

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-008056

10/31/2012

HONORABLE MARIA DEL MAR VERDIN

CLERK OF THE COURT
L. Stogsdill
Deputy

DELLS I I I LENDER L L C

DALE S ZEITLIN

v.

AMBROSE ROJAS, et al.

DENISE J WACHHOLZ

RULING

The Court is in receipt of the Defendants' Motion for Partial Summary Judgment, filed September 14, 2012. The Plaintiff has failed to respond to the Defendants' Motion and their time for doing so under Rule 7.1(a), Ariz.R.Civ.P. has expired. Pursuant to 7.1(b), Ariz.R.Civ.P., the Court finds that the Plaintiff's unexplained inaction is deemed consent to the granting of the Motion.

Summary Judgment is appropriate if, after reviewing the facts in the light most favorable to the non-moving party, no genuine issues of material fact remain. *Joseph v. Markovitz*, 27 Ariz. App. 122, 551 P.2nd 571 (App 1976). "A 'genuine' issue of material fact is one that a reasonable jury, on the record before the court, could resolve in favor of either party". *Southwest Pet Products, Inc. v. Koch Ind.*, 273 F.Supp. 2d 1041, 1050 (D.Ariz.2003) (citations omitted). Even where the facts are undisputed, a genuine dispute as to conflicting inferences to be drawn from them precludes an award of summary judgment. *Executive Towers v. Leonard*, 7 Ariz. App. 331,439 P.2d 303 (1968).

Accordingly, having considered the matters presented, the Court finds no genuine issue of material fact as to Defendants' request and finds in their favor.

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IT IS ORDERED granting the Defendants' Motion for Partial Summary Judgment, filed September 14, 2012. Count II of the Complaint, the claim for punitive damages; any damage claim based on a nonpayment of a promissory note that was "extinguished" pursuant to A.R.S. § 33-814(D), and any damage claim for losses based on the decline of the real estate market after the Defendants' appraisal are dismissed.

Count I of the Complaint is not addressed by this Motion.

The Defendants are directed to submit a form of Judgment no later than **November 21, 2012.**

The Court takes no further action at this time.

PLEASE NOTE: If/when a party files a pleading within 48 hours of a scheduled event, the party should also e-mail same to the Court's Judicial Assistant at the following: *mgabel@superiorcourt.maricopa.gov*

NOTE: COUNSEL SHALL UPLOAD AND E-FILE ALL PROPOSED ORDERS IN WORD FORMAT ONLY TO ALLOW FOR POSSIBLE MODIFICATIONS BY THE COURT.

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.