

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-001865

11/03/2023

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT  
P. McKinley  
Deputy

VAL VISTA LAKES COMMUNITY  
ASSOCIATION, THE

GREGORY A STEIN

v.

SUSAN M WELLMAN, et al.

OLEN V LENETS

JUDGE BLANEY

**UNDER ADVISEMENT RULING**

The Court has reviewed and considered the following:

1. Plaintiff's *Motion for Partial Summary Judgment Against Defendant Susan M. Wellman on Count II – Lien Foreclosure*;
2. Plaintiff's *Separate Statement of Facts in Support of Motion for Partial Summary Judgment Against Defendant Susan M. Wellman on Count II – Lien Foreclosure*;
3. Defendant Susan Wellman's *Response to Plaintiff's Motion for Partial Summary Judgment*;
4. Defendant Susan Wellman's *Controverting and Separate Statement of Facts in Support of Response to Motion for Partial Summary Judgment*;
5. Plaintiff's *Reply in Support of Motion for Partial Summary Judgment Against Defendant Susan M. Wellman on Count II – Lien Foreclosure*;
6. Plaintiff's *Response to Defendant's Controverting and Separate Statement of Facts in Support of Response to Motion for Partial Summary Judgment*; and
7. The arguments received at the November 1, 2023 oral argument.

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This case arises from a dispute between a homeowner and the governing homeowner's association. Plaintiff HOA alleged that Defendant was in violation of the HOA's declaration and other governing documents because she maintained a large quantity of trash on her property, had unauthorized structures in her backyard in which various transient individuals were living, inoperable vehicles, and other violations that constituted a nuisance. Plaintiff obtained a default judgment against Defendant, along with a permanent injunction ordering that Defendant permanently abate the nuisance. The injunction also contained a self-help provision, pursuant to which Plaintiff could enter the property to abate the nuisance after providing notice if Defendant failed to comply with the injunction.

Defendant failed to comply with the injunction and Plaintiff therefore exercised the self-help provision. Plaintiff's contractors cleared the property of over 220,000 pounds of trash and other unauthorized items. The total cost to Plaintiff for the removal, not including attorney's fees and costs, was \$38,960.99, which Plaintiff charged to Defendant's account ledger pursuant to the default judgment and Plaintiff's governing documents. Defendant subsequently began including with her monthly assessment an extra amount toward the \$38,960.99. When she had paid approximately \$2,665.54 toward the total, Plaintiff filed a Supplemental Complaint to foreclose upon the remaining \$36,295.45.

After the initiation of this action, Defendant paid the remaining \$36,295.45 in full. Plaintiff seeks its reasonable attorney's fees and costs arising from the foreclosure action.

Summary judgment is appropriate only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *See* Rule 56(a), *Arizona Rules of Civil Procedure*; *Orme School v. Reeves*, 166 Ariz. 301, 305 (1990); *Hourani v. Benson Hosp.*, 211 Ariz. 427, 432 (App. 2005). All facts must be viewed in the light most favorable to the nonmoving party. *See Grain Dealers Mutual Insurance Co. v. James*, 118 Ariz. 116 (1978); *Farmers Ins. Co. v. Vagnozzi*, 138 Ariz. 443, 448 (1983). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts" are not proper on summary judgment. *Orme School*, 166 Ariz. at 309-10 (citing *Anderson v. Liberty Lobby*, 477 U.S. 242, 255, 106 S.Ct. 2505, 2513, 91 L.Ed.2d 202 (1986)).

**THE COURT FINDS** that Plaintiff's costs incurred while exercising self-help were properly charged to Defendant's account ledger and secured by Plaintiff's assessment lien, subject to foreclosure by Plaintiff.

**THE COURT FURTHER FINDS** that on the date that Plaintiff initiated this action, Plaintiff was entitled to foreclose on the remaining \$36,295.45 because Defendant was "delinquent in the payment of monies secured by the lien ... in the amount of \$1,200 or more." A.R.S. § 33-1807(A); *Laveen Meadows Homeowners Association v. Mejia*, 249 Ariz. 81, 84-86 (App. 2020).

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**THE COURT FURTHER FINDS** that Defendant's arguments in opposition lack merit. Specifically, Defendant's argument that Plaintiff failed to comply with the notice provision A.R.S. § 33-1807(K) before filing its foreclosure action fails to recognize that Defendant had sufficient notice that Plaintiff was initiating collection activities. The parties were already involved in legal proceedings regarding this issue and the Court had already issued the default judgment.

**THE COURT FURTHER FINDS** that there are no genuine issues of material fact precluding summary judgment and Plaintiff has established its entitlement to judgment as a matter of law.

**IT IS THEREFORE ORDERED** granting Plaintiff's *Motion for Partial Summary Judgment Against Defendant Susan M. Wellman on Count II – Lien Foreclosure*.

**IT IS FURTHER ORDERED** directing Plaintiff to prepare and lodge a form of Judgment on or before **November 13, 2023**. Plaintiff shall file any application for attorney's fees and statements of taxable costs by this deadline as well. Defendant shall file any objections or responses to the form of judgment or to the request for attorney's fees and costs within **ten (10) days** thereafter.

**IT IS FURTHER ORDERED** the Judgment shall contain Rule 54(c) language as upon resolving attorney's fees and costs, no further matters will remain pending.