

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-015333

01/26/2016

HONORABLE DAWN M. BERGIN

CLERK OF THE COURT
S. Brown
Deputy

DESERT MOUNTAIN CLUB INC

THERESA DWYER

v.

ERIC GRAHAM, et al.

DARYL M WILLIAMS

MINUTE ENTRY

The Court has reviewed Defendants' Motion to Vacate Summary Judgment filed on December 9, 2015; Plaintiff's Response; and the Fabians' Reply. It now makes the following findings and orders.

On October 16, 2015, the Court issued a minute entry granting Plaintiff's Motion for Summary Judgment against the ; and denied the Motion for Judgment on the Pleadings against Plaintiff. The were represented by Daryl Williams at that time. Mr. Williams subsequently filed a Motion to Withdraw as counsel for the , which the Court granted on November 12, 2015. The claimed that Mr. Williams was not authorized to represent them. In light of those allegations, the Court scheduled an evidentiary hearing.

The hearing occurred on November 30, 2015. Testimony was taken from .

Daryl Williams and Chris Callahan, attorney for Plaintiff. The then filed

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this Motion to Vacate Summary Judgment on December 9, 2015, the deadline imposed by the Court.

Based on the testimony and evidence presented at the November 30, 2015 hearing, including the Court's assessment of the credibility of the witnesses,

THE COURT FINDS that Daryl Williams was authorized by the [redacted] to file the June 22, 2015 Response to Plaintiff's Motion for Summary Judgment and to represent them for purposes of oral argument on the Motion.

IT IS THEREFORE ORDERED denying the [redacted] Motion to Vacate Summary Judgment against them.¹

Plaintiff requests fees, costs and expenses pursuant to A.R.S. §12-349. The Court will hold this request in abeyance pending the outcome of Plaintiff's Motion to Enforce Settlement Agreement, which was filed on December 24, 2015.

¹ The Court also agrees with the alternative bases proffered by Plaintiff for denying the [redacted]'s motion: (1) Mr. Williams possessed apparent authority to act on behalf of the [redacted] (Resp. at 6-7); (2) the [redacted] failed to refute the underlying motion for summary judgment (Resp. at 7-8); and the [redacted] waived any argument that Mr. Williams lacked authority to represent them (Resp. at 8-9).