

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-000707

12/07/2017

HONORABLE DAWN M. BERGIN

CLERK OF THE COURT
S. Ortega
Deputy

MARKHAM CONTRACTING CO INC

KAREN A PALECEK
THOMAS L HUDSON
ERIC M FRASER

v.

PINNACLE POINT DEVELOPERS L L C, et al.

RICHARD Q NYE
FRANK S TOMKINS
SCOTT A MALM
MINA C. O'BOYLE

MATTERS TAKEN UNDER ADVISEMENT

Courtroom: ECB - 713

1:34 p.m. This is the time set for Oral Argument on several post-remand Motions. Plaintiff, Markham Contracting Co., Inc., is represented by counsel, Karen Palecek, Eric Fraser, and Thomas Hudson. Michael Markham, representative for Plaintiff, Markham Contracting Co., Inc., is also present. Defendant, PrimeAZ/Libra, LLC, is represented by counsel, Richard Nye. Defendant, Federal Deposit Insurance Company ("FDIC"), is represented by counsel, Scott Malm and Mina O'Boyle, for counsel of record Frank Tomkins.

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

Oral argument is held on:

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- FDIC's Motion for Summary Judgment on Markham's Right to Foreclose Against FDIC's Interest in the Property filed on October 2, 2017
- Defendants' FDIC and PrimeAZ's Joint Motion for Summary Judgment Re: Rights of Parties with Respect to Real Property and FDIC's and PrimeAZ's Right to Interest on Equitable Subrogation Amount filed on October 2, 2017
- Markham's Application for Attorneys' Fees, Costs, Expenses and Rule 68 Sanctions filed on September 1, 2017
- Markham's Motion for Entry of Judgment filed on September 1, 2017
- PrimeAZ and FDIC's Joint Cross-Application for Attorneys' Fees, Costs and Expenses filed on November 6, 2017
- PrimeAZ and FDIC's Proposed Form of Judgment filed on November 21, 2017

2:55 p.m. Court stands at recess.

3:17 p.m. Court reconvenes with respective counsel and Mr. Markham present.

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Argument continues.

For the reasons set forth on the record,

THE COURT FINDS that Markham is the successful party in this litigation and is entitled to reasonable attorneys' fees pursuant to A.R.S. §33-998(B). The amount of the fees and how they will be incorporated into Markham's lien will be addressed after the completion of supplemental briefing.

IT IS ORDERED that Markham shall file a Supplemental Application for Attorneys' Fees by **December 21, 2017**.

IT IS FURTHER ORDERED that Defendants shall file a supplemental objection to Markham's Application for Attorneys' Fees by **January 12, 2018**.

IT IS FURTHER ORDERED that Markham shall file a response to Defendants' supplemental objection by **February 2, 2018**.

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IT IS FURTHER ORDERED that the parties shall file simultaneous briefs, not to exceed 7 pages, on FDIC's immunity defenses by **February 2, 2018**.

IT IS FURTHER ORDERED continuing Oral Argument on Markham's Motion for Entry of Judgment, specifically on the issue of pre-judgment interest, on **December 11, 2017 at 1:30 p.m. (60 minutes)** in this division.

Counsel and the parties, if representing themselves, are to appear in person before:

**THE HONORABLE DAWN BERGIN
MARICOPA COUNTY SUPERIOR COURT
EAST COURT BUILDING
101 W JEFFERSON
7TH FLOOR, COURTROOM 713
PHOENIX, AZ 85003
602-372-2961 TEL**

NOTE: All court proceedings are recorded by audio and video method and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

4:52 p.m. Hearing concludes.

LATER:

IT IS FURTHER ORDERED denying PrimeAZ and FDIC's Joint Cross-Application for Attorneys' Fees, Costs and Expenses.

IT IS FURTHER ORDERED taking under advisement the following motions as of **February 2, 2018**.

- FDIC's Motion for Summary Judgment on Markham's Right to Foreclose Against FDIC's Interest in the Property;

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- Defendants FDIC and PrimeAZ's Joint Motion for Summary Judgment Re: Rights of Parties with Respect to Real Property and FDIC's and PrimeAZ's Right to Interest on Equitable Subrogation Amount;
- Markham's Application for Attorneys' Fees, Costs, Expenses and Rule 68 Sanctions; and
- Markham's Motion for Entry of Judgment filed on September 1, 2017