

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 14-cv-00200-CMA-KMT

AVALON CONDOMINIUM ASSOCIATION, INC,

Plaintiff,

v.

SECURA INSURANCE, A MUTUAL COMPANY,

Defendant.

**ORDER GRANTING IN PART MOTION TO STRIKE THE REPLY TO
DEFENDANT'S AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT**

On May 1, 2015, Plaintiff Avalon Condominium Association Inc. filed a Motion to Strike the Reply to the Amended Motion for Partial Summary Judgment filed by Defendant or Alternatively, Motion for Leave to File a Sur-Reply. (Doc. # 145.) On May 11, 2015, Defendant Secura Insurance responded (Doc. # 150); Plaintiff did not file a reply.

Plaintiff contends that in the reply in support of the Amended Motion for Partial Summary Judgment, Defendant asserted new arguments and proffered over 200 pages of previously "un-attached" evidence. Specifically, Plaintiff asserts that in the reply, Defendant: (1) raised the argument that employees of JP Roofing are experts, listed alleged qualifications of these alleged experts, and improperly attached voluminous documentation presuming to support the new qualifications for the first time; (2) asserted the argument that Defendant's decision regarding the scope of damages to

the roofs was based on Tony Suriano's independent findings and attached a new affidavit of Mr. Suriano outlining these findings; and (3) attached seventeen evidentiary exhibits that it relied upon, which were not attached or referenced in the original motion. Defendant argues that there are no new arguments in its reply; rather, the arguments and evidence presented with its reply are consistent with the arguments provided in its Amended Motion for Partial Summary Judgment and entirely and solely responsive to the arguments raised by Plaintiff in the response.

If a movant includes new material raised for the first time in its reply brief, a court should allow a nonmoving party an opportunity to respond to the new material. *Green v. N. M.*, 420 F.3d 1189, 1196 (10th Cir. 2005) (citations omitted). However, if a court does not rely on the new material, which includes both new evidence and new legal arguments, in reaching its decision, it does not abuse its discretion by precluding a surreply. *Id.*

In the instant case, Defendant attached new materials to its reply in support of its Amended Motion for Partial Summary Judgment, including the depositions of Dale Albrecht, Warren Erickson, Joshua Gallardo, Ronda Horner, and Brittney Stoerger, expert witness disclosures, a climate report, and an affidavit of Mr. Suriano. The Court will not rely on the new material or any arguments associated with the new material in deciding the Amended Motion for Partial Summary Judgment filed by Defendant.

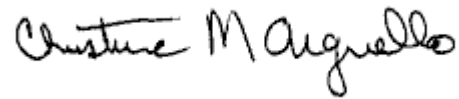
As such, it is ORDERED that the Motion to Strike the Reply to the Amended Motion for Partial Summary Judgment filed by Defendant or Alternatively, Motion for Leave to File a Sur-Reply (Doc. # 145) is GRANTED IN PART AND DENIED IN PART.

The Court strikes the portions of Defendant's reply that rely on new evidence raised for the first time and will not consider that information when it rules on the Motion.

Plaintiff's request to file a sur-reply is denied.

DATED: September 14, 2015

BY THE COURT:

A handwritten signature in black ink that reads "Christine M. Arguello". The signature is written in a cursive style with a horizontal line underneath the name.

CHRISTINE M. ARGUELLO
United States District Judge