

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-008702

04/21/2004

HONORABLE KENNETH L. FIELDS

CLERK OF THE COURT
D. Whitford
Deputy

FILED: 04/22/2004

MONTANA DEL SOL CONDOMINIUM
ASSOCIATION

JOYCE J KAPSAL

v.

JWE SPRING OAKS LLC, et al.

MICHAEL A ANDERSON

JACK G BARONE
STEVEN R BARTELL
WILLIAM H DOUGLAS
ANDREW M FEDERHAR
DOUGLAS H FITCH
FREDERICK G GAMBLE
JOHN T GILBERT
BRIAN L HENRY
MICHAEL W HERZOG
BRADLEY R JARDINE
JOSEPH A KULA
DAVID E MCDOWELL
ANDREW PESHEK
JONATHAN D SCHNEIDER
GARY M SUNDBERG
JULIE G OGAWA
ADAM B CAMPBELL
DANIEL E FREDENBERG
DAVID R GREEN
DREW M GULLY
JASON M KELLY
JOHN H CLINE
M DUNCAN SCOTT
DOUGLAS A LUSSON

RULING ON MATTER TAKEN UNDER ADVISEMENT

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The Court has under advisement the following motions:

1. Third-Party Defendants Central Valley Specialties Inc, Michie Concrete LLC and Hart Plumbing of Arizona, Inc's motions to dismiss.
2. Third-Party Defendants Ultra Installations Inc. and Parra Drywall, Inc.'s Motion for Summary Judgment. These motions were joined by Defendants Cohaco Building Specialties, Inc. Hart Plumbing,

After consideration of the pleadings,

IT IS ORDERED:

1. Denying the Third-Party Defendants' motions to dismiss. A reading of paragraphs 1.2 and 2.1 of the subcontracts indicates that the parties intended to also directly benefit the owner (JWE). JWE has standing to bring this action since the subcontractors had obligations under their contracts toward the owner.
2. Denying both Ultra Installations and Parra Drywall's motions for summary judgment. Both parties argue that the plaintiff association is limited to an action for damages to the common areas of the condominium only. By statute, condominium is defined as real estate having both common and individual ownership. ARS 33-1202 (11). Under ARS 33-1242(4) an association may bring an action in its own name on behalf of itself or two or more unit owners on matters affecting the "condominium". This necessarily includes non-common areas. Res Judicata will protect the defendants here from subsequent claims by individual owners in the condominium seeking to litigate the same issues.