

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-016728

12/01/2008

HON. MARK F. ACETO

CLERK OF THE COURT
M. Sahli
Deputy

TENTH AVENUE MISSIONS HOMEOWNERS
ASSOCIATION INC

COREY ISRAEL RICHTER

v.

DENNIS P KLEINSCHMIT, et al.

ANDREW D LYNCH

MINUTE ENTRY

On April 2, 2008, Plaintiff filed a pleading which includes a "Cross-Motion for Summary Judgment". On October 14, 2008, Defendants also filed a pleading which includes a Cross-Motion for Summary Judgment". The Court has reviewed the pleadings. Pursuant to Rule 7.1, the Court declines to schedule oral argument.

The Court will not comment on all arguments made; however, the Court makes note of the following:

- In essence, Defendants argue that a renewed judgment cannot form the basis of a valid lien. The Court rejects this argument. Plaintiff renewed its judgment against Defendants on November 3, 2006. Plaintiff perfected this lien by recording on or about February 7, 2008. At a minimum, this lien will remain viable for five years after renewal of the judgment upon which it is based. A.S.R. § 33-964.

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- While Plaintiff could have pursued relief pursuant to A.R.S. § 33-1807, Plaintiff did not do so. Section 33-1807 does not abrogate other remedies available to a planned community association.
- A.R.S. § 33-722 precludes a creditor from simultaneously seeking money damages and foreclosure. However, it does not preclude a creditor from first obtaining a money judgment, and later seeking foreclosure based on the unsatisfied money judgment. *Mid Kansas Fed. S. & L.V. Dynamic Dev.*, 167 Ariz. 122, 126 (1991).
- Plaintiff seeks issuance of a Writ of General Execution, requiring an officer to satisfy the amount of \$17,352.15, plus an additional three dollars per day going forward from April 2, 2008.¹ Based on the subject judgment and a conservative calculation of interest pursuant to A.R.S. § 44-1201, the judgment sought reflects the amount owed to Plaintiff by Defendants.
- The homestead exemption statute does not prevent issuance of a Writ of General Execution in this case. However, it would prevent a foreclosure sale unless the bid satisfies Defendants' homestead plus the amount of any consensual liens with priority. A.R.S. § 33-1105.

Plaintiff has established that it is entitled to judgment as a matter of law. Therefore, it is ordered granting Plaintiff's "Cross-Motion for Summary Judgment" and denying Defendants' "Cross-Motion for Summary Judgment".

INACTIVE CALENDAR

IT IS ORDERED vacating any future court settings in this case. Further,

IT IS ORDERED placing this case on the Inactive Calendar until **February 2, 2009**. If a proposed form of judgment is not submitted by that date, this case will be dismissed without further notice.

¹ It is expected that relief sought by Plaintiff will also include an award of fees and costs incurred in this case.