

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-000707

09/12/2011

HONORABLE MARIA DEL MAR VERDIN

CLERK OF THE COURT  
L. Firriello  
Deputy

MARKHAM CONTRACTING CO INC

KAREN A PALECEK

v.

PINNACLE POINT DEVELOPERS L L C, et al.

DANIEL E FREDENBERG

**MINUTE ENTRY**

This matter came before the Court on August 1, 2011 on the Plaintiff's Motion for Summary Judgment filed February 15, 2011; and the Defendant's Cross Motion for Summary Judgment filed April 8, 2011. The matter has been under advisement.

The Court has considered the matters presented, including the Plaintiff's Motion for Summary Judgment filed February 15, 2011; and the Defendant's Response and Cross Motion for Summary Judgment filed April 8, 2011; the Plaintiff's Objection, Reply and Response to Cross-Motion filed May 16, 2011; and the Defendant's Reply filed June 8, 2011; the authorities cited and argument made by counsel.

THE COURT FINDS the Plaintiff Markham has a valid lien in the amount of \$341,777.25. The priority of the Plaintiff's lien however is in question.

THE COURT FURTHER FINDS a genuine issue of material fact exists as to whether or not equitable subrogation should apply. The Defendant has failed to show that the requisite implied or expressed intent occurred between the lenders. It is further unclear whether allowing subrogation to occur up to the extent and/or more than the amount of the original 2006 DOT will

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prejudice Markham. Without resolving these issues, the first lien priority of the Lending Parties is unclear.

**IT IS ORDERED** denying Plaintiff's Motion for Summary Judgment filed February 15, 2011 to the extent that it requests to have Markham's lien in a priority position; and denying Defendant's Cross Motion for Summary Judgment filed April 8, 2011.

The Court takes no further action.

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.