

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-051768

02/09/2009

HONORABLE EDDWARD BALLINGER, JR.

CLERK OF THE COURT
R. Tomlinson
Deputy

402 NOW L L C, et al.

LAWRENCE K LYNDE

v.

REGENCY HOUSE ASSOCIATION

BRIAN W MORGAN

MINUTE ENTRY

The court has reviewed the materials filed in connection with defendant/counterclaimant/third-party plaintiff Regency House Association's ("Regency") motion to: 1. Dismiss the counterclaim filed against it by Yummy Tummy, LLC ("Yummy"); 2. Strike the response memorandum; and 3. Grant summary disposition. Respondents oppose dismissal of the Yummy claim.

After review,

IT IS ORDERED denying the motion to strike or for summary disposition.

With respect to the merits of the motion, Regency claims that the lis pendens filed in this case is validly filed under A.R.S. § 33-420 because it affects a claim to title to the realty described in its recorded notice and, therefore, the Yummy claim is invalid as a matter of law.

Respondents claim that movants may have Yummy liability because the claim upon which the lis pendens was filed is legally barred by A.R.S. § 33-1256 (B)(2) and, therefore, movants have filed a groundless claim under A.R.S. § 33-420.

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The court finds that this is not an instance where a motion to dismiss can resolve the issue of whether there is a Yummy cause of action. Therefore,

IT IS ORDERED denying the motion to dismiss.