

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-008033

04/21/2008

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, having conducted an Evidentiary Hearing on the issue of the apportionment of the amount of Plaintiff's lien, enters the following ruling.

The evidence produced at the hearing clearly established that the materials supplied by the Plaintiff (asphalt base course, "ABC"), were used only on the interior roadways of the Montelena subdivision. Exhibit 1 in evidence.

The Court had been under the impression, that Tracts G, X, Y, and AA were serviced by the roads constructed by use of Plaintiff's ABC.

The Court was mistaken. None of the interior streets in the subdivision, on which Plaintiff's materials were used, serviced Tract G. Tract G is separated from the nearest street by a common area planted and turf according to Mr. Carlson.

There are only six points in the subdivision at which the interior streets contact Tracts AA, X and Y and five of six of those are at cul-de-sacs. Those particular points about a 10 to 15-foot wide public equestrian trail.

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Mr. Carlson specifically testified that the streets were put in for the benefit of the homeowners in the subdivision.

Because the streets constructed by the use of Plaintiff's materials do not directly benefit any of the tracts owned by the Town of Queen Creek, and because the Plaintiff's lien did not extend to those tracts, there can be no apportionment of the lien amount to those tracts. Adams Tree Service, Inc. v. Transamerica Title Insurance Company, 20 Ariz. App. 214, 218 511 P.2d 658 (App. 1973) Accordingly that part of the Court's February 19, 2008, minute entry which states:

"The Court GRANTS Defendant's 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"

is vacated. Plaintiff's lien extends only to the 426 residential lots in this subdivision.

Once the issue of Plaintiff's claims for attorneys fees have been resolved, Plaintiff shall submit an appropriate form of judgment reflecting this ruling.