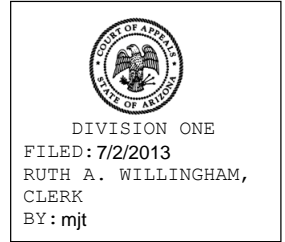


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



HAROLD LANG, a single man,) 1 CA-CV 12-0665
)
Plaintiff/Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication-
RECONTRUST COMPANY, N.A.,) Rule 28, Arizona Rules
) of Civil Appellate
Defendant/Appellee.) Procedure)
)
)
_____)

Appeal from the Superior Court of Yavapai County

Cause No. V1300CV820090493

The Honorable Patricia A. Trebesch, Judge

AFFIRMED

Harold Lang, *In Propria Persona*
Plaintiff/Appellant

Sedona

Bryan Cave LLP
By Robert W. Shely
And Rodney W. Ott
Attorneys for Defendant/Appellee

Phoenix

T H O M P S O N, Presiding Judge

¶1 Harold Lang (Lang) appeals from the trial court's grant of summary judgment in favor of defendant/appellee ReconTrust Co. (trustee). For the reasons that follow, we affirm.

¶2 Lang owned a house in Sedona. In April 2007, he took out a thirty-year fixed rate refinance loan on the house. The lender was Countrywide Home Loans, Inc., which subsequently was taken over by Bank of America (the lender). In early 2009, Lang stopped paying the full amount of his mortgage payment.¹ He has not paid any amount to the lender since March 2009.

¶3 In June 2009, trustee noticed a trustee's sale on Lang's house. Lang filed a complaint in superior court to prevent the trustee's sale. He maintained that the lender had refused his tendered payments and to explain an increase in his monthly payments. In September 2009, the trial court issued a preliminary injunction preventing the trustee's sale, and ordered Lang to deposit the undisputed amount of his mortgage payment, \$3027.20 per month, with the court "as additional bond to the Court."

¶4 By December 2009, Lang stopped making the required monthly deposit with the court. He advised the court that he had run out of money. Trustee filed a motion for summary judgment in April 2010.

¶5 In June 2010, the trial court held oral argument on

¹ In February 2009, Lang tried to make a \$3000.20 mortgage payment (less than the amount due) using three different credit cards (\$850.00 apiece) and a check for \$450.20. The lender did not accept the credit card payments. Despite this, Lang persisted in attempting to use credit cards to make his mortgage payments.

trustee's motion for summary judgment and dismissed Lang's claim for declaratory relief. The court found that there were factual issues in dispute regarding whether or not Lang had been presented with a complete accounting, and denied the motion for summary judgment as to count one of the complaint. Trustee filed a motion for reconsideration, which the trial court denied.

¶6 In September 2010, trustee filed a motion to quash the preliminary injunction. The same month, Lang filed a "motion for order to dismiss foreclosure," which the trial court denied. Lang failed to respond to the motion to quash the preliminary injunction, and the trial court granted the motion. In December 2011, the trial court issued an order granting trustee's motion to compel Lang's responses to discovery and to deem admissions admitted based on Lang's failure to respond to trustee's discovery requests. The requested admissions included:

1. Bank of America sent you a letter explaining . . . why your mortgage payment increased in early 2009 . . . on September 9, 2009.
2. Bank of America sent you a full accounting of your mortgage loan account in October 2009 through your former attorney Scott Miskel.
3. Undersigned counsel sent you a copy of the accounting of your mortgage loan account as an attachment to the Motion for Summary Judgment filed in this case on March 30, 2010.

4. Undersigned counsel again sent you a copy of the accounting of your mortgage loan account via a certified letter dated June 29, 2010. That letter stated: "This fully satisfies the request for an accounting that you made in your complaint."
5. Plaintiff's response to undersigned counsel's letter was a letter dated August 2nd stating, in relevant part, that he "believe[s] the correspondence that [he] received from the Bank was inadequate."
6. The August 2, 2010 letter sent by Plaintiff to undersign [sic] counsel does not specifically reference the accounting sent to Plaintiff on September 9, 2009, October 2, 2009, March 30, 2010 and June 29, 2010 nor does it point to any single line item and reveal a discrepancy or alleged discrepancy in the accounting.

¶7 In May 2012, trustee filed a second motion for summary judgment, "based upon the admissions deemed admitted by this Court and Lang's continued failure to respond to [trustee's] remaining discovery requests." Lang failed to respond, and trustee filed a motion for summary disposition. Lang filed his own motion for summary disposition. The trial court granted the motion for summary judgment on Lang's remaining claim for an accounting, concluding that no genuine issue of material fact existed to preclude summary judgment. Lang timely appealed.

¶8 Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P.

56(c)(1). We review the grant of summary judgment de novo to determine whether any genuine issues of material fact exist, and we view the evidence and all reasonable inferences in favor of the nonmoving party. *Chalpin v. Snyder*, 220 Ariz. 413, 418, ¶ 17, 207 P.3d 666, 671 (App. 2008) (citation omitted). Summary judgment should be granted "if the facts produced in support of [a] claim . . . have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim" *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990).

¶19 On appeal, Lang raises numerous issues in the opening brief that do not pertain to his accounting claim or his claim for declaratory relief. This court generally does not consider issues and arguments not presented to the trial court. *Ammer v. Ariz. Water Co.*, 169 Ariz. 205, 211, 818 P.2d 190, 196 (App. 1991). Additionally, issues not clearly raised and argued in the opening brief are waived. *Jones v. Burk*, 164 Ariz. 595, 597, 795 P.2d 238, 240 (App. 1990). We note that the opening brief further fails to provide any legal authority to support Lang's arguments. See ARCAP 13(a)(6). Even if waiver did not apply, however, Lang's failure to respond to discovery requests resulted in an admission that he received a full accounting from lender, one which "fully satisfie[d] the request for an

accounting that you made in your complaint.” As to Lang’s claim about refused payments, he was given the injunction he sought and was told to make payments to the court, but stopped doing so. He further failed to comply with discovery orders and respond to the motion to quash the injunction, thus the trial court did not err in denying relief on the claim that the lender rejected his payments.

¶10 For the foregoing reasons, we affirm the trial court’s order granting summary judgment in favor of trustee.

/s/

JON W. THOMPSON, Presiding Judge

CONCURRING:

/s/

KENT E. CATTANI, Judge

/s/

LAWRENCE F. WINTHROP, Judge