Appellant filed his Motion for a New Trial (“Motion”). In it, he argued deficiencies in Appellant’s argument regarding any delinquency in assessments (as argued in the MSJ) and also that the ledger charges, which included such items as “rebill fees”, “demand fees” and “collection account maintenance fees” among others, had not been properly authenticated nor had Appellee proven why those items were imposed or collectible. *See* Motion at 6:21-8:24. Appellant also included Check number 1561 in the amount of \$312.00 and check number 1635 in the amount of \$312.00, both of which he indicated had been provided to Appellee through its counsel, but not indicated on the ledger.

In response, Appellee argued these materials had not been provided upon request of counsel, in disclosure, or in the MSJ briefing and thus should not be considered. *See* Response to Defendant’s Motion for a New Trial at 2:18-21.³

The Motion for a New Trial was denied on June 8, 2021. This timely appeal followed.

II. STANDARD OF REVIEW

This Court reviews a grant of summary judgment *de novo* to determine “whether there are any genuine issues of material fact and whether the trial court erred in applying the law.” *Wells Fargo Bank, N.A. v. Allen*, 231 Ariz. 209, 213 ¶ 14 (App. 2012). In so doing, this Court views “the facts in the light most favorable to the non-moving party.” *Id.*

Where the facts are undisputed, this Court is free to draw its own legal conclusions and substitute its judgment for that of the trial court. *Gries v. Plaza Del Rio Mgmt. Corp.*, 236 Ariz. 8, 12 ¶ 15 (App. 2014); *SAL Leasing, Inc. v. State ex rel. Napolitano*, 198 Ariz. 434, 438 ¶ 13 (App. 2000). This Court reviews *de novo* the trial court’s interpretation of court rules. *Cuellar v. Vettorel*, 235 Ariz. 399, 401 ¶ 4 (App. 2014).

III. ISSUES ON APPEAL

Appellant argues the trial court erred in granting the MSJ, erred in denying the Motion for a New Trial, and erred in relying on incomplete evidence. Because this court remands on the first issue, it need not reach the others. When an appellate court is faced with multiple issues on

² Appellee argues on appeal the ledger did not contain those checks because it did not extend through that time period. Whether the ledger was the most complete and accurate evidence would have been another factual determination for the trier of fact.

³ Appellant had indicated in his MSJ Response that those had been provided, another issue of fact to be resolved.

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appeal, it must resolve those issues on the narrowest grounds possible. *See, e.g., R.L. Augustine Const. Co., Inc., v. Peoria Unified School Dist. No. 11*, 188 Ariz. 368, 370 (1997).

IV. DISCUSSION

A plaintiff seeking summary judgment always bears the “heavy” burden of proof and persuasion that no genuine issues of material fact exist and that the plaintiff is entitled to judgment as a matter of law. *Wells Fargo Bank*, 231 Ariz. at 213 ¶¶ 16–17. A defendant bears no burden of production or persuasion. “To carry its burden of persuasion, a plaintiff who seeks summary judgment must submit **undisputed** admissible evidence that would compel any reasonable juror to find in its favor on every element of its claim.” *Id.* at 213 ¶ 18 (internal quotation omitted)(*emphasis added*).

Arizona Justice Court Rules of Civil Procedure (“JCRCP”) permit the trial court to “grant a summary judgment motion if the record before the court shows that there is no genuine issue as to the material fact, and that the moving party is entitled to judgment as a matter of law”. *JCRCP 129(d)*. Facts must be viewed most favorably to Appellant, the party against whom summary judgment was entered. *See United Bank of Arizona v. Allyn*, 167 Ariz. 191, 193, (App. 1990); *State ex rel. Corbin v. Challenge, Inc.*, 151 Ariz. 20 (App.1986).

In the present case, there were numerous genuine and material issues of fact in dispute between the parties. Appellant argued he had paid all assessments, Appellee credited some payments but argued there was still an outstanding balance. The documentation was not clear on its own. Appellant argued he had documented other payments to Appellee, Appellee’s records did not include them. Appellant argued he had provided checks to Appellee’s counsel. Appellee ignored that statement in the MSJ Response but noted in the Motion for a new trial that it had not received any additional checks.⁴

Appellee argues that somehow Appellant’s refusal to provide check copies to it until the Motion for New Trial briefing alters its burden. *See Appellee’s Response Memorandum* at 3:9-19. The Court of Appeals has considered and rejected the argument that “...the party adverse to summary judgment therefore must either produce controverting evidence or at least point to evidentiary items otherwise in the record which reveal a genuine dispute of fact”. *Allyn* at 194. The burden was on the moving party. Appellant did point to evidentiary items that revealed a genuine dispute of fact, even though under no obligation to do so.

⁴ The decision as to whether the material was or should have been included in a disclosure statement and if that evidence should not have been excluded as a sanction for any failure to disclose would have been influenced by the determination of that disputed fact.

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Further, the moving papers themselves contained inferences regarding a genuine issue of fact. *See Allyn* at 196.

Defendant generally denied his failure to make assessment payments. The Defendant does not present any prior payments, checks or other evidence supporting his claim that each and every prior payment was made. Defendant's allegations have only risen as an excuse not to pay the debt. As discussed below, Defendant's allegations do not provide a legal pretext for refusing to pay assessments, thus summary judgment should be granted for Las Brisas.

MSJ at 3:3-7.

Appellant argued he made payments. Appellee not only said he didn't but further argued Appellant had "refused" to do so. Appellee, and then the trial court, improperly shifted the burden to Appellant to prove "every prior payment was made". There was a question of fact to be determined as was clear from the MSJ itself. It was error to grant Summary Judgment with the disputed facts raised by both parties.

It may well be that despite all payments made, Appellant still owes Appellee money under contract or after proper notice. It may also be that the checks not contained in the ledger were never received. But it is also possible that those checks were received and negotiated, and the record keeping of Appellee failed to note same. There are also questions with respect to which fees and assessments are collectible under contract and which need to be proven. There are many possibilities regarding the underlying facts of this case.

This court takes no position on the veracity of any facts alleged by the parties. But they are clearly in genuine dispute. And material. "Mere speculation or insubstantial doubt as to the facts will not suffice, but where the evidence or inferences would permit a jury to resolve a material issue in favor of either party, summary judgment is improper." *Allyn* at 195; *See also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574(1986).

V. DISPOSITION & ORDERS

Based on the foregoing, this Court must conclude that the trial court erred in its application of the law when it granted summary judgment in favor of Appellee. Accordingly,

IT IS THEREFORE ORDERED vacating the judgment of the White Tank Justice Court.

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IT IS FURTHER ORDERED remanding this matter to the White Tank Justice Court for any further proceedings.

IT IS ALSO ORDERED that no further matters remain pending between the parties and this ruling constitutes this Court's final decision for purposes of Rule 54(c), Arizona Rules of Civil Procedure.

IT IS FURTHER ORDERED signing this ruling as a formal order of the Court.

/s/ Julie A. LaFave

THE HON. JULIE A. LAFAVE
Judicial Officer of the Superior Court

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.