

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2004-006947

08/01/2006

HONORABLE ROBERT C. HOUSER

CLERK OF THE COURT  
R. Tomlinson  
Deputy

MARILYN PRICE, et al.

STEPHEN E SILVERMAN

v.

SAFECO INSURANCE COMPANY, et al.

LARRY D LANGLEY

RICHARD T TREON

RULING

This matter was taken under advisement following a hearing held on Plaintiffs' Motion for Partial Summary Judgment Re: Conclusive Effect of Appraisal Awards. The Court has considered the papers filed by the parties in support of and opposition to the Motion, the file herein, the arguments of counsel and the relevant law.

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law on all or any part of a claim. Ariz. R. Civ. P. 56(a), (b), (c)(1); *Western Corrections Group, Inc. v. Tierney*, 208 Ariz. 583, 586 (App. 2004); *Samsel v. Allstate Ins.*, 204 Ariz. 1, 4 (App. 2002). The party moving for summary judgment has the burden of establishing the absence of a genuine dispute of material fact. *Orme School v. Reeves*, 166 Ariz. 301, 309 (1990); *Chanay v. Chittenden*, 115 Ariz. 32, 38 (1977). When the moving party makes the necessary showing that no material facts are genuinely in dispute, the adverse party cannot rest on the pleadings but must show by competent evidence the existence of a genuine dispute of material fact requiring trial. Ariz. R. Civ. P. 56(e); *Schwab v. Ames Const.*, 207 Ariz. 56, 60 (App. 2004); *Kelly v. NationsBanc Mortgage Corp.*, 199 Ariz. 284, 287 (App. 2000).

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In considering the motion, the court must view all facts and reasonable inferences flowing from those facts in a light most favorable to the party against whom summary judgment is sought. *Myers v. City of Tempe*, 212 Ariz. 128, ¶ 7 (2006); *Gipson v. Kasey*, 128 Ariz. 235, ¶ 2 (App. 2006); *Bothell v. Two Point Acres, Inc.*, 192 Ariz. 313, 315 (App. 1998). The motion should only be granted “if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense.” *Orme School v. Reeves*, 166 Ariz. at 309. In making this determination, the Arizona Supreme Court has cautioned that “[s]ummary judgment should not be used as a substitute for jury trials simply because the trial judge may believe the moving party *will* probably win the jury's verdict, nor even when the trial judge believes the moving party *should* win the jury's verdict.” *Id.* at 310 (emphasis in original). However, a motion for summary judgment should not be denied “simply on the speculation that some slight doubt. . . , some scintilla of evidence, or some dispute over irrelevant or immaterial facts might blossom into a real controversy in the midst of trial.” *Id.*

While a party may move for summary judgment on all or part of a claim, this Motion does neither. Instead, it seeks a declaration regarding the scope of the preclusive effect to be afforded to the insurance appraisal awards entered between the parties. In substance, the Motion is directed to the admissibility of the evidence that may be presented at trial. The question of admissibility is properly addressed in the context of a motion in limine not a motion for summary judgment.

Therefore,

**IT IS ORDERED** denying the Plaintiffs’ Motion for Partial Summary Judgment Re: Conclusive Effect of Appraisal Awards without prejudice to rearguing the issue as a motion in limine prior to trial.