

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-094261

08/12/2014

HON. MARK F. ACETO

CLERK OF THE COURT
M. Scott
Deputy

TROON RIDGE ESTATES I I I & I V
HOMEOWNERS ASSOCIATION

JOSHUA M BOLEN

v.

4 A A R HOLDINGS L L C, et al.

ELIJAH W ROSOV

GARY N LENTO
CITIBANK SOUTH DAKOTA N A
7920 NW 110TH ST.
KANSAS CITY MO 64153
MICHAEL D RIPSON
28695 N 94TH PL
SCOTTSDALE AZ 85262
LINDSEY O STEARNS
ANDREW J VAN LOON

MINUTE ENTRY

The Court makes note of the following:

- CV2012-018064 has been consolidated with CV2012-094261.
- On February 5, 2014, Forange filed a “Motion for Partial Summary Judgment”. This motion relates exclusively to the claims asserted by Forange in the Complaint it filed in CV2012-018064.
- Forange named as Defendants in the Complaint it filed in CV2012-018064 the following: Troon Ridge HOA; attorney Javier Delgado; attorney Joshua Bolen; and attorney Lindsey Stearns (formerly Lindsey O’Connor). In this Minute Entry, these parties will be collectively referred to as “Defendants”.

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- On March 12, 2014, Defendants filed a Cross-motion for Summary Judgment. Through this “Cross-motion”, Defendants move for Summary Judgment on all claims asserted against them in the Complaint filed by Forange in CV2012-018064.
- The Court has reviewed the pleadings.
- Pursuant to Rule 7.1, the Court declines to schedule oral argument.

MOTION TO STRIKE

On June 4, 2014, Forange filed a “Motion to Strike”. Regarding this motion, the Court has reviewed the pleadings.

The Court makes note of the following:

- In their “Motion for Summary Judgment”, Defendants characterize the request for information that is the subject of the pending motions as “trickery and an attempt to avoid a contractual obligation....”
- In its “Response to Cross-motion”, Forange did not address this “trickery” argument.
- In their “Reply in Support of ...Cross-motion”, Defendants made a further “trickery” argument in the paragraph beginning on the bottom of page 4.

Under the circumstances,

IT IS ORDERED granting in part Forange’s “Motion to Strike”. More specifically,

IT IS ORDERED striking the paragraph beginning on the bottom of page 4 of Defendants’ “Reply in Support of...Cross-motion”.

IT IS ORDERED denying the remainder of Forange’s “Motion to Strike”.

MOTIONS FOR SUMMARY JUDGMENT

The Court makes note of the following:

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- A.R.S. §33-1807 creates a lien for unpaid assessments in favor of HOAs.
- Regarding such liens, subsection I of this statute provides that HOAs must furnish payoff statements within 10 days of a request made by a unit owner, a lienholder, or an escrow agent.
- Subsection I provides a special penalty provision regarding requests made by escrow agents. In this regard, the subsection provides that failure to furnish a payoff statement within 10 days of a request by an escrow agent shall extinguish any lien for unpaid assessments.
- In this case, the following facts are undisputed: an escrow agent requested a payoff statement regarding the lien asserted against the subject unit. This request was not made in the context of any pending sale, transfer, lease, or other transaction regarding the subject unit. Rather, the escrow agent made the request simply because somebody asked her to.
- While the Court's ruling in no way hinges on this, the Court makes note of the following as an aside: as a unit owner, Forange had the right to demand and receive a payoff statement within 10 days pursuant to the statute. The only rational reason to request the lien amount information through an escrow agent was the hope that the HOA would not timely respond and thereby set the stage for an argument that the lien was extinguished.
- The pivotal issue is this: what is the intent of §33-1807 (I)?¹ Is the statute designed to imbue escrow agents with the magical ability to make liens disappear for no other reason than that they are escrow agents? Or is the statute designed to facilitate sales and other transactions involving condominium units by providing that HOAs must either timely respond to requests for payoff statements or lose their liens? In other words, is the statute intended to apply only when an escrow agent is taking action regarding a pending escrow transaction?
- Neither the language of the statute nor logic support a conclusion that the statute was intended to give special powers to escrow agents just because....
- Statutes must have a rational interpretation, to be collected not only from the words used, but from the policy which may be reasonably supposed to have dictated the enactment. *Mahoney v. Maricopa County*, 49 Ariz. 479, 491 (1937).

¹ Both sides agree that this issue should be resolved as a matter of law.
Docket Code 019

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The penalty provision in question was certainly dictated by the intention to ensure that HOAs timely respond to requests for payoff statement in the context of an actual pending escrow transaction.

Given all of the circumstances, including but not limited to those discussed above,

IT IS ORDERED as follows:

- Forange's "Motion for Partial Summary Judgment" is denied.
- Defendants' "Motion for Summary Judgment" is granted.