

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-056369

05/22/2012

HONORABLE LINDA H. MILES

CLERK OF THE COURT
R. Tomlinson
Deputy

CAPITAL ONE BANK U S A, N A

JENNIFER E NIX

v.

TENNIE B MARTIN

TENNIE B MARTIN
7835 E MONTE VISTA RD
SCOTTSDALE AZ 85257

ZACHARY EVAN MUSHKATEL

MINUTE ENTRY

The Court has received and considered Defendant Tennie B. Martin's Reply to Plaintiff's Application for and Affidavit on Entry of Default and Motion to Dismiss Cause, filed March 9, 2012 (hereinafter Defendant's "Motion to Dismiss"), Plaintiff's Response thereto, and Defendant's Reply. In her Motion to Dismiss, Defendant requests that the Court (1) deny Plaintiff's Application for and Affidavit of Default; and (2) dismiss this case for lack of service or order Plaintiff to provide Defendant with a copy of the Summons and Complaint.

The Court's docket in this case does not contain an Application for and Affidavit on Default. While Plaintiff may have mailed such a document to Defendant, it did not file the document with the Clerk of the Court. Thus, there is no Application to "deny."

With respect to the service issue, on March 27, 2012, Defendant filed an Answer to the Complaint. Although she asserted lack of service as an affirmative defense in her Answer, she also included Counterclaims against the Plaintiff. A challenge to the sufficiency of service of process is waived if the Defendant seeks affirmative relief in the action. *National Homes Corp.*

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v. Totem Mobile Home Sales, Inc., 140 Ariz. 434, 682 P.2d 439 (Ct. App. 1984). Because Defendant seeks affirmative relief in her Counterclaims, she has waived any defects in service.

For the reasons set forth above,

IT IS ORDERED denying Defendant's Motion to Dismiss.

NOTICE: Due to rotation of judicial officers, effective June 25, 2012, all civil matters assigned to the Honorable Linda H. Miles will be assumed by the Honorable Michael D. Gordon.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.