

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

BARCELONA MANOR ASSOCIATION,
AN ARIZONA NON-PROFIT CORPORATION,
Plaintiff/Appellee,

v.

TRAVIS L. NOLTE,
Defendant/Appellant.

No. 2 CA-CV 2025-0183
Filed February 10, 2026

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. C20242617
The Honorable Greg Sakall, Judge

AFFIRMED

COUNSEL

Travis Nolte, Tucson
In Propria Persona

Halk, Oetinger and Brown PLLC, Tucson
By John J. Halk and Andrea J. Miska
Counsel for Plaintiff/Appellee

MEMORANDUM DECISION

Judge Sklar authored the decision of the Court, in which Presiding Judge Kelly and Judge Brearcliffe concurred.

S K L A R, Judge:

¶1 Travis Nolte appeals from the trial court's order granting Barcelona Manor Association, Inc.'s motion for summary judgment on the foreclosure of its assessment lien against his property. He also appeals the court's denial of his motion to stay. For the following reasons, we reject his arguments and affirm the court's judgment.

BACKGROUND

¶2 Nolte purchased a condominium unit in Barcelona Manor in 2017. The property was subject to Barcelona Manor's Declaration of Covenants, Conditions, and Restrictions, which obligated him to pay monthly assessments. In July 2022, Barcelona Manor filed a lien notice for nonpayment of assessments. It later obtained a money judgment against Nolte for breach of contract.

¶3 In May 2024, Barcelona Manor filed this action, which sought foreclosure of its lien. Nolte filed an answer, essentially alleging that he was excused from paying assessments due to Barcelona Manor's alleged breach of its own obligations to repair the property. Specifically, he alleged that since 2020, three incidents of flooding and a fire had left the property uninhabitable and that the property was condemned by the county between 2022 and 2024. He therefore sought "a reasonable amount of time to gather information and evidence for [his] case showing negligence" by Barcelona Manor.

¶4 Barcelona Manor moved for summary judgment, arguing that there was no genuine issue of material fact that it was entitled to foreclose its assessment lien under A.R.S. § 33-1256(A) and the CC&Rs. In response, Nolte argued that he was entitled to withhold his assessment payments until Barcelona Manor repaired the property.

¶5 The trial court requested supplemental briefing as to whether, if Nolte's allegations regarding Barcelona Manor's negligence were true, he would have a "legally recognizable defense or counterclaim" against the

BARCELONA MANOR ASS'N, INC. v. NOLTE
Decision of the Court

assessment lien. After both parties submitted briefing, the court granted Barcelona Manor's motion. Nolte filed a motion for reconsideration, which the court denied. He then filed a motion to stay the case, which the court also denied in its final order and decree of foreclosure. Nolte appealed.

SUMMARY JUDGMENT

¶6 On appeal, Nolte argues that the trial court erred in granting summary judgment. He argues that Barcelona Manor: (1) was negligent for failing to promptly repair damage to his property; (2) violated Arizona law by raising assessments more than twenty percent in one year; and (3) was barred from charging assessments while the property was condemned. We review a trial court's grant of summary judgment de novo, and we view the facts and reasonable inferences in the light most favorable to the nonmoving party. *Tilley v. Delci*, 220 Ariz. 233, ¶ 7 (App. 2009).

¶7 Regarding Nolte's first argument, the trial court found that the law provides no self-help remedy to withhold assessments, even where the association failed to maintain the property. We agree. Under A.R.S. § 33-1247(A), a condominium association "is responsible for maintenance, repair and replacement of the common elements" of the unit. Nolte argues that Barcelona Manor violated this statute by not promptly repairing damage caused by a shared drainage pipe that serviced the units above him, which left the property without drywall or cabinets, and filled with mold. However, even assuming that Barcelona Manor violated this statute, it does not provide condominium owners the remedy of withholding assessments. Nor has Nolte cited legal authority that otherwise provides him such a right. We likewise have found none.

¶8 Nolte could arguably be understood as asserting the affirmative defense of setoff. *See Granmo v. Superior Court*, 122 Ariz. 510, 512 (App. 1979) (a setoff is "a cause of action in favor of the defendant on which he might have brought a separate action against the plaintiff and recovered a judgment"). But even if the defense were theoretically available, Nolte has failed to create a genuine dispute of material fact as to its applicability. A party opposing summary judgment must support his position with admissible evidence. Ariz. R. Civ. P. 56(c)(3)(B)(i) (party opposing summary judgment must "cit[e] for each disputed material fact the specific, admissible parts of the record that establish the dispute"). Such evidence may include an affidavit "made on personal knowledge" which "set[s] out facts that would be admissible in evidence," and it may be supplemented by other admissible evidence, "including deposition

BARCELONA MANOR ASS'N, INC. v. NOLTE
Decision of the Court

excerpts, interrogatory responses, admissions, and additional affidavits.”
Ariz. R. Civ. P. 56(c)(5)-(6).

¶9 Nolte provided no such evidence. Instead, he supplied an unsworn description of the alleged negligence along with photos of the damage to the property, fire department reports, and county work permits. Absent some means of authentication, this evidence is insufficient, as it is not admissible. *See* Ariz. R. Evid. 901(a); *Wells Fargo Bank, N.A. v. Allen*, 231 Ariz. 209, n.3 (App. 2012). And although Nolte is not represented by counsel, he is still required to comply with the rules of civil procedure and evidence. *See Flynn v. Campbell*, 243 Ariz. 76, ¶ 24 (2017).

¶10 Second, Nolte argues that Barcelona Manor violated A.R.S. §§ 33-1803 and 1242 by raising assessments forty percent in one month and another ten percent one month later. Under Section 33-1803, the association of a planned community “shall not impose a regular assessment that is more than twenty percent greater than the immediately preceding fiscal year’s assessment without the approval of the majority of the members of the association.” As noted by the trial court, this statute is inapplicable to condominium associations. It is instead part of the statutory section governing planned communities, from which condominiums are expressly excluded. A.R.S. § 33-1802(6)(b)(ii). Nor is Section 33-1242 useful. It references a condominium owners association’s ability to collect assessments for common expenses from unit owners, but it does not impose limitations on assessment increases. § 33-1242(A)(2).

¶11 Third, Nolte argues that Barcelona Manor was prohibited from charging assessments during the twenty-eight-month period in which the property was condemned due to fire and flood damage. We decline to reach this argument because Nolte raised it for the first time in his motion for reconsideration in the trial court. *See RT Auto. Ctr., Inc. v. Westlake Servs. LLC*, 253 Ariz. 91, ¶ 12 (App. 2022) (appellate court does not consider issues raised for the first time in motion for reconsideration unless facts or arguments were not available when trial court entered challenged ruling). We thus conclude that the court properly granted summary judgment.

MOTION FOR STAY

¶12 Nolte additionally argues that the trial court erred by summarily denying a stay that would prevent Barcelona Manor from collecting its judgment against him until the resolution of a case that he intends to bring against it for damage to his property. We review a court’s

BARCELONA MANOR ASS'N, INC. v. NOLTE
Decision of the Court

denial of a stay for an abuse of discretion. *Apache Produce Imports, LLC v. Malena Produce, Inc.*, 247 Ariz. 160, ¶ 9 (App. 2019).

¶13 To prevent a plaintiff from immediately attempting to enforce a judgment against him, a defendant may post a supersedeas bond in the trial court under Rule 7(a) of the Arizona Rules of Civil Appellate Procedure. *Wallace v. Smith*, 255 Ariz. 377, ¶ 2 (2023). Nolte has not done so. He also did not separately move for a stay in this court under Rule 7(c), which gives an appellate court the power to “stay proceedings while an appeal is pending.” Further, he has cited no legal authority that would allow a stay on enforcement to remain in effect past the resolution of this appeal. *See* Ariz. R. Civ. App. P. 7(b)(1) (stay “remains in effect until issuance of the appellate court’s mandate”).

¶14 Even assuming that a stay were possible, we conclude that the trial court did not abuse its discretion in denying one. In deciding whether to grant a stay, a court considers whether a stay would avoid: (1) increased costs to parties; (2) harassment by repeated suits; (3) a burden on judicial resources; (4) “piecemeal litigation;” (5) “unusually difficult questions” of law that “bear upon important policy issues;” and (6) conflicting judgments. *Apache Product Imports*, 247 Ariz. 160, ¶ 10 (quoting *Tonnemacher v. Touche Ross & Co*, 186 Ariz. 125, 130 (App. 1996)). Because Nolte has not yet filed a separate action, and a judgment has already been entered in this case, the factors do not weigh in his favor.

ATTORNEY FEES

¶15 Barcelona Manor requests an award of attorney fees and costs on appeal. As the prevailing party, it is entitled to recover its attorney fees and costs under Section 13.2(B) of its CC&Rs, upon its compliance with Rule 21(b) of the Arizona Rules of Civil Appellate Procedure.

DISPOSITION

¶16 For the foregoing reasons, we affirm the trial court’s order.