

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-000707

04/23/2014

HONORABLE MARIA DEL MAR VERDIN

CLERK OF THE COURT  
M. Nielsen  
Deputy

MARKHAM CONTRACTING CO INC

KAREN A PALECEK

v.

PINNACLE POINT DEVELOPERS L L C, et al.

PINNACLE POINT DEVELOPERS L L C  
NO ADDRESS ON RECORD

RICHARD Q NYE  
FRANK S TOMKINS

UNDER ADVISEMENT RULING

This matter came before the Court for Oral Argument on March 28, 2014 regarding Plaintiff's Motion for Partial Summary Judgment with Regard to Mechanics Lien Remaining in Place, filed November 4, 2013; Defendant FDIC Motion for Summary Judgment regarding Extinguishment of Markham's Mechanic's Lien, filed November 4, 2013; and Defendants FDIC and PrimeAZ's Joint Motion for Summary Judgment against Markham on Count Six First Amended Complaint, filed October 30, 2013. The matter was taken under advisement.

The Court has considered the matters presented.

Summary Judgment is appropriate if, after reviewing the facts in the light most favorable to the non-moving party, no genuine issues of material fact remain. *Joseph v. Markovitz*, 27 Ariz. App. 122, 551 P.2d 571 (App 1976). "A 'genuine' issue of material fact is one that a reasonable jury, on the record before the court, could resolve in favor of either party". *Southwest Pet Products, Inc. v. Koch Ind.*, 273 F.Supp. 2d 1041, 1050 (D.Ariz.2003) (citations omitted). Even where the facts are undisputed, a genuine dispute as to conflicting inferences to be drawn from them precludes an award of summary judgment. *Executive Towers v. Leonard*, 7 Ariz. App. 331,439 P.2d 303 (1968). Evidence creating even the "slightest doubt" about the

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facts may be insufficient to withstand a motion for summary judgment. *Orme School v Reeves*, 166 Ariz. 301, 309 (1990).

Plaintiff's Motion for Partial Summary Judgment with Regard to Mechanics Lien and Defendant FDIC Motion for Summary Judgment re: Extinguishment of Mechanic's Lien

The only question before the Court is whether the Plaintiff's mechanic's lien remains in place given the Court's previous subrogation ruling. Both Parties agree this is a question of law before the Court. Equitable subrogation is "the substitution of another person in place of a creditor, so that the person whose favor it is exercised succeeds to the rights of the creditor in relation to the debt." *Sourcecorps, Inc. v. Norcutt*, 229 Ariz. 270, 272, 274 P.3d 1204, 1206 (2012). The Court is persuaded by the Defendant's position that the priority of the earlier mortgage is preserved in favor of the subsequent mortgage holder. The foreclosure of the subsequent mortgage is in effect a foreclosure of the earlier mortgage wiping out any junior liens. The result is supported by Arizona's statutory scheme governing deeds of trust and trustee's sales.

This Court makes no finding on whether or not the trustee sale was properly noticed and executed or whether a cause of action exists as a result.

**IT IS ORDERED** denying Plaintiff's Motion for Partial Summary Judgment with Regard to Mechanics Lien Remaining in Place, filed November 4, 2013; and granting Defendant FDIC Motion for Summary Judgment regarding Extinguishment of Markham's Mechanic's Lien, filed November 4, 2013.

Defendants FDIC and PrimeAZ's Joint Motion for Summary Judgment Count Six re Declaratory Judgment

The Plaintiff seeks a declaratory judgment entitling them to monies from the Defendants as a result of the trustee's sale on the property. The Parties agree that without a lien there is no legal right to any "additional monies." Without a lien any request for declaratory judgment is moot.

Therefore,

**IT IS ORDERED** granting the Defendants' FDIC and PrimeAZ's Joint Motion for Summary Judgment against Markham on Count Six First Amended Complaint, filed October 30, 2013.