

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-006201

05/21/2020

HONORABLE MARGARET R. MAHONEY

CLERK OF THE COURT
K. Ballard
Deputy

NACHMAN ULLMAN, et al.

WILLIAM MORRIS FISCHBACH III

v.

FIRST AMERICAN TITLE INSURANCE
COMPANY

SCOTT A MALM

JUDGE MAHONEY

HEARING

Courtroom: ECB-411

2:31 p.m. This is the time set for Oral Argument on Defendant First American's Motion for Summary Judgment, filed 7/30/2019. The Court will also address Plaintiff's Emergency Motion to Strike Defendant's Supplemental Statement of Facts in Support of Motion for Summary Judgment, filed 5/13/2020. Plaintiff Rajzi Ullman is present and is represented by Counsel Amy Sells (appearing in place of William Morris Fischbach), who also represents Plaintiff Nachman Ullman. Defendant First American Title Insurance Company is represented by Counsel Scott A. Malm. All appearances are telephonic.

A record of the proceedings is made digitally in lieu of a court reporter.

The Court has reviewed the following in conjunction with Plaintiff's Motion to Strike:

1. Plaintiff's Emergency Motion to Strike Defendant's Supplemental Statement of Facts in Support of Motion for Summary Judgment, filed 5/13/2020;
2. Defendant's Response to Emergency Motion to Strike Supplemental Statement of Facts in Support of Motion for Summary Judgment, filed 5/18/2020; and

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3. Plaintiffs' Reply in Support of Their Emergency Motion to Strike Defendant's Supplemental Statement of Facts in Support of Motion for Summary Judgment, filed 5/18/2020.

Neither party has any additional argument to add to the briefing on the Motion to Strike.

For the reasons discussed on the record,

IT IS ORDERED granting Plaintiff's Emergency Motion to Strike Defendant's Supplemental Statement of Facts in Support of Motion for Summary Judgment.

The Court will not consider Defendant's Supplemental Statement of Facts in Support of Motion for Summary Judgment, filed 4/2/2020, nor has the Court read the updated appraisal referenced therein and attached thereto.

The Court has reviewed the following in conjunction with the Motion for Summary Judgment:

1. Defendant's Motion for Summary Judgment, filed 7/30/2019;
2. Defendant's Statement of Facts in Support of Motion for Summary Judgment, filed 7/30/2019;
3. Plaintiffs' Response to Defendant's Motion for Summary Judgment and attached Plaintiffs' Controverting Statement of Facts in Support of Response to Defendant's Motion for Summary Judgment, filed 11/1/2019; and
4. Defendant's Reply in Support of Motion for Summary Judgment, filed 12/4/2019.

The chronology of the case and pretrial deadlines ordered are reviewed.

Court and counsel discuss the very early filing of Defendant's Motion for Summary Judgment, a mere 25 days after Defendant filed its Answer herein, and long before the parties filed their initial Joint Report, much less conducted any discovery.

Oral argument is presented on the Motion for Summary Judgment.

Plaintiff having conceded in the briefs, and confirmed on the record, that summary judgment is appropriate as to Count III,

IT IS FURTHER ORDERED granting, as unopposed, summary judgment in favor of Defendant as to Count III, Indemnity.

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Oral argument continues.

Discussion is held as to Exhibit "F" attached to Defendant's Statement of Facts in Support of Motion for Summary Judgment, filed 7/30/2019, which references attached Exhibits "A," "B," "C," and "D," which are *not* in fact attached to Exhibit "F." Defendant's counsel confirms Exhibits "A," "B," "C," and "D" were not attached to Exhibit "F" as defense counsel considered those exhibits not relevant to the related Statement of Fact.

Oral argument continues.

With respect to Count IV, Bad Faith, Plaintiff moves under Rule 56(d) for leave to conduct additional discovery before the Court rules on the Motion for Summary Judgment on that Count if the Court is inclined to grant summary judgment on it. Court and counsel discuss the same.

Oral argument continues.

Further discussion is held as to the missing Exhibit "B" to Exhibit "F" attached to Defendant's Statement of Facts in Support of Motion for Summary Judgment, which the Court finds relevant and therefore directs Plaintiffs' counsel to read into the record, defense counsel having submitted an incomplete version of Exhibit "F" for the Court's consideration.

Oral argument continues.

For the reasons discussed on the record,

THE COURT FINDS there are genuine issues of material fact in dispute that preclude the granting of summary judgment in favor of Defendant on Counts I, II, and IV of Plaintiffs' First Amended Complaint, and Defendant is not entitled to judgment as a matter of law on those Counts.

Accordingly,

IT IS FURTHER ORDERED denying Defendant's Motion for Summary Judgment as to Count I, Breach of Contract; Count II, Breach of Covenant of Good Faith and Fair Dealing; and Count IV, Bad Faith.

4:22 p.m. Matter concludes.