

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-008033

12/05/2007

HON. EDWARD O. BURKE

CLERK OF THE COURT
T. Tankersley
Deputy

UNITED METRO MATERIALS INC

FRANCES J HAYNES

v.

REQUIP L L C, et al.

WILLIAM J SIMON
SEAN P ST CLAIR

RULING

The Court has received and reviewed Plaintiff Rinker Material's ("Rinker") Motion for Partial Summary Judgment No. 2 Re: The Validity of the Notice and Claim of Lien as to USDL and Beazer Homes, the Defendants' Response and the Plaintiff's Reply; Plaintiff Rinker Material's Motion for Partial Summary Judgment No. 3 Re: The Validity of Rinker Material's Lien Claim as to the Entire Montelena Subdivision Property and Owner Defendants' Counterclaim, the Defendants' Response and Plaintiff's Reply; and Defendants' U.S. Development Land L.L.C. ("USDL"), Western Surety Company ("Western"), Beazer Homes Holding Corp., ("Beazer") Standard Pacific of Arizona Inc., ("Standard") and Montelena Master Community Association's renewed Motion for Partial Summary Judgment, Plaintiff Rinker Material's Response and the Defendants' Reply and, having heard oral argument and reviewed the cases cited, enters the following rulings.

1. Plaintiff Rinker Material's Motion for Partial Summary Judgment No. 2 is GRANTED.
2. Plaintiff Rinker Material's Motion for Partial Summary Judgment No. 3 Re: The Validity of Rinker Material's Lien Claim as to the Entire Montelena Subdivision Property and Owner Defendants' Counterclaim is GRANTED.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-008033

12/05/2007

3. Defendants' U.S. Development Land L.L.C., Western Surety Company, Beazer Homes Holding Corp., Standard Pacific of Arizona Inc., and Montelena Master Community Association's Renewed Motion for Partial Summary Judgment is DENIED.

FACTS

1. On January 5, 2004, USDL purchased a parcel of real property that became known as the Montelena subdivision ("Montelena").
2. Within 90 days thereafter USDL formed Defendant Montelena Master Community Association (the "Association") and deeded what became the common area of Montelena to the Association..
3. USDL sold two large parcels of Montelena to Beazer and Defendant Standard Pacific of Arizona, Inc. ("Standard").
4. USDL entered into a Joint Development and Escrow Agreement (the "Joint Agreement") with Beazer, Standard and the Association to construct the subdivision infrastructure for all of Montelena; i.e. grading and paving the roads, installing a storm drainage system, connecting each lot to the water main, and installing fencing, landscaping and recreational facilities, (together the "Improvements").
5. USDL was designated in the Joint Agreement as the Contract Administrator to hire engineers and contractors to construct the Improvements. Part of USDL's responsibilities as Contract Administrator was to bill each of the other developers and collect and pay their pro-rata shares of the cost of the Improvements.
6. USDL owns lots 223-403 of Montelena.
7. Beazer owns lots 1-101 of Montelena
8. On March 15, 2005, USDL contracted with Defendant Requip to perform paving work on Montelena's streets. Rinker supplied materials to Requip for use at Montelena. Requip left the job without fully completing its work.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-008033

12/05/2007

9. On April 5, 2005, USDL and Beazer entered into a joint development and escrow agreement for the purposes of jointly developing Montelena. USDL was designated to administer contracts.
10. On May 9, 2005, Rinker mailed a Preliminary Notice Job Information Request to Requip concerning Montelena.
11. Requip responded in writing stating that Beazer Homes Sales of Arizona was the owner of the property to which the materials were to be supplied, that Requip was the general contractor, and that Compass Bank was the lender.
12. On May 13, 2005, Rinker mailed a Preliminary Twenty Day Notice ("Prelim") to Beazer, Requip and Compass Bank, as evidenced by a certificate of mailing as proof of service by first class mail. Beazer claims it did not receive this Prelim. George L. Robb III, Beazer's Vice President of land development says he reviewed the preliminary lien notice file kept by Beazer and did not find a copy of the Prelim in it.
13. On November 23, 2005, Rinker prepared and served on Beazer, Requip and Compass Bank an amendment to the May 13, 2005, Prelim. This amended notice was found in Beazer's file.
14. October 17, 2005, Rinker sent a Preliminary Notice Job Information Request to Requip. Requip responded indicating that USDL was the owner of the property to which materials were to be supplied.
15. October 21, 2005, Rinker served on USDL, Requip and Compass Bank a Prelim. USDL admits that it was served by mail and received this Prelim. USDL also admits that it did not provide Rinker with any of the information requested pursuant to A.R.S. § 33-992.01(I) nor did it notify Rinker of any inaccuracy in the 2005 prelimin.
16. Rinker recorded a Notice and Claim of Lien (the "Lien") against Montelena on March 9, 2006, and served a copy on the owners of the property.
17. Beazer claims that because it did not receive the May 13, 2005, Prelim. mailed by Rinker, Rinker's claim for materials can only date back to November 3, 2005, i.e. 20 days before Rinker's November 23, 2005, Amended Prelim it did receive.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-008033

12/05/2007

18. Defendants claim that Rinker's Notice and Claim of Lien is invalid as to USDL's property for material supplied under the May 13 and November 23, 2005, Prelims. Beazer claims that the lien is invalid as to its property under the October 21, 2005, Prelim. Defendants also claim that the maximum amounts secured by the lien on Beazer's property is \$157,265.08 and on USDL's property \$13,638.13.
19. Defendants recorded a statutory discharge of lien bond on April 18, 2006.

RULING

Rinker's Motion for Partial Summary Judgment No. 2

Rinker's Motion for Partial Summary Judgment No. 2 asks the Court to find that:

1. Rinker's Prelims served on USDL and Beazer substantially comply with A.R.S. § 32-992.01 (C) and (D);
2. USDL and Beazer are precluded from asserting any inaccuracies in the Prelims under A.R.S. § 32-992.01 (I); and
3. Rinker's lien against Montelena is valid as to USDL and Beazer.

A.R.S. § 32-992.01 (F) states:

F. The notice or notices required by this section may be given by mailing the notice by first class mail sent with a certificate of mailing, registered or certified mail, postage prepaid in all cases, addressed to the person to whom notice is to be given at the person's residence or business address. Service is complete at the time of the deposit of notice in the mail.

Rinker substantially complied with the service requirement set forth above as to USDL and Beazer.

The Court gives very little weight to the affidavit George Robb III because he has no personal knowledge as to whether Beazer received the May 13, 2005, Prelim and the information in his affidavit is simply based on his review of a file of Beazer's accounting department. In any event, service of the May 13, 2005, Prelim was completed on Beazer on the date of the mailing certificate and Robb's affidavit does not rebut the presumption of receipt of an item properly placed in the United States Mail.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-008033

12/05/2007

The Court finds that Rinker has established as facts that appear without substantial controversy the nine items set forth on pages 6-7 of its Motion for Partial Summary Judgment No. 2.

Rinker's Motion for Partial Summary Judgment No. 3

Rinker's Motion for Partial Summary Judgment No. 3 asks the Court to find that the Lien is valid as to all portions of the Montelena subdivision and to dismiss the Defendants' counterclaim.

The Court has found that USDL and Beazer were served with Rinker's Prelims. Neither notified the other developers in Montelena of the Prelims nor advised Rinker of the names and addresses of the other owners as required by A.R.S. 32-992.01.

For the reasons set forth in Rinker's memoranda and the holding in James Weller, Inc. v. Hansen, 21 Ariz. App. 217, 517 P.2d 1110 (1974), the Court finds that the Lien is valid as to all portions of the Montelena subdivision.

Defendants, USDL, Western, Beazer, Standard Pacific, and the Association's Renewed Motion for Partial Summary Judgment

Because of the rulings set forth above, Defendants' U.S. Development Land L.L.C., Western Surety Company, Beazer Homes Holding Corp., Standard Pacific of Arizona Inc., and Montelena Master Community Association's Renewed Motion for Partial Summary Judgment must be DENIED.