

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-094169

04/15/2015

HON. DAVID K. UDALL

CLERK OF THE COURT

K. Tiero

Deputy

TROON NORTH ASSOCIATION

CHARLES E MAXWELL

v.

RIPSON HOLDINGS L L C, et al.

ELIJAH W ROSOV

MARK W WALDRON

NO ADDRESS ON RECORD

UNDER ADVISEMENT RULING

The Court took this matter under advisement after Oral Argument was held on April 3, 2015 on Defendant/Counterclaimant's Motion for Partial Summary Judgment Re: Plaintiff's Foreclosure Count and Re: Counterclaimant and Plaintiff/Counter Defendant's Cross Motion for Partial Summary Judgment. The Court has considered the arguments of the parties and the pleadings. The Court makes the following findings and enters the following orders.

With respect to Plaintiff's Motion to Strike,

THE COURT FINDS the Defendants have improperly cited a ruling from Superior Court Judge Mark Aceto.

IT IS ORDERED granting Plaintiff's Motion to Strike. The Court will not consider any of the references to Judge Aceto's ruling in this case.

THE COURT FINDS that Defendant Ripson is the owner of the property at 28695 North 94th Place in Scottsdale, Arizona. The Court further finds that Ripson has become delinquent in his payments for assessment fees and other late charges and costs. The Court further finds that

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Defendant Ripson became delinquent in 2009 and remained delinquent each year thereafter through 2014, at which time he paid off the delinquent assessment fees.

The Court will first consider Defendant's special action under A.R.S. §33-420 in which the Defendant attempted to find attorney Waldron and the Home Owners' Association responsible for failing to release the lis pendens lien which was filed.

The Court further finds that A.R.S. §33-420 is not applicable under the circumstances of this case. The Court further finds that at the time the lis pendens was filed, the Defendant owed \$1,682.00. The Court further finds that Defendant admits that he owed that money to the Home Owners' Association at the time the lis pendens was put into effect. The Court further finds as a matter of law, that A.R.S. §33-420 does not apply in these circumstances.

IT IS ORDERED dismissing Defendant's special action and counterclaim under A.R.S. §33-420 with prejudice.

Defendant contends that Plaintiff has no right for foreclosure under A.R.S. §33-1807(A) because he, at some point in time, paid the Home Owners' Association assessments. A.R.S. §33-1807(A) reads as follows:

“The association lien for assessments, for charges for late payments of those assessments, for reasonable collections of attorney's fees and for reasonable attorney's fees and costs incurred with respect to those assessments may be foreclosed in the same manner as a mortgage on real estate but may be foreclosed only if the owner has been delinquent in the payment of money secured by the lien, excluding reasonable collection fees, attorney's fees and charges for late payments and costs incurred with respect to those assessments, for a period of one year or for an amount of \$1,200.00 or more, whichever occurs first.”

The Court further finds that at one point the Plaintiff was in arrearage in his assessment fees for over a period of one year and over the amount of \$1,200.00. The Court further finds that on August 04, 2014, the Defendant paid his assessments in full. The Court interprets the phrase “has been” delinquent to be a triggering mechanism under which the Home Owners' Association could foreclose on a delinquent homeowner. The Court does not interpret the “has been” language to allow the delinquent homeowner to, at any point and time, pay the full assessment fees to avoid the foreclosure provisions of A.R.S. §33-1807(A).

The Court interprets the “has been” language as similar to that of a jurisdiction question that once the delinquent party has been in arrears for over a year or \$1,200, whichever occurs first, the statute applies at that point and time to the delinquent homeowner. The Court further

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finds that the Association's lien did not end with the Defendant's payment of his regular assessment portion of the lien.

The Court finds under article 7 of the CC&R's, specifically 7.02 and 7.04, that the Home Owners' Association has a right to place liens on parcels and to enforce them. The Court further finds that they also have the right to assess special assessments. The Court further finds that section 7.07 of the CC&Rs confirms the association's contractual liens against delinquent homeowners and their ability to collect late charges, interest and attorney's fees and costs. The Court further finds that the Planned Community Act does not pre-empt the Home Owners' Association's contractual liens and rights under their CC&R's and their rights to foreclose thereunder. The Court further finds that A.R.S. §33-1807(K) does contain language that shows Arizona Legislature's intent to pre-empt a contracted right or other statutory rights under the Planned Community Act. The Court further finds that language is not found with respect to the Home Owners' Association's right to foreclose under A.R.S. §33-1807(A). Therefore,

THE COURT FINDS the Home Owners' Association has a separate right to foreclose under its CC&R's as well as under A.R.S. §33-1807(A).

IT IS ORDERED denying Defendant's Motion for Partial Summary Judgment.

With respect to Plaintiff's foreclosure account and regarding their counterclaim,

THE COURT FINDS that there are no genuine issues of material fact, and the Plaintiff has the right to foreclose under both theories.

IT IS ORDERED granting Plaintiff's Cross Motion for Partial Summary Judgment.

THE COURT FINDS that the Association lien did not end when the Defendant paid the regular assessment fees, and that the Association may proceed pursuant to its lien and foreclosure rights under both its CC&Rs and under A.R.S. §33-1807(A).

IT IS ORDERED allowing Plaintiff to collect its attorney's fees and costs. Plaintiff shall have **30 days from receipt of this minute entry** to file a form of Judgment and a request for attorney's fees.

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Dated this 15th day of April, 2015

/ s / HONORABLE DAVID K. UDALL

HONORABLE DAVID K. UDALL
JUDICIAL OFFICER OF THE SUPERIOR COURT