

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-022078

07/05/2012

HONORABLE GEORGE H. FOSTER, JR.

CLERK OF THE COURT
J. Polanco
Deputy

WELLS FARGO BANK N A

WILLIAM SCOTT JENKINS JR.

v.

GROBEHNBASH L L C, et al.

GROBEHNBASH L L C
C/O NORMAN BASHKINGY
PO BOX 8811
RANCHO SANTE FE CA 92067

GEORGE BASHKINGY
13615 SE 35TH STREET
VANCOUVER WA 98683
WILLIAM D BLACK

RULING
CASE ON INACTIVE CALENDAR

On April 20, 2012, Plaintiff, Wells Fargo Bank, N.A., filed a Motion for Summary Judgment against all Defendants. The Defendants have not filed a response. The Court having considered the Motion and the attachments thereto, as well as the relevant portions of the record in the matter, finds as follows.

The Defendants have failed to file a response to the Motion for Summary Judgment. "When a party moving for summary judgment makes a prima facie showing that no genuine issue of material fact exists, the burden shifts to the opposing party to produce sufficient competent evidence to show that an issue exists." See *Kelly v. Nations Banc Mortgage Corp.*, 199 Ariz. 284, 287, 17 P.3d 790, 793 (App.2000) citing *GM Dev. Corp. v. Cmtv. Am. Mortgage Corp.*, 165 Ariz. 1, 5, 795 P.2d 827,831 (App. 1990)

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Rule 56(e) provides that “an adverse party may not rest upon the mere allegations or denials of [its] pleading,” and that if the party does not respond, summary judgment shall be entered against the party “if appropriate.” Choisser, 12 Ariz.App. at 261, 469 P.2d at 495 (quoting Ariz. R. Civ. P. 56(e)). This is another way of saying that the moving party is entitled to summary judgment if “there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” Ariz. R. Civ. P. 56(c)(1); Markel v. Transamerica Title Ins. Co., 103 Ariz. 353, 358, 442 P.2d 97, 102 (1968), overruled on other grounds by Burch & Cracchiolo v. Pugliani, 144 Ariz. 281, 288, 697 P.2d 674, 681 (1985). The burden of showing that no genuine issue of material fact exists rests with the party seeking summary judgment. Chanay, 115 Ariz. at 38, 563 P.2d at 293.

The admonition in Rule 56(e) simply means that a nonmoving party who fails to respond does so at his 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. Choisser, 12 Ariz.App. at 261, 469 P.2d at 495. 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, the nonmoving party need not respond to controvert the motion. See United Bank of Ariz. v. Allyn, 167 Ariz. 191, 196, 805 P.2d 1012, 1017 (App.1990) (citing Chanay, 115 Ariz. at 38, 563 P.2d at 293); see also Zimmerman v. Shakman, 204 Ariz. 231, 237, ¶ 21, 62 P.3d 976, 982 (App.2003) (stating that Rule 7.1(b) “is not mandatory, and the failure to respond does not in and of itself authorize a judgment against the nonmoving party if the motion fails to demonstrate the movant’s entitlement to the requested relief”).

By failing to file a response to the Motion, the Defendants have waived any procedural or evidentiary arguments or objections that could have been made in response to the Motion. Johnson by Johnson v. Svidergol, 157 Ariz. 333, 335 (App. 1988). According to A.R.S. Rules of Civil Procedure, Rule 56(c), “A party opposing the motion must file affidavits, memoranda or both within 30 days after service of the motion.” The effect of non-compliance to Rules 56(c) and (e) Ariz. R. Civ. Pro. may be deemed as consent to the denial or granting of the motion, and the court may dispose of the motion summarily, if appropriate.

Generally, if a party merely rests on his pleadings when the movant supports his motion for summary judgment with an affidavit alleging specific facts, the non-moving party risks finding by court that facts stated in affidavits negate existence of genuine material factual dispute and that summary judgment is appropriate. Insurance Agencies Co. v. Weaver (1979) 124 Ariz. 327, 604 P.2d 258

Based on the matters presented,

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THE COURT FINDS the movant is entitled to summary judgment as a matter of law and there is no dispute as to any material fact.

IT IS ORDERED granting the Motion for Summary Judgment filed by the Plaintiff, Wells Fargo Bank, N.A.

IT IS FURTHER ORDERED moving party to file a form of Judgment within 30 days of this Order.

IT IS FURTHER ORDERED the Plaintiff is entitled to its attorneys fees and costs pursuant to ARS§ 12-341.01 or 12-349 and shall submit an application for the award of such fees and costs within 30 days of this date.

IT IS FURTHER ORDERED this matter will be placed on the Inactive Calendar for 90 days following this Order.

The foregoing ruling is all in accordance with the formal written Order signed by the Court on July 5, 2012 and filed (entered) by the Clerk on July 5, 2012.

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.