

07/09/2002

CLERK OF THE COURT  
FORM V000A

JUDGE PENDLETON GAINES

J. Stobierski  
Deputy

CV 2001-006128

FILED: \_\_\_\_\_

FIRST AMERICAN TITLE INSURANCE  
COMPANY

JULES I FIRETAG

v.

TANGLEWOOD ASSOCIATION

CALLIOPE SCHICKLER

ERIC W SACHRISON

RULING

This case was tried to the Court, by agreement, on written submissions consisting of the briefing on Plaintiff's and Defendant's motions for summary judgment, statements of facts (the parties agreed the facts are undisputed) and supporting documents. A pending request for findings of fact and conclusions of law was withdrawn, and neither party subsequently requested such. The case was argued on July 8, 2002, and taken under submission.

The Court finds in favor of Plaintiff on its complaint to quiet title.

The relative priority of Plaintiff's agreement for sale and Defendant's lien, and resulting foreclosure of that lien, for unpaid homeowner's assessments is the crux of the controversy. By the terms of A.R.S. Section 33-1256(B)(2), a homeowners' association lien for unpaid assessments is expressly subordinated to a seller's interest in an agreement for sale "recorded prior to the lien arising pursuant to subsection A of

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this section." Here, the agreement for sale was recorded in 1969. The homeowners' assessment became due subsequently, was foreclosed and resulted in a sheriff's deed issued to Defendant's predecessor in 1991.

Defendant argues that its statutory lien dates from 1964, the date upon which the homeowners' association's CC&R's were recorded. This argument is contrary to the express language of A.R.S. Section 33-1256 (A), which provides that:

"The Association has a lien on a unit for any assessment levied . . . from the time the assessment . . . becomes due." (Emphasis added).

Here, by the explicit terms of the statute, the assessment, which admittedly was not due until after the recordation of Plaintiff's agreement for sale, must necessarily be subordinate and inferior to the interest represented by the agreement for sale.

Defendant concedes that its "sheriff's deed" argument rises or falls with a determination of the priority issue. The Court is persuaded by, and adopts, Plaintiff's positions on the adverse possession and statute of limitations issues set forth in its briefing.

**IT IS ORDERED AS FOLLOWS:**

1. The Court finds for Plaintiff on its complaint to quiet title.
2. Plaintiff shall submit a formal judgment consistent with this **order not later than August 9, 2002**, failing submission of which this case will be dismissed without prejudice.