

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-009465

11/08/2018

HON. PAMELA GATES

CLERK OF THE COURT
K. Ballard
Deputy

CELIA GOMEZ

ANTONIO DOMINGUEZ

v.

RHONDA GOMEZ

RHONDA GOMEZ
2937 W SAN JUAN AVE
PHOENIX AZ 85017

ORDER ENTERED BY COURT

The court has considered Plaintiff Celia Gomez's Motion for Summary Judgment filed on September 17, 2018. Defendant Rhonda Gomez did not file a Response or request additional time to submit a Response.

The failure to respond to a motion may be treated as consent to its being granted. Ariz. R. Civ. P. 7.1(b). Moreover, an unopposed motion for summary judgment will be granted unless the moving party fails to present facts showing the absence of any materially disputed issue of fact. *See e.g., Biondo v. General Motors Corp.*, 5 Ariz. App. 286, 291, 425 P.2d 856, 861 (1967) (affirming summary judgment); *Siner v. Stewart*, 9 Ariz. App. 101, 103, 449 P.2d 635, 637 (1969). When, as here, the party against whom the Motion for Summary Judgment fails to respond, the facts asserted by the moving party are assumed to be true. *See Sato v. Van Denburgh*, 123 Ariz. 225, 599 P.2d 181 (1979) (affirming summary judgment); *Schuldes v. National Surety Corp.*, 27 Ariz. App. 611, 617, 557 P.2d 543, 549 (App. 1976). The Motion for Summary Judgment and its accompanying Statement of Facts establish that there are no material facts in dispute that preclude granting the Motion.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-009465

11/08/2018

IT IS ORDERED granting Plaintiff's Motion for Summary Judgment filed on September 17, 2018.

In entering this order, the court finds the following undisputed facts as true:

1. Plaintiff Celia Gomez, a single woman, has an undivided one-half interest as fee title and legal title holder in the real property ("Property"), which is the subject of this partition action, located in Maricopa County, Arizona and legally described as:

Lot 311, MARYVALE PARK NUMBER TWO, according to
Book 54 of Maps, Page 7, records of Maricopa County, Arizona.

(Commonly known as 2937 W. San Juan Avenue, Phoenix,
Arizona)

2. Defendant Rhonda Gomez, a married woman, dealing with her sole and separate property, has an undivided one-half interest as fee title and legal title holder in the Property.
3. Pursuant to A.R.S. § 12-1218(B), a fair partition of the Property cannot be made without depreciating the value thereof, that a sale is more beneficial, and therefore judgment should be entered directing that the Property be sold and the proceeds be divided between the parties according to their rights in the Property.
4. Plaintiff seeks without objection the appointment of Gloria Castillo, with Clayton Nash Real Estate, to act as the Special Commissioner to sell the Property. Plaintiff stated that Gloria Castillo is familiar with the Property and is willing to act in the capacity of a Special Commissioner in order to sell the Property. The court finds appointment of Gloria Castillo as Special Commissioner is appropriate.

Based upon the foregoing findings, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Property is to be sold and the proceeds divided between the parties according to their ownership interest pursuant to A.R.S. § 12-1218(B).
2. Appointment. Gloria Castillo (hereinafter "Special Commissioner") is appointed Special Commissioner for sale of the Property. The Special Commissioner shall market and sell the Property.
3. Insurance. The Special Commissioner shall maintain a policy of Errors and Omissions Insurance consistent with the amount the Special Commissioner was

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-009465

11/08/2018

required to have in place when he or she was authorized to act as a Special Commissioner plus the amount of any increase ordered by the presiding court by Administration Order issued from time to time.

4. Cooperation and Access. The parties and their attorneys shall cooperate in good faith in providing access to the Property by the Special Commissioner. The party in possession of the premises shall make contact with the Special Commissioner directly within ten working days of the filing date of this order for the purpose of beginning the sales process and shall provide the Special Commissioner with a key to the Property within forty-eight hours after a request by the Special Commissioner. The Special Commissioner shall attempt to give reasonable notice to the parties before gaining access to the premises at reasonable times.
5. Market Analysis and Appraisal. The Special Commissioner shall within ten days of being granted access to the Property, cause a market analysis of the Property to be made, and shall deliver copies of said market analysis to the parties and (if applicable) to the parties' attorneys. Within ten days after receipt of the market analysis, either party may provide written comments about the market analysis to the Special Commissioner, and either party or Special Commissioner may request an appraisal. The cost of the appraisal shall be paid by the requesting party or parties upon demand. The Special Commissioner shall have no obligation to obtain an appraisal, unless the parties advance the appraisal fee except in those cases when the Special Commissioner is requesting the appraisal. In such cases, the Special Commissioner shall advance the appraisal fee to be reimbursed from the proceeds of the sale after close of escrow. The Special Commissioner shall select any appraiser agreed to by both parties, except that if the parties are unable to agree, the Special Commissioner shall select an independent appraiser.
6. Listing. The Property shall be listed for sale in a commercially reasonable manner at the value estimated by the market analysis or, if applicable, at the appraised value. The parties shall execute and deliver a listing agreement substantially consistent with the current model listing agreement approved by the Arizona Association of Realtors, and shall so deliver said listing agreement within three days of presentation by the Special Commissioner. As used in the order, the term "commercially reasonable manner" includes, but is not limited to [a] listing the property on the Multiple Listing Service (hereinafter, MLS), [b] stating a fair description of the properties' features, and [c] a statement of terms the sellers and the Special Commissioner will, and (as appropriate) will not, consider. If either party fails or refuses to execute the listing agreement as presented within three days,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-009465

11/08/2018

the Special Commissioner may sign for them. The listing shall contain a provision that “the sale may be subject to court approval.”

7. Reports. The Special Commissioner shall upon request by either party or the court report, in writing, the efforts made to sell the Property. The Special Commissioner shall deliver copies of said report to both parties, and (if applicable) their counsel, every thirty days. Said report shall include recommendations, if any, for changes to the offering terms. The report shall not be filed directly with the court, however, either party may submit any or all reports for the court’s consideration in further proceedings.
8. Offers. The parties shall consider all written offers for purchase of the Property. Approval of terms of offer shall not be unreasonably withheld; approval, rejection, or counter-offer shall be made timely and in the manner necessary to consummate an arms-length real property transaction.
9. Changes. The Special Commissioner shall determine if reasonable changes are necessary to the terms of listing the Property for sale if, after a period of not less than ninety days from the date of the first publication in the MLS, the Property remains unsold. As applied herein, “unsold” means the parties have not accepted a written offer for sale. The Special Commissioner shall make a recommendation in writing to the parties, and if applicable, to their attorneys. If either party fails, neglects, or refuses to deliver a written approval to/of changes to the terms of listing recommended by Special Commissioner, the Special Commissioner or either party may petition the court for hearing. Pending hearing, changes to the terms of listing suggested by the Special Commissioner shall be the terms which the Property is offered for sale; the MLS listing shall note stated terms under these conditions to be “subject to court approval.” If neither party has requested a hearing within ten days of mailing to their last known address or delivery of notice of the change recommended by the Special Commissioner, the recommendation shall be deemed accepted by the parties, and the phrase “subject to court approval” may be removed from the MLS.
10. Court Approval. If the Special Commissioner receives a written offer to purchase the Property which the parties, or either of them, reject, the Special Commissioner may petition the court for an accelerated hearing and for acceptance of the offer. If, after accelerated hearing, the court determines the offer should be accepted, the court may direct the Special Commissioner or the Clerk of Court, pursuant to Rule 70, Arizona Rules of Civil Procedure, to make, execute and deliver the appropriate

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-009465

11/08/2018

documents for consummation of sale. The court may impose sanctions against the party having unreasonably withheld approval of sale.

11. Proceeds. Net proceeds of sale shall be impounded by the title company engaged by the Special Commissioner, pending written agreement of the parties or order of the court.
12. Commission. Upon close of escrow, the Special Commissioner and the selling broker shall be paid a commission consistent with the reasonable and customary fees paid to Realtors in similar transactions in Maricopa County, Arizona.
13. Purchase By Party. In the event either party wishes to purchase the Property, the purchasing party shall submit an offer to the other party in writing and provide a copy to the Special Commissioner. No party shall reject an offer unless that party can make a factual showing as to a reasonable basis for the rejection. All such offers that are rejected may be submitted to the court for approval. In the event of an owner purchasing the Property, compensation shall be paid as follows:
 - a. Offers made and accepted prior to an executed listing agreement that are approved by the court or agreed to by the parties shall result in a reasonable fee for the time expended, including preparation of the market analysis.
 - b. Agreements to sell by the parties or agreements approved by the court after a listing agreement shall subject the offering owner to payment of a fee to the Special Commissioner, plus the out-of-pocket expenses of the Special Commissioner. The fee shall be the greater of the one percent (1%) of the total selling price or reasonable hourly fee for the efforts expended by the Special Commissioner based upon reasonable hourly rates to be approved by the court. All such fees and costs shall be paid from the proceeds of sale. In the event the proceeds of sale are insufficient to pay the Special Commissioner costs and fees, these fees shall be paid by the purchasing owner prior to close of escrow.
 - c. If, after receipt by the Special Commissioner of a bona fide offer to purchase the Property from a third party, either owner makes a written offer to purchase the Property, which offer is approved by the court, the purchasing owner shall pay a commission to the Special Commissioner in the amount of three and one-half percent (3.5%) of the total selling price. A bona fide offer means an offer from a qualified purchaser presenting commercially reasonable terms. Payment of the Special Commissioner fee shall be paid

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-009465

11/08/2018

of the court's order of approval requiring the payment as a contingency to the close of escrow.

14. Sanctions. The court may impose additional sanctions for a party's unreasonable behavior under this order, including but not limited to, adding an additional one percent (1%) of the selling price as compensation for services rendered as Special Commissioner, over and above the reasonable and customary fees paid for similar services not involving a Special Commissioner within Maricopa County. Other sanctions may include contempt, an award of attorney's fees, or removal from the premises.
15. Change of Address. All parties representing themselves must keep the court updated with address changes.
16. Plaintiff is required to provide a copy of this order to Gloria Castillo, with Clayton Nash Real Estate. Ms. Castillo may object to the appointment within 7 court days of receiving a copy of this order.