

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2018-002502

10/24/2018

HON. TERESA SANDERS

CLERK OF THE COURT  
A. Durda  
Deputy

DEANNE COURT CONDOMINIUM  
ASSOCIATION

AUGUSTUS H SHAW IV

v.

DENNIS M EMMERICH, et al.

GARY F URMAN  
JUDGE SANDERS

RULING

The Court has read and considered the following pleadings:

- Plaintiff's Motion for Summary Judgment filed June 11, 2018.
- Plaintiff's Statement of Facts in Support of Its Motion for Summary Judgment filed June 11, 2018.
- Defendant AHCCCS's Response filed July 16, 2018.
- Plaintiff's Reply filed August 13, 2018.

The Court has also considered the authorities cited by counsel, as well as arguments made on October 19, 2018.

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The issue to be resolved in this matter is whether Plaintiff or Defendant AHCCCS has the priority lien on Defendant Dennis Emmerich's real property located at 10430 West Deanne Drive, Sun City, Arizona, 85351. Plaintiff, the Homeowner's Association governing the property, claims that it has the priority lien pursuant to its contract with Defendant Emmerich. Defendant AHCCCS claims that it has the priority lien pursuant to A.R.S. § 33-1256(B)(3).

Plaintiff contends that it is entitled to summary judgment on its claim because its lien was perfected prior to AHCCC's lien, and AHCCS is not entitled to priority pursuant to A.R.S. § 33-1256(B)(3).

Defendant AHCCCS contends that A.R.S. § 33-1256(B)(3) leaves no doubt that its lien constitutes "governmental assessments or charges against the unit", and takes priority over Plaintiff's HOA lien.

Pursuant to Ariz. R. Civ. P. Rule 56(a), "[t]he court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Evidence is viewed in the light most favorable to the nonmoving party. *Sanchez v. City of Tucson*, 191 Ariz. 128, 953 P.2d 168 (1998). "It is only the existence of uncontroverted competent evidence favorable to a movant, from which only one inference can be drawn, that entitles a party to summary judgment." *Nemec v. Rollo*, 114 Ariz. 589, 592, 562 Pl.2d 1087, 1090 (App. 1977) (citing *Choisser v. State ex rel. Herman*, 12 Ariz.App. 259, 469 P.2d 493 (1970)).

"When deciding a motion for summary judgment, '[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.'" *Allstate Indem. Co. v. Ridgely*, 214 Ariz. 440, 444, ¶ 19, 153 P.3d 1069, 1073 (App. 2007) (quoting *Thomspon v. Better-Bilt Aluminum Prds. Co.*, 171 Ariz. 550, 558, 832 P.2d 203, 211 (1992)). "Summary judgment is inappropriate where the facts, even if undisputed, would allow reasonable minds to differ." *Nelson v. Phoenix Resort Corp.*, 181 Ariz. 188, 191, 888 P.2d 1375, 1378 (App. 1994).

In our case, both parties concede that there are no genuine issues of material fact, and that the dispositive issue is a legal determination that must be made by the Court. Each party indicated they were unaware of any specific authority regarding the issue of whether a claim by a HOA or a governmental agency took priority in a case such as the one before the Court.

A.R.S. § 33-1256(B)(3) provides that a condominium homeowner's association has a priority lien for assessments against a property except for "liens for real estate taxes and other governmental assessments or charges against the unit." Plaintiff contends that AHCCC's lien is not a governmental assessment or charge against the unit.

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A.R.S. § 36-2935 authorizes AHCCCS to file a claim “against a member’s estate to recover paid assistance”, and that it is also “entitled to a lien on a member’s property to recover paid assistance the member receives.” Defendant Emmerich is receiving “paid assistance” from AHCCCS, and there is no dispute that AHCCCS is a governmental agency.

Based upon the matters presented, the Court finds that AHCCC’s lien on Defendant Emmerich’s property is a “governmental assessment or charge” against it, and therefore takes priority over Plaintiff’s lien.

For the reasons set forth above,

**IT IS ORDERED** denying Plaintiff’s Motion for Summary Judgment filed June 11, 2018.

Defendant AHCCCS is directed to submit a form of order no later than 30 days from the date of this minute entry.