

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-002237

10/08/2013

HONORABLE MARIA DEL MAR VERDIN

CLERK OF THE COURT
M. Nielsen
Deputy

ROSEVIEW HOMEOWNERS ASSOCIATION

JAMES H HAZLEWOOD

v.

DANIELA C MIHAILA, et al.

JONATHAN A DESSAULES

KEYBANK NATIONAL ASSOCIATION
NO ADDRESS ON RECORD

RULING

This matter came before the Court for Oral Argument on August 13, 2013 re Defendants' Motion for Partial Summary Judgment, filed May 8, 2013; and Plaintiff's Cross-Motion for Summary Judgment, filed July 10, 2013. The matter was taken under advisement.

The Court has considered the matters presented including the Motions, Responses and Replies filed; authorities cited and Counsels' argument.

Summary Judgment is appropriate if, after reviewing the facts in the light most favorable to the non-moving party, no genuine issues of material fact remain. *Joseph v. Markovitz*, 27 Ariz. App. 122, 551 P.2d 571 (App 1976). "A 'genuine' issue of material fact is one that a reasonable jury, on the record before the court, could resolve in favor of either party". *Southwest Pet Products, Inc. v. Koch Ind.*, 273 F.Supp. 2d 1041, 1050 (D.Ariz.2003) (citations omitted). Even where the facts are undisputed, a genuine dispute as to conflicting inferences to be drawn from them precludes an award of summary judgment. *Executive Towers v. Leonard*, 7 Ariz. App. 331,439 P.2d 303 (1968). Evidence creating even the "slightest doubt" about the facts may be insufficient to withstand a motion for summary judgment. *Orme School v Reeves*, 166 Ariz. 301, 309 (1990).

The Plaintiff, a homeowners' association, seeks to foreclose on the property pursuant to A.R.S. s33-1807 and obtain a money judgment for amounts they claim are owed. The

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-002237

10/08/2013

Defendants argue they are entitled to summary judgment as a matter of law because the Plaintiff lacks a legal basis to foreclose or obtain what would be a second money judgment over the same debt.

The Parties agree that the Plaintiff obtained a judgment against the Defendants in the amount of \$3,426.29 which included monies owed through May 31, 2011. A little over a year later, the Plaintiff filed this lawsuit, to foreclose on the property and seeking judgment for monies owed from mid-2010 through July 2012. Subsequent to the filing of the lawsuit, the Defendants made payments to bring their account current through December 31, 2012 but only as it pertained to assessments owed.

The Parties disagree that the Defendants have incurred monetary penalties since May 31, 2011 for violations under the Association's policies.

There is no question that at the time the lawsuit was filed, the Defendants were not in compliance with their contractual obligation and current with monies owed. In fact, they were delinquent for more than a year or owed at least \$1,200.00 in assessments. However, as of the filing of this Motion, the Defendants have paid the past due assessments that triggered the right to foreclose under A.R.S. s 33-1807.

The Plaintiff may still pursue a monetary claim for the remaining amounts owed after May 31, 2011 (as long as they are properly pled) to include attorney's fees, as well as remedies for payment of the existing judgment entered prior to May 31, 2011, but not under the foreclosure statute.

The Court determines there are genuine issues of material facts as it pertains to the Defendants' challenge of the alleged violation of the Association policies and fines incurred. The Plaintiff has not shown they are entitled to summary judgment on this issue.

IT IS ORDERED granting Defendants' Motion for Partial Summary Judgment filed May 8, 2013 with respect to foreclosure of the property.

IT IS ORDERED denying the Plaintiff's Cross-Motion for Summary Judgment filed July 10, 2013.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 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.