

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

7

8

9

Custom Homes By Via LLC,

No. CV-12-01017-PHX-FJM

10

Plaintiff,

**ORDER**

11

vs.

12

Bank of Oklahoma; Bank of Arizona,

13

Defendants.

14

15

16

Before the court is the Bank’s motion for reconsideration (doc. 90) of our order granting partial summary judgment in plaintiff’s favor (doc. 67). Plaintiff sought summary judgment on its claim that the Bank breached the loan agreement by failing to fund the entire May 27, 2008 draw request. We considered and rejected the Bank’s only argument in opposition—that it was not obligated to fund future work.

21

22

The Bank now raises a new argument. It contends that it was not obligated to fund the May 27, 2008 draw request because plaintiff had not established that it was not in default, and otherwise in compliance with certain conditions precedent, for example guarantor’s obligation to maintain a combined net worth of \$8 million. We reject the Bank’s argument, and thus its motion for reconsideration, for two reasons. First, we will not consider an argument raised for the first time in a motion for reconsideration without a showing that the argument could not have been asserted before. The Bank has not made, nor could it make,

28

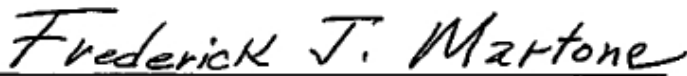
1 such a showing.

2           Second, even if we were to consider the merits of the Bank's new argument, we would  
3 reject it. The Bank now contends that it was not contractually obligated to fund the draw  
4 request because plaintiff failed to establish certain conditions precedent. The Bank's belated  
5 reliance on conditions precedent is belied by the fact that it funded a portion of the draw  
6 request. The Bank has not explained how it could, under the terms of the Loan Agreement,  
7 reject only part of a draw request based on conditions precedent.

8           **IT IS ORDERED DENYING** the Bank's motion for reconsideration (doc. 90).

9           DATED this 7<sup>th</sup> day of November, 2013.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

---

**Frederick J. Martone**  
**Senior United States District Judge**