

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-006735

03/18/2013

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
C. Danos
Deputy

BANK OF AMERICA

LARRY O FOLKS

v.

BRAD L COTTLE D M D, P C, et al.

JEFFREY J TONNER

RULING

The Court received and considered Plaintiff Bank of America, N.A. [Plaintiff] Motion For Summary Judgment, Defendants' Brad L. Cottle, D.M.D., P.C., Brad L. Cottle, D.M.D. [Defendants Cottle] responsive pleadings and the corresponding reply submitted by Plaintiff. The parties have requested oral argument. The Court finds that the briefing is sufficient and that oral argument would not add to the Court's consideration of the issues presented. Accordingly, oral argument is waived pursuant to Ariz. R. Civ. P. Rule 7.1[c][2] to expedite the business of the Court. The Court issues the following ruling.

Plaintiff moves for summary judgment on its claim for unjust enrichment. Plaintiff seeks an award of damages against the Defendants Cottle for their possession, use of and profit from dental equipment belonging to Plaintiff. There is no factual dispute that Plaintiff was the rightful owner of the equipment and further that Defendants Cottle possessed and used this equipment without Plaintiff's knowledge, consent and without any compensation to Plaintiff for a period of years. Plaintiff seeks the diminution of value of the equipment during the period of possession and use in the sum of \$15,970.

Defendants Cottle argue that they purchased the equipment from a third-party landlord and were unaware of Plaintiff's UCC security interest in the equipment, that once advised of this

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interest they surrender the property. They argue that they were not enriched as they paid the value of the assets to the third-party landlord.

Standard of Review.

To grant summary judgment, the Court must determine that the record before it contains “no genuine issue as to any material fact” and, thus, “that the moving party is entitled to judgment as a matter of law.” [Rule 56 [c]. In determining whether to grant summary judgment, the Court will view the facts and inferences from these facts in the light most favorable to the nonmoving party.[Matsushita Elec. Co. V. Zenith Radio Corp. 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 [1986]].

Summary judgment is appropriate “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” [Celotex Corp.v Catrett, 477 U. S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 [1986]]. In such a situation, there can be no genuine issue as to any material fact since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial. In such a case, the moving party is entitled to a judgment as a matter of law.

A party opposing a motion for summary judgment cannot rest upon mere allegations or denials in the pleadings or papers, but instead must set forth specific facts demonstrating a genuine issue for trial.

Discussion. The Court concurs with Plaintiff that Defendants Cottle are liable, as they received a benefit by using the dental equipment for a number of years without any compensation being provided to the equipment’s rightful owner. A person “who has been unjustly enriched at the expense of another is required to make restitution to the other”.¹ The doctrine of unjust enrichment is applicable to these circumstances.

The amount of damages has not been contested in this matter. Defendants Cottle did not present evidence disputing the diminution of value of these assets.

As a consequence, the Court finds that there are no genuine issues of material fact and further that Plaintiff is entitled to judgment as a matter of law.

IT IS ORDERED GRANTING Plaintiff’s Motion for Summary Judgment.

¹ John A. Artukovich & Sons, Inc. v Reliance Truck Co., 126 Ariz. 246 [1980].
Docket Code 019

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IT IS FURTHER ORDERED that Plaintiff shall timely submit a form of judgment consistent with this Court ruling, together with an Affidavit of Fees and Statement of Costs, if applicable.

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.