

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TJ 2013-003854

07/01/2013

COMMISSIONER JAMES R. MORROW

CLERK OF THE COURT  
S. Stulz  
Deputy

VELDA ROSE ESTATES HOMEOWNERS  
ASSOCIATION

CHARLES E MAXWELL

v.

EDITH POGGI

EDITH POGGI  
P O BOX 4103  
CAVE CREEK AZ 85327

KATHY COLE  
6429 E UNIVERSITY DR, #1  
MESA AZ 85205  
JAMES HANLEY  
6429 E UNIVERSITY DR  
# 2  
MESA AZ 85205  
NONI JOHNSON  
6429 E UNIVERSITY, #3  
MESA AZ 85205  
COLETTE M THOMPSON  
6429 E UNIVERSITY DR  
#4  
MESA AZ 85205

MINUTE ENTRY

Courtroom: OCH 001.

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2:01 p.m. This is the time set for Hearing on Judgment Debtor's Objection to Writs of Garnishment and Applications for Orders of Continuing Lien. Counsel, Alan Quist, is present on behalf of Judgment Creditor. Judgment Debtor, Edith Poggi, is present on her own behalf.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held regarding Judgment Creditor's Motion to Strike Objection as Untimely.

Based upon the matters presented,

IT IS ORDERED denying in part, Judgment Creditor's Motion to Strike Objection as Untimely in respect to future rents and to whether an order of continuing lien should be issued.

IT IS FURTHER ORDERED granting in part Judgment Creditor's Motion to Strike Objection as Untimely as to whether issuance of the Writ is appropriate.

Argument is presented.

Judgment Debtor's Exhibits 1-3 are marked for identification.

IT IS FURTHER ORDERED overruling Judgment Creditor's objection as to the assignment of rents.

Further argument is presented.

IT IS FURTHER ORDERED taking this matter under advisement.

2:52 p.m. Matter concludes.

LATER:

This matter having been under advisement,

One objection remained unresolved at the conclusion of the garnishment hearing. Judgment Debtor raised an issue in her Objection to Writs of Garnishment and Application for Orders of Continuing Lien concerning whether the A.R.S. § 12-1584(A) only allows judgment to be entered against garnishees for the amount due to the debtor as of the time that the Writ was served and does not authorize a continuing lien for future payments. During the garnishment

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hearing, Judgment Creditor referred the Court to *Weir v. Galbraith*, 92 Ariz. 279, 376 P.2d 396 (1962). The Court has now had an opportunity to consider this authority. The Arizona Supreme Court, in *Weir*, stated that unmatured installments under a contract would be subject to a writ of garnishment “if the payment thereof is not contingent on the occurrence of any act or event.” *Weir*, 92 Ariz. at 287, 376 P.2d at 404.

In the case at issue, the garnishees are tenants renting residences from the Judgment Debtor. Continued rent payments are contingent upon the individual garnishees remaining tenants of the Judgment Debtor. According to the Judgment Debtor, one of the garnishees has already stopped renting from the Judgment Debtor since the writ of garnishment was served upon her.

Given the contingent nature of the landlord-tenant relationship,

THE COURT FINDS that garnishment of the future stream of rent payments is not appropriate in this case.

As discussed during the garnishment hearing, Judgment Creditor is free to periodically have issued and served writs of garnishment upon Judgment Debtor’s tenants seeking to garnish owed, but unpaid rents.

IT IS ORDERED sustaining the objection as to the continuing nature of the garnishment on future, contingent rents.

IT IS FURTHER ORDERED vacating the Orders of Continuing Lien filed on June 21, 2013, as to the withholding and delivery of future rental payments concerning the following Garnishees: Colette M. Thompson, James Hanley, Noni Johnson, and Kathy Cole.

There being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of the Court,

IT IS FURTHER ORDERED that counsel/party or written designee shall take possession of what has been marked as Defendant’s exhibits 1-3 not offered or received in evidence to the counsel/party causing it/them to be marked, or to their written designee by **August 1, 2013**; thereafter, the Clerk is authorized to dispose of the exhibits. The party shall have the right to re-file relevant exhibits as needed in support of any appeal. Re-filed exhibits must be accompanied by a Notice of Re-filing Exhibits and presented to the Exhibits Room of the Clerk of Court. The Court’s tag must remain intact on all re-filed exhibits. Said exhibits are currently in the possession of the Division Clerk, located at:

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Maricopa County Superior Court  
Old Court House  
125 W. Washington  
Courtroom 001  
Phoenix, AZ 85003

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.