

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 29 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CRESTWOOD CAPITAL
CORPORATION,

Plaintiff-Appellee,

v.

ANDES INDUSTRIES, INC.,

Defendant-Appellant.

No. 17-17219

D.C. No. 2:15-cv-00600-NVW

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Neil V. Wake, District Judge, Presiding

Argued and Submitted May 14, 2019
San Francisco, California

Before: THOMAS, Chief Judge, and McKEOWN and GOULD, Circuit Judges.

Andes Industries, Inc. (“Andes”) appeals the district court’s entry of summary judgment in favor of Crestwood Capital Corporation (“Crestwood”), ordering Andes to pay Crestwood the amount due on a note. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review the district court’s grant of summary judgment *de novo*, *Chemehuevi Indian Tribe v. Newsom*, 919 F.3d 1148, 1150–51

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

(9th Cir. 2019), and we affirm. Because the parties are familiar with the facts, we omit them.

Andes argues that summary judgment was inappropriate because it has outstanding claims that could be used to support a setoff defense. Even if this were once true, we affirmed the dismissal of the claims Andes bases its setoff defense on in *Andes Industries, Inc. v. Cheng Sun Lan*, No. 17-17059, 2019 WL 2152825 (9th Cir. May 16, 2019). A potential setoff defense is therefore no barrier to the entry of summary judgment.

Andes also argues that summary judgment was inappropriate because it has a viable fraud defense to the enforcement of the note. However, the district court did not err in holding that this defense had been waived because Andes failed to plead it in its answer. *See Enlow v. Salem-Keizer Yellow Cab Co., Inc.*, 389 F.3d 802, 819 (9th Cir. 2004) (“Failure to plead an affirmative defense . . . results in a waiver of that defense.”).

Because these two arguments were the only grounds for reversing the district court Andes asserts, we affirm the district court’s grant of summary judgment.

AFFIRMED.