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9 **SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 LAURA OWENS; ELIZABETH NAYLOR,

12 Plaintiffs,

13 vs.

14 SHAWN [REDACTED]; [REDACTED]
CONSTRUCTION, LLC,

15 Defendants.

Case No.: CV2021-053242

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

TIER 2

(Assigned to the Honorable Sara J. Agne)

16
17 Comes now the Defendants, by and through their attorney undersigned, and hereby
18 respond to Plaintiffs' Motion for Summary Judgment, as more fully set forth in the
19 accompanying Memorandum of Points and Authorities.
20

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 Rule 56, Ariz.Civ.P. states in relevant part:

23 (a) **Motion for Summary Judgment or Partial Summary**
24 **Judgment.** A party may move for summary judgment, identifying each
25 claim or defense--or the part of each claim or defense--on which summary
26 judgment is sought. The court shall grant summary judgment if the
27 moving party shows that there is no genuine dispute as to any material fact
and the moving party is entitled to judgment as a matter of law. The court
should state on the record the reasons for granting or denying the motion.

28 . . .

(c) **Procedures.**

1 (3) *Supporting and Opposing Statements of Fact.*

2 (A) Moving Party's Statement. The moving party must set forth, in a
3 statement separate from the supporting memorandum, the specific facts
4 relied on in support of the motion. The facts must be stated in concise,
5 numbered paragraphs. The statement must cite the specific part of the
6 record where support for each fact may be found.

7 Plaintiffs' Motion for Summary Judgment fails to sufficiently identify each claim or
8 defense--or the part of each claim or defense--on which summary judgment is sought.

9 Plaintiffs' Motion fails to state the specific cause of action they seek summary judgment on;
10 fails to set forth the specific facts relied upon in support of each specific cause of action they
11 seek summary judgment on; and Plaintiffs' Motion fails to set for the elements of each cause of
12 action or provide legal analysis, including case law.

13 In addition to Plaintiffs' failure to properly format a Motion for Summary Judgment,
14 Plaintiffs' Motion should be denied for the following additional reasons:

- 15 1. Multiple triable issues of fact exist in this matter;
- 16 2. No foundation was provided for any of Plaintiffs' voluminous exhibits;
- 17 3. No Affidavit(s) were provided to lay the foundation and verify any of the 121
18 exhibits.

19 A clear example of a triable issue of fact is demonstrated by the Plaintiffs themselves. In
20 their most recent pleading, their Motion to Compel & For Sanction filed Friday February 4,
21 2022. Within the Plaintiffs' pleading they argue ad nauseam that the invoice attached to
22 Defendants' First Supplemental Disclosure Statement dated and emailed to Plaintiffs on
23 Thursday February 3, 2022, that: "**that Defendant has altered (ARS 13-2002(A)(1)) and**
24 **presented (ARS 13-2002(A)(2)) and plans to use as evidence**". This dispute over the invoice
25 goes directly to the core of Plaintiffs' case and creates a triable issue of fact as to the authenticity
26 of the invoice.
27
28

1 Plaintiffs attached 121 exhibits to their Motion for Summary Judgment consisting mainly
2 of purported emails between the parties and others, as well as a number of photographs taken by
3 an unknown person on an unknown date. Evidence submitted in support of a Motion for
4 Summary Judgment needs to be admissible evidence and not hearsay. Without an affidavit(s)
5 accompany the Motion for Summary Judgment, all 121 exhibits lack foundation and are hearsay.
6

7 It is impossible to tell what counts Plaintiffs are moving for summary judgment or partial
8 summary judgment.

9 Defendant [REDACTED] Construction, LLC is an Arizona State licensed and bonded
10 contractor, license [REDACTED]. [REDACTED] Construction, LLC is an active contractor with
11 zero (0) open cases, discipline cases, or resolved/settled cases. [REDACTED] Construction,
12 LLC holds a Specialty Dual CR-14 Fencing license. [REDACTED] Construction, LLC is
13 bonded through Western Surety Company with bond number [REDACTED].
14

15 On or about December 2020, Plaintiffs requested bids for steel fencing on their
16 residential property located in Scottsdale, Arizona. The steel fencing was for horse corrals.
17 Plaintiff (“Owens”) **did not** accept any bid from [REDACTED] Construction in writing on
18 December 16, 2020. Defendant Shawn [REDACTED] did not meet with the Plaintiffs until
19 February 16, 2021, at approximately 8 a.m. The Plaintiffs did not arrive at the property until
20 Monday February 15th as Plaintiff stated in text messages. Defendant Shawn [REDACTED]
21 walked the property with the Plaintiffs on February 16, 2021, and then sent the Plaintiffs an
22 estimate on February 20, 2021. Work commenced on or about Tuesday March 16, 2021.
23
24

25 On or about March 16, 2021, a City of Scottsdale zoning inspector arrived at the property
26 at approximately 8:30 a.m. and then left the residence. Defendant Shawn [REDACTED] called the
27 city inspector and he returned to the property stating that neighbors had concerns about a
28

1 construction project. The Plaintiffs informed Mr. [REDACTED] that they had posted project
2 details on a social media site and figured that's how neighbors found out.

3 Defendant Shawn [REDACTED] then told the inspector that they were building fencing
4 and stalls and asked what the non-permit criteria would be so that Plaintiffs could have
5 shading for their horses. The inspector then said 200 sq ft or less and that shade structures
6 have to be 4ft 6" apart from each other.
7

8 After meeting with inspector all plans had changed. At 12:24 pm on March 16, 2021,
9 the same day Defendant Shawn [REDACTED] submitted a new invoice to Plaintiffs, who agreed
10 to changes, and at 2:39 pm Plaintiffs texted Defendant Shawn [REDACTED] that the deposit
11 check was ready.
12

13 Total price with changes totaled 33, 447.57

14 On or about May 31, 2021, Plaintiffs texted Defendant Shawn [REDACTED] saying to
15 hold off on coming tomorrow to work as we have questions about invoices.
16

17 On or about June 21, 2021, Defendant Shawn [REDACTED] exchanged text messages
18 with the Plaintiffs discussing settlement negotiations with the Plaintiffs as Defendant Shawn
19 [REDACTED] had been dealing with some unrelated personal issues. Plaintiffs initially agreed to
20 a settlement; however, within a few minutes Plaintiffs changed their mind.
21

22 On or about June 28, 2021, Plaintiffs changed the terms of their settlement offer by
23 increasing the amount to \$44,000 plus dollars and demanded payment or else.

24 Defendant Shawn [REDACTED] then contacted [REDACTED] with Arizona Registrar of
25 Contractors and informed him Defendant Shawn [REDACTED] was being extorted and needed
26 advice.
27
28

1 On June 30, 2021, Owens demanded Defendant Shawn [REDACTED] “pay \$44,000
2 dollars tomorrow or she will file harassment charges and two other felony crimes.”

3 Defendant Shawn [REDACTED] then sent an email to [REDACTED], the Arizona
4 Registrar of Contractors investigator asking for advice.

5
6 Defendant Shawn [REDACTED] then had communication with client on July 7, 2021, and
7 Owens stated she wanted \$44,000 dollars in two payments and Defendant responded in text
8 message “we can find resolution after ROC investigation.”

9 On Friday August 13, 2021, the day of the Registrar of Contractor’s inspection,
10 Plaintiffs sent Defendant Shawn [REDACTED] a text message stating “hello, there was an
11 incident here in the middle of the night and we are suspicious of [REDACTED] LLC’s
12 involvement in it. We are looking into filing a police report this morning.” “Again you never
13 responded to my message from yesterday to acknowledge your receipt. which is yet another
14 indication in your role in last night’s events. But you and your crew are not welcome on or
15 near our property at any point in time. The police will be standing by to arrest you should you
16 choose to. Please let me know if you plan to have a courier deliver a check or do a bank
17 transfer in the amount of \$44,441.44 which must be received by the end of day on Monday. If
18 I do not here back from you by 10 a.m. today, a lawsuit will be filed today.”

19
20 On Friday August 13, 2021, [REDACTED], an Arizona Registrar of Contractors investigator called
21 Defendant Shawn [REDACTED] and said inspection is called off and case is closed due to the
22 Plaintiffs not allowing access.

23
24 All of the work performed at the Plaintiffs’ residence was performed in a workmanlike
25 manner and met any existing building codes. The work was up to industry standards; yet
26 Plaintiffs continue to harass the Defendants and their workers. Plaintiffs told Defendant Shawn
27
28

1 [REDACTED] not to return to the property; would not give an ROC inspector access to the property;
2 and even tried to prevent the Defendants from removing their machinery from the property.

3 WHEREFORE, Plaintiffs' Motion for Summary Judgment should be denied.

4 Respectfully submitted this 7th of February 2022.

5
6 **THOMAS M. BAKER PLC**

7
8 /s/ Thomas M. Baker

9 Thomas M. Baker

Attorney for Defendants

10 **ORIGINAL** of the foregoing e-filed via
11 **Turbo Court** this 7th day of February 2022 with:

12 Clerk of the Superior Court

13 **COPY** of the foregoing emailed via **Turbo Court**
14 this 7th day of February 2022 to:

15 Laura Owens and Elizabeth Naylor at:

16 [REDACTED]@gmail.com

17 Plaintiffs Pro Per

18 /s/ Thomas M. Baker