

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2023-012489

10/18/2024

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT  
L. Gilbert  
Deputy

SAFARI DRIVE CONDOMINIUM  
ASSOCIATION

MONYA N COHEN

v.

WUZUP HOMES L L C, et al.

ISAAC M GABRIEL

LORI A METCALF  
JUDGE WARNER

MINUTE ENTRY

East Court Building – Courtroom 712

11:32 a.m. This is the time set for Oral Argument on Counterdefendant Safari Drive Condominium Association's Amended Partial Motion to Dismiss Wuzup Homes, LLC's Third and Fourth Counterclaims Based on Alleged Violations of 42 U.S.C. §3604 and A.R.S. §41-1492-02 Pursuant to Rule 12(C), Arizona Rules of Civil Procedure. Counterdefendant Safari Drive Condominium Association is represented by counsel, Lori Metcalf. Counterclaimant Wuzup Homes, LLC is represented by counsel, Isaac M. Gabriel and Sarah D. Malham.

A record of the proceedings is made digitally in lieu of a court reporter.

Argument is presented.

**IT IS ORDERED** taking this matter under advisement.

11:53 a.m. Matter concludes.

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LATER:

In this action to foreclose a lien for unpaid condominium association assessments, Plaintiff Safari Drive Condominium Association (“the Association”) seeks dismissal of counterclaims brought by Plaintiff Wuzup Homes, LLC (“Wuzup”) under the Arizona and Federal Fair Housing Acts. The Association argues that any damages for Fair Housing Act violations cannot be offset against its claim and lien so as to prevent foreclosure.

Wuzup responds by disclaiming any intent to offset its damages. *See* Response at 5 (“Wuzup Homes is not seeking to ‘offset’ any debts owed to Safari HOA”). Rather, it claims that, because the Association failed to accommodate Wuzup’s owner’s disability, Wuzup did not receive proper notice of assessments and therefore is not liable for them. Yet at oral argument, Wuzup acknowledged its counterclaims seek damages.

As a matter of law, any damages Wuzup might be awarded under either the Arizona or Federal Fair Housing Acts cannot be offset against the Association’s lien so as to prevent lien foreclosure. *Nutter v. Occidental Petroleum Land & Dev. Corp.*, 117 Ariz. 458, 460-61 (App. 1977). But this does not preclude Wuzup from raising an alleged failure to provide proper notice in violation of the Fair Housing Act as a defense to assessments. Nor does it prevent Wuzup from pleading its Fair Housing Act claims as counterclaims for damages in this action.

**IT IS ORDERED** denying the Association’s July 29, 2024 Amended Partial Motion To Dismiss Wuzup Homes, LLC’S Third And Fourth Counterclaims.