

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-053929

04/29/2020

HONORABLE THEODORE CAMPAGNOLO

CLERK OF THE COURT
A. Wood
Deputy

SKY BOLES

MARK W HORNE

v.

JASON TARRELL, et al.

MARY T HONE

KATHRYN A BATTOCK
TROY B STRATMAN
MARK ZINMAN
JUDGE CAMPAGNOLO

**MINUTE ENTRY CONVERTING MOTION TO DISMISS
TO MOTION FOR SUMMARY JUDGMENT**

The Court has reviewed Defendant Northern Manor Townhouse Association's Motion to Dismiss, Defendant Maricopoly's Joinder therein, Plaintiff's Response to Defendant's Motion to Dismiss, Northern Manor Townhouse Association's Reply, Maricopoly's Reply in Support of Motion to Dismiss, the Complaint, and the applicable law. For the reasons stated below and pursuant to Rule 12(d), ARIZ. R. CIV. P., the Motion to Dismiss is being converted to a Motion for Summary Judgment.

Defendant Northern Manor Townhouse Association (NMTA) attached numerous exhibits to its Motion to Dismiss. In considering a Motion to Dismiss for Failure to State a Claim, if the trial court considers matters outside the pleadings (extraneous matters), it must treat the motion as a Rule 56 motion for summary judgment, and allow the parties a reasonable opportunity to present all pertinent material. *Strategic Development and Construction, Inc. v. 7th and Roosevelt Partners, LLC*, 224 Ariz. 60, ¶1 (App. 2010). Matters of public record or matters that are central to a complaint are not considered "extraneous matters." *Id.* at ¶¶13 & 14.

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In this case, some of the exhibits are public records, and some may be deemed to be central to the Complaint. However, some of the exhibits may not fall within the categories of non-extraneous matters. Therefore, out of an abundance of caution, the Court believes it is appropriate to convert this matter to a Rule 56 proceeding, and allow the parties a reasonable opportunity to present all pertinent material to the Motion, pursuant to Rule 12(d).

IT IS ORDERED that Defendant Northern Manor Townhouse Association's Motion to Dismiss is converted to a Motion for Summary Judgment under Rule 56.

IT IS FURTHER ORDERED that a 15-minute telephonic scheduling conference shall be heard on **May 19, 2020 at 9:30 a.m.** for the purpose of determining a scheduling for the submission of all pertinent materials, and to set oral arguments on the converted motion for summary judgment. Defendant Northern Manor Townhouse Association's counsel shall initiate the telephone conference, and shall call into the Division at **602-372-0537** at the designated time.