

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-051923

03/29/2018

HONORABLE SUSAN M. BRNOVICH

CLERK OF THE COURT
A. Wood
Deputy

SUNRISE CONDOMINIUM ASSOCIATION

TROY B STRATMAN

v.

ROBERT K WELCH

MATTHEW ALLEN KLOPP

MINUTE ENTRY

The Court has read and considered Defendant's Motion for Partial Summary Judgment, Plaintiff Sunrise Condominium Association's Response and Cross-Motion for Partial Summary Judgment as to Liability, Defendant's Combined Reply in Support of His Motion for Partial Summary Judgment, Response to Plaintiff's Cross-Motion, and Plaintiff Sunrise Condominium Association's Reply, and the associated pleadings and exhibits. In the Court's discretion, the request for oral argument is denied and the Court's ruling follows.

Plaintiff filed a Complaint for foreclosure and breach of contract based on the claim that Defendant is delinquent in the payment of assessments to Plaintiff. Defendant has moved for partial summary judgment and a finding that Plaintiff is precluded from seeking assessments outside of 4 years prior to the filing of the Complaint on the breach of contract claim and outside of 3 years prior on the foreclosure. Plaintiff concedes that A.R.S. §33-1256(F) only entitles it to a lien for unpaid assessments after February 1, 2014. The 3 year limit on enforcing the lien applies to count 1, the foreclosure. Plaintiff disputes that there is a 4 year limit on damages for the breach of contract claim and instead asserts they have a 6 year limit.

SUPERIOR COURT OF ARIZONA
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Defendant argues that A.R.S. §12-544(3) imposes a 4 year statute of limitations on damages for the breach of contract claim because the contract was executed outside Arizona. A.R.S. §12-544(3) reads as follows:

“There shall be commenced and prosecuted within four years after the cause of action accrues, and not afterward, the following actions:

.....

3. Upon a judgment or decree of a court rendered without the state, or upon an instrument in writing executed without the state. This paragraph does not apply to a judgment for support, as defined in [§ 25-500](#), and to associated costs and attorney fees.”

The contract in this case is the Amended and Restated Condominium Declaration for Sunrise Condominium (the “Declaration”). The Declaration was signed and recorded by the developer. The Declaration was recorded in Maricopa County but was signed before a Notary Public in Cook County, Illinois. Therefore, Defendant argues that the contract is executed without the state and the 4 year limitation period applies.

Plaintiff argues that the 6 year limitation period from A.R.S. §12-548 applies because the contract in this case was executed in Arizona. Plaintiff bases there argument on the fact that the contract was not finalized until Defendant bought his property, in Arizona, in 2006. However, just because the final party to the contract accepted in Arizona does not change the fact that the original party executed the contract in Illinois. Neither side provided any case law on the issue but in *Acacia Mut. Life Ass’n v. Berry*, 54 Ariz. 208 (1939), the Arizona Supreme Court found that the 4 year limitation period applied to an insurance contract that was negotiated in Arizona, the application was provided to an agent of the company in Arizona, but the final issuance of the contract came out of Washington D.C.. The same logic would apply here. Therefore,

IT IS ORDERED granting Defendant’s Motion for Partial Summary Judgment and limiting damages on Count 1 to those accruing after February 1, 2014 and limiting damages on Count 2 to those accruing after February 1, 2013. (Defendant asked for a dollar amount to be set but as damages are in dispute, the Court’s ruling is restricted to setting the limitation period).

Plaintiff’s Cross-Motion for Partial Summary Judgment asks for judgment as to liability only. From the pleadings, it is undisputed that Defendant was delinquent in his payment of assessments to the Association. The Court also finds that there are no material issues of genuine fact that would put into question that Defendant was delinquent by at least \$1200 at the time of the filing of the complaint. The only facts in dispute are the amount secured by the assessment lien on Count 1 and the amount of damages that Defendant must pay to the Association on the breach of contract claim. Therefore,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-051923

03/29/2018

IT IS ORDERED granting Plaintiff's Cross-Motion for Partial Summary Judgment as to liability.