

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-000008

07/02/2018

HON. ROSA MROZ

CLERK OF THE COURT
C. Avena
Deputy

GREGORY BEST, et al.

GREGORY BEST
P O BOX 24152
PHOENIX AZ 85074

v.

HARRY TAPIA CADRIEL, et al.

KYLE WESTFALL HALLSTROM

MINUTE ENTRY

The Court has considered **Plaintiff's Motion for Reconsideration of Court's Ruling Filed May 18, 2018** filed on May 22, 2018, Defendant Nieblas' Response to Plaintiff's Motion for Reconsideration of Court's Ruling Filed March 1, 2018 filed on June 12, 2018, and Plaintiff's Reply to Defendant's Response for Reconsideration of Court's Ruling Filed March 1, 2018 filed on June 18, 2018.

Defendant Nieblas responded to the wrong Motion for Reconsideration. Plaintiff's Motion for Reconsideration of the March 1, 2018 was already denied via a minute entry filed on March 21, 2018.

At the May 16, 2018 hearing, the Court held a discussion regarding the remaining claims in this case. The Court noted that Plaintiff has already obtained a default judgment against Defendants Cadriel and Hartman and that the only remaining defendant is Defendant Nieblas. At that time, the Court reviewed Plaintiff's First Amended Complaint filed on April 24, 2017, and noted that the only remaining claims against Defendant Nieblas are for Count 1, Trespass, and Count 2, Theft/Conversion. Plaintiff affirms that the total value of those claims is \$18,000. As pointed out by Plaintiff in this Motion for Reconsideration, the Court did not review the Notice

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of Errata filed on June 8, 2017 at the May 16, 2018 hearing. The Court was unaware of its existence. That Notice of Errata does correct the First Amended Complaint so that Count 3, Interference with Business Expectancy, applies to all Defendants.

IT IS ORDERED granting Plaintiff's Motion for Reconsideration of Court's Ruling Filed May 18, 2018, to the extent that Plaintiff's claims against Defendant Nieblas consist of Count 1, Trespass; Count 2, Theft/Conversion; and Count 3, Interference with Business Expectancy.

The Court has considered Plaintiff's Motion to Compel filed June 6, 2018, Defendant Nieblas' Response filed on June 19, 2018, and Plaintiff's Reply filed on July 1, 2018.

In this Motion to Compel, Plaintiff requests that the Court: (1) enforce a stipulation to stay discovery for 45 days; (2) enforce an agreement reached at the settlement conference for Nieblas to obtain an appraisal of his property so that Plaintiff can buy the property; and (3) enforce an agreement for Nieblas' attorney to produce Nieblas' daughter so that she may be deposed.

As to the stipulation to stay discovery for 45 days and the production of Nieblas' daughter for deposition, the Court finds that Nieblas to be in the wrong. The exhibits provided by Plaintiff establish that the parties stipulated to a stay of discovery for 45 days. Nieblas' attorney drafted the Stipulation and Plaintiff agreed for it to be filed. Yet, the Stipulation was not filed and Nieblas' explanation for why it was not filed is deficient. The Court disagrees with Nieblas' argument that Plaintiff does not need to depose Nieblas' daughter because there is no longer a claim for Interference with Business Expectancy. As explained above, that claim still exists. The Court rejects Nieblas' argument that "Mr. Best was free at any time to issue a subpoena and notice the deposition of Mr. Nieblas' daughter." It is clear to the Court that Plaintiff was trying to do just that but needed Mr. Nieblas' daughter's address. It is also clear to the Court that Nieblas' attorney stated "We'll produce her for you."

IT IS ORDERED that the discovery deadline for deposing Nieblas' daughter is extended until **August 16, 2018.**

IT IS FURTHER ORDERED that Nieblas shall produce Nieblas' daughter for deposition on a date to be agreed upon between the parties before **August 16, 2018.**

As to the agreement for Nieblas to obtain an appraisal on his property so that Nieblas can sell the property to Plaintiff, Nieblas explained why the appraisal was not obtained – Nieblas could not afford the appraisal. The Court agrees with Plaintiff that Nieblas should have communicated this information to him and it was bad form not to do so. However, this is not the type of agreement that the Court can enforce. *See* Civil Rule 80(d) ("If disputed, no agreement or

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consent between parties or attorneys in any matter is binding, unless: (1) it is in writing; or (2) it is made orally in open court and entered in the minutes.”).

IT IS ORDERED denying Plaintiff’s request to enforce the agreement for Nieblas to obtain an appraisal.

The Court suggests to the parties that they split the cost of the appraisal rather than to continue this time-consuming and costly litigation, if there is truly a desire by the parties to settle this case by having Nieblas sell the property to Plaintiff at the appraisal value, For Nieblas, the cost of continuing to pay an attorney to litigate this case and go to trial is surely a lot more than the cost of an appraisal.

The Court also notes that Plaintiff only gave Nieblas’ less than a day to return his phone call for the meet and confer requirement before filing the Motion to Compel. This is not a reasonable amount of time.

IT IS ORDERED that from this point forward, the parties shall give each other the courtesy to return a phone call within 3 business days for the purposes of the meet and confer requirement.

The Court has considered **Defendant Nieblas’ Motion to Have Plaintiff Gregory Best Deemed a Vexatious Litigant** filed on June 12, 2018, and Plaintiff’s Response filed on June 22, 2018. Nieblas’ attorney indicated at the June 25, 2018 status conference that Nieblas will not be filing a Reply.

While it is true that Plaintiff has filed a lot of motions that this Court has denied, and that Plaintiff’s constant requests for sanctions against Nieblas’ attorney have been meritless, the Court does not believe that Plaintiff’s conduct has risen to the level of being vexatious in this case, yet. The Court notes that it has also granted some of Plaintiff’s motions and some of Nieblas’ arguments have been meritless.

IT IS ORDERED denying Defendant Nieblas’ Motion to Have Plaintiff Gregory Best Deemed a Vexatious Litigant filed on June 12, 2018.