

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-016728

06/23/2008

HON. MARK F. ACETO

CLERK OF THE COURT
M. Sahli
Deputy

TENTH AVENUE MISSIONS HOMEOWNERS ASSOCIATION INC RICHARD V MACK

v.

DENNIS P KLEINSCHMIT, et al.

ANDREW D LYNCH

MINUTE ENTRY

MOTION TO DISMISS

On March 14, 2008, Defendant filed a "Motion to Dismiss". The Court has reviewed the pleadings. For purposes of this motion, the Court deems the facts alleged in Plaintiff's Complaint to be true.

Plaintiff obtained a judgment against Defendants in justice court on May 30, 2002. On October 17, 2006, Plaintiff filed a certified copy of this judgment in the Superior Court and, from that date going forward, the judgment had like effect as a judgment of the Superior Court pursuant to A.R.S. § 33-962.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-016728

06/23/2008

Defendants argue that the judgment was not effectively filed in the Superior Court. Defendants argue that a justice court judgment may not be effectively filed in Superior Court pursuant to § 33-962 unless accompanied by a “separate information statement” as discussed in § 33-967. Defendants’ argument is without merit. A “separate information statement” is a prerequisite for perfecting a judgment as a lien. However, there is no requirement that such a “separate information statement” be filed in Superior Court.

If not renewed within five years, judgments expire. Plaintiff’s judgment against Defendants has never expired. Pursuant to § 12-1611, Plaintiff renewed its judgment against Defendants by filing the instant action.

Plaintiff perfected its lien on the judgment against Defendants’ property on or about February 7, 2008, when it recorded the renewed final judgment, accompanied by a § 33-967 “separate information statement”.

Section 33-1807 creates statutory liens for unpaid assessments in favor of homeowners associations. Such statutory liens are extinguished if an action is not initiated within three years. In this case, Plaintiff is not seeking to enforce a statutory lien. Rather, Plaintiff is seeking to enforce a judgment lien. The three-year limitation on statutory liens is not applicable to this action.

Plaintiff’s Complaint includes a prayer for “reasonable attorneys’ fees and costs... pursuant to A.R.S. § 33-1807....” Plaintiff admits on page six of the Response filed on April 2, 2008, that “A.R.S. § 33-1807 is inapplicable to this case....” Under the circumstances,

IT IS ORDERED dismissing Plaintiff’s claim for “reasonable attorneys’ fees and costs... pursuant to A.R.S. § 33-1807....”

Defendants have not established that the remainder of Plaintiff’s Complaint fails to state a claim upon which relief can be granted. Therefore,

IT IS ORDERED denying the remainder of Defendants’ Motion to Dismiss”.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-016728

06/23/2008

MOTION FOR SUMMARY JUDGMENT/MOTION TO STRIKE

A pleading filed by Plaintiff on April 2, 2008, includes a "Motion for Summary Judgment". Because they had filed a Motion to Dismiss, Defendants' answer was not due at the time the Motion for Summary Judgment was filed. Under the circumstances, Defendants' filed on May 5, 2008, a "Motion to Strike" Plaintiff's Motion for Summary Judgment.

The Court has now denied Defendants' Motion to Dismiss.

IT IS ORDERED establishing the deadline for Defendants' Answer to be ten court days after this minute entry is filed by the Clerk of the Court. Under the circumstances, striking Plaintiff's Motion for Summary Judgment would generate unnecessary attorney fees and would be inconsistent with the interests of judicial economy. Under the circumstances,

IT IS ORDERED denying Defendants' Motion to Strike.

Defendants have indicated a need to do discovery before responding to Plaintiff's Motion for Summary Judgment. Given all of the circumstances,

IT IS ORDERED extending to September 15, 2008, the deadline for Defendants' Response to Plaintiff's Motion for Summary Judgment.

TELEPHONIC COMPREHENSIVE PRETRIAL CONFERENCE

On March 16, 2008, Plaintiff filed a "Request for Rule 16(b) Comprehensive Scheduling Conference".

IT IS ORDERED setting a telephonic Rule 16 Comprehensive Pretrial Conference on **July 25, 2008 at 10:45 a.m.**, (allotted time: 15 minutes) in this division.

NOTE: This division will place the conference call at the time of the hearing.

IT IS FURTHER ORDERED that counsel for all parties shall meet personally before the Pretrial Conference and prepare a Joint Pretrial Memorandum addressing all applicable subjects set forth in Rule 16(b) or Rule 16(c) of the Arizona Rules of Civil Procedure. The parties shall file and provide this Division with a copy of the Joint Pretrial Memorandum no later than five (5) judicial days before the conference, addressing all applicable subjects in ARCP 16.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-016728

06/23/2008

Suggested dates for disclosure and discovery will be stated as dates certain and not, for example, as “___ days before trial”. If counsel are unable to agree on any of the items in the Joint Pretrial Memorandum, the reasons for their inability to agree shall be set forth in the Memorandum.

Counsel are reminded that the Court may impose sanctions against counsel and/or their clients for failure to participate in good faith in the Joint Pretrial Conference Memorandum or the Pretrial Conference.

If a party is not represented by counsel, that party has all of the obligations that would otherwise be the obligations of counsel.