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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

**GALLERY COMMUNITY
ASSOCIATION, an Arizona non-profit
corporation,**

Plaintiff,

v.

**K. HOVNANIAN AT GALLERY, LLC, an
Arizona limited liability company; et al.,**

Defendants.

**K. HOVNANIAN AT GALLERY, LLC, an
Arizona limited liability company; et al.;**

Third-Party Plaintiffs

v.

**ARTISTIC STAIRS, LTD., an Arizona
limited liability company; et al.,**

Third-Party Defendants.

Case No. CV2020-008714

**DEFENDANTS'/ THIRD-PARTY
PLAINTIFF'S RESPONSE TO
PLAINTIFF'S REQUEST FOR RULE
56(D) RELIEF**

(Assigned to the Honorable Michael Kemp)

(Oral Argument Requested)

COMES NOW Defendants K. HOVNANIAN AT GALLERY, LLC, K. HOVNANIAN ARIZONA OPERATIONS, LLC, K. HOVNANIAN DEVELOPMENTS OF ARIZONA, INC. and K. HOVNANIAN COMPANIES OF ARIZONA, LLC (collectively, "Defendants"), by and through undersigned counsel and hereby respond to Plaintiff's Request for Rule 56(d) Relief. For the reasons stated below, Plaintiff's request should be denied.

1 **LEGAL ARGUMENT**

2 Plaintiff first makes the argument that the case is not at issue, however, the case IS at issue.
3 Back on July 27, 2020 (over eight months ago), Plaintiff filed a Complaint against various K
4 Hovnanian (“K Hov”) entities after presumably doing some investigation into the facts, as is
5 required. There is no basis for Plaintiff to now claim it needs more time to explain its case.

6 Plaintiff seeks a continuance of six months or more under rule 56(d) to conduct discovery.
7 While Plaintiff contends that it needs certain discovery, it fails to make a showing that this
8 discovery is “essential” under Rule 56(d) to justify its opposition, as required by the above rule
9 [See Generally Plaintiff’s Request for Rule 56(d) relief and Decl. of Penny Manship]. Any claim
10 that it needs this discovery is unfounded and was not supported by case law or statute, in light of
11 the fact that Plaintiff *actually fully responded* to the motion, by submitting a 19-page substantive
12 argument along with a supporting Statement of Facts and exhibits. Plaintiff cannot reasonably tell
13 the court that it is unable to do something that in fact it has already done. Granting relief would
14 essentially allow the Plaintiff to file a second response to a fully briefed motion that is already
15 before this Court.

16 In addition, Plaintiff fails to show, that the evidence it deems important to the response will
17 actually be relevant toward defeating the Motion for Summary Judgement. Plaintiff asserts that it
18 requires additional discovery regarding the roles of each Defendant with respect to the
19 development, design, construction and or/sale of The Gallery [See Manship Decl ¶7a] Plaintiff’s
20 claim that this information will reveal the involvement each Defendant had at the Project,
21 including potential roles as builder-vendors or builders at The Gallery [Id at ¶7b]. However,
22 further clarification of these roles will not negate the fact that the CC&Rs place the duty to
23 manage, maintain and administer the common area elements on the Plaintiff and on the Plaintiff
24 alone. As such, the Defendants, no matter what their role in the development and construction of
25 The Gallery, had no duty to the Plaintiff to maintain or repair the common areas of The Gallery
26 and without that duty there can be no breach of contract. This information will also not negate the
27 fact that there was no express warranty attached to the Quit Claim Deed and that the law has never
28

1 addressed implied warranty at law in this context and that even where the implied warranty at law
2 attaching to a homeowner/homebuilder has been found, it does NOT apply to defects that were
3 known or assumed. It cannot negate the fact that the Association would have been aware of the
4 patent defects and thus no warranty will apply.

5 **CONCLUSION**

6 For the foregoing reasons, Defendants respectfully request that the Court deny Plaintiff's
7 request for Rule 56(d) Relief, and proceed with a ruling on the Motion for Summary Judgment.

8 **RESPECTFULLY SUBMITTED** this 16th day of April, 2021.

9 **WILENCHIK & BARTNESS, P.C.**

10 */s/ Dennis I. Wilenchik*

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24 /s/ Hilary Myers _____

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