

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-008033

02/19/2008

HON. EDWARD O. BURKE

CLERK OF THE COURT
L. Nixon
Deputy

UNITED METRO MATERIALS INC

FRANCES J HAYNES

v.

REQUIP L L C, et al.

WILLIAM J SIMON
SEAN P ST CLAIR

MINUTE ENTRY

The Court has had Defendants, Beazer Homes Holding Corp., Standard Pacific of Arizona, Inc., U.S. Development Land, LLC, Montelena Master Community Association, and Western Surety Company's Motions For Partial Summary Judgment under advisement and enters the following ruling.

FACTS

1. Defendants moved for Partial Summary Judgment against Plaintiff, United Metro Materials, Inc. dba Rinker Materials ("Rinker") on the issues of whether and how Rinker's Mechanic's Lien (the "Lien") is to be apportioned among the lots and tracts which comprise the development known as Montelena and/or including the tracts deeded to the Town of Queen Creek.
2. The Montelena subdivision is comprised of 403 lots and 27 tracts for a total of 430 parcels.
3. Tracts A through F and H through W are common areas owned by the Montelena Master Community Association.

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4. Tracts G, X, Y, and A-A were deeded to the Town of Queen Creek and are designated as public parks and open space.
5. On March 15, 2005, ReQuip, L.L.C. entered into a construction contract whereby ReQuip was to, among other things, install onsite and offsite roadways at Montelena.
6. Rinker furnished road materials to ReQuip for improvements to the Montelena Subdivision.
7. ReQuip ceased operating in December, 2005, and failed to pay Rinker.
8. Rinker recorded a Notice and Claim of Lien (the "Lien") against Montelena on March 9, 2006, and served a copy on the owners of the property. The Lien covered all the lots and tracts in Montelena, except the tracts deeded to the Town of Queen Creek.

RULING

Defendants contend that Rinker's lien must be apportioned equally among all the lots and tracts in Montelena, including Tracts W, X, Y, and A-A which were deeded to the Town of Queen Creek.

Plaintiff, Rinker claims that because the Lien attached to the residential lots (1-403) and Tracts A through F, and H through W and not to tracts X, Y, and A-A, which were deeded to the Town of Queen Creek, the Lien can only be apportioned among the parcels to which it attached.

In Wahl v. Southwest Savings & Loan Association, 12 Ariz. App. 90, 467 P.2d 930 (1970) the court held that a mechanic's lienor cannot apportion its lien only to those lots on which its lien has priority, but, rather the lien had to be apportioned among all the lots to which it attached, saying:

"...we have concluded that the primary intent of the legislature was to relate mechanics' and materialmen's liens to the particular building or improvement to which their services or materials have contributed value.... Further, we do not believe that the legislature intended that the priority given by A.R.S. § 33-962 to mechanic and materialman lien claimants would be greater in amount than the reasonable value of materials furnished for the actual buildings or improvements concerning which priority is granted" 12 Ariz. App. 90, 99.

In CS & W Contractors, Inc. v. Southwest Savings & Loan Association, 180 Ariz. 167, 883 P.2d 404 (1994) our Supreme Court said:

"A lienor cannot extract the improvements made to several lots from fewer than all those lots. Apportionment is required when the superior lien runs to fewer than all the total number of improved lots.

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Wahl did not address the issue of the value or method of apportionment when improvements benefit all lots in a subdivision instead of individual lots. Basic infrastructure such as roads, sewers, and water lines, benefit the entire subdivision and are only fortuitously located on any given lot. Each lot is equally benefited. Every future homeowner will use the same streets, water lines, sewers, and fire hydrants. The 'equitable principle' in Wahl requires proof of specific benefit to specific lots in a subdivision when the value of that benefit is easy to determine. But if all lots benefit equally from infrastructure an equal apportionment is satisfactory, unless the claimant can prove disproportionate value was put into a lot over which it had priority." 180 Ariz. 167, 169.

Applying these principles to this case the Court concludes that Rinker's materials, which were used for the roadways, benefited the entire subdivision, including the areas deeded to the Town of Queen Creek. The fact that Rinker has no lien rights against the Town of Queen Creek is no different than the situation in Wahl where the lien claimant did not have priority against most of the lots that were benefited. The tracts deeded to the Town of Queen Creek certainly benefited by having roads built to them and the residential lots and common area tracts should not be charged with the cost of running the roads past the Town's tracts.

The Court GRANTS Defendants' Motion For Partial Summary Judgment as follows: Rinker's lien must be apportioned amongst all the lots and tracts in Montelena, including the tracts deeded to the Town of Queen Creek. The facts presented to the Court in the motion papers do not specifically spell out the lineal footage of the roads which border the tracts deeded to the Town as opposed to the lineal footage of all other the lots and tracts in Montelena, not do they give the square footage of each lot and tract for use as a means to fairly apportion Rinker's lien. However, Exhibit A attached to Plaintiff's Statement of Facts indicates that at least one of the tracts deeded to the Town of Queen Creek is substantially larger than a residential lot.

The Court suggests that the most logical way to apportion Rinker's lien would be based on the total square footage of each of the parcels. Absent the receipt of such information from the parties, the Court is left with only the illogical option to apportion Rinker's lien equally among the 430 parcels, with each parcel bearing the equivalent of 1/430 of the total lien.

The parties may submit additional briefing concerning the best method of apportionment or simply stipulate to a form of judgment.