

MICHAEL K. JEANES
Clerk of the Superior Court
By vanessa martinez, Deputy
Date 05/11/2016 Time 14:13:33

Description	Amount
CASE# CV2016-094391	
CIVIL NEW COMPLAINT	319.00
TOTAL AMOUNT	319.00
Receipt# 25239293	

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9 CHAD M. GALLACHER - STATE BAR NO. 025487
10 *Attorneys for Plaintiff*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 LAVEEN MEADOWS HOMEOWNERS
14 ASSOCIATION, an Arizona nonprofit
15 corporation,

16 Plaintiff,

17 vs.

18 CARLOS MEJIA, a married man, as his sole
19 and separate property; STATE OF ARIZONA,
20 a governmental entity; LEXINGTON
21 NATIONAL INSURANCE CORPORATION;
22 US IMMIGRATION BONDS AND
23 INSURANCE SERVICES, INC.; UNITED
24 STATES OF AMERICA, DEPARTMENT OF
25 THE TREASURY-INTERNAL REVENUE
26 SERVICE; THE UNKNOWN HEIRS AND
27 DEVISEES OF ABOVE NAMED
28 DEFENDANTS, IF DECEASED,

Defendants.

No. CV2016-094391

COMPLAINT

(Lien Foreclosure)

Plaintiff alleges as follows:

1. At all times mentioned, Plaintiff was and is now a nonprofit corporation duly organized and existing by virtue of law with authorization and capacity to institute and prosecute this action in Arizona.

2. Upon information and belief, Defendant Carlos Mejia, a married man, as his sole and separate property, is a resident of Maricopa County, Arizona.

1. 3. Upon information and belief, Defendant State of Arizona, is a governmental entity.

2 4. Upon information and belief, Defendant Lexington National Insurance Corporation
3 may have an interest in property located in Maricopa County, Arizona.

4 5. Upon information and belief, Defendant US Immigration Bonds and Insurance
5 Services, Inc. may have an interest in property located in Maricopa County, Arizona.

6 6. Upon information and belief, Defendant United States of America, Department of the
7 Treasury-Internal Revenue Service is a governmental entity.

8 7. The subject of this Complaint is property situated in the County of Maricopa, State of
9 Arizona ("Property") and is described as follows:

10 Lot 63, of LAVEEN MEADOWS - PARCEL 2, according to the plat of
11 record in the office of the County Recorder of Maricopa County, Arizona,
12 recorded in Book 719 of Maps, Page 13,

13 aka 7824 South 73rd Lane, Laveen, AZ 85339

14 8. The events alleged herein occurred in Maricopa County, Arizona.

15 9. The CC&R's, Bylaws and Articles of Incorporation of the Plaintiff Association, as well
16 as Arizona statute, provide that all past due amounts owed the Association are secured by a lien
17 against the Property, which was perfected upon recordation of the CC&R's. (Relevant portions of the
18 contractual CC&R's are attached hereto as Exhibit "A" and by reference incorporated herein.)

19 10. As the result of Defendants' failure to pay assessments, the amount set forth herein is
20 secured by a lien against the Property owned by Defendants.

21 11. The principal balance due as of 2016 is \$8,246.48, plus monthly late charges, pursuant
22 to the CC&R's and A.R.S. § 33-1807(A), both constituting separate and independent bases for this
23 action, including late charges, plus prejudgment interest at 10% per annum or \$2.26 per diem from
24 May 9, 2016. Additional assessments will accrue commencing January 1, 2017, in an amount not less
25 than \$552.00, plus late charges of \$15.00 per month. The principal balance set forth herein is all
26 encompassing pursuant to Plaintiff's contractual and statutory lien rights and includes both amounts
27 awarded in an earlier justice court judgment, as well as amounts not previously reduced to judgment,
28 including attorney fees and costs, but in no event has there been or will there be a double recovery as

1 all credits and offsets are reflected in the principal amount, nor has there been any election of
2 remedies.

3 12. Plaintiff has obtained a real estate foreclosure title search at a cost of \$200.00, and has
4 been obliged to employ counsel to prosecute this action. Pursuant to the terms of the contract and
5 statutes, Plaintiff is entitled to receive its accruing costs and attorney fees incurred herein. Plaintiff
6 may advance further sums during the pendency of this action for taxes (including redemption),
7 insurance premiums, costs of this action and receivership proceedings, and other expenses or costs
8 permitted under the terms of the contract and statutes, and the payment or advance of all such sums are
9 secured by the lien of the Association.

10 13. Carlos Mejia is named as a Defendant herein as the purported record title holder of the
11 Property pursuant to the litigation guarantee secured by Plaintiff.

12 14. State of Arizona is named as a Defendant herein pursuant to the Judgment recorded
13 August 10, 2007, at Document No. 2007-0905460, pursuant to the litigation guarantee secured by
14 Plaintiff.

15 15. Lexington National Insurance Corporation is named as a Defendant herein pursuant to
16 the Deed of Trust recorded December 29, 2014, at Document No. 2014-0853775, pursuant to the
17 litigation guarantee secured by Plaintiff.

18 16. US Immigration Bonds and Insurance Services, Inc. is named as a Defendant herein
19 pursuant to the Deed of Trust recorded December 29, 2014, at Document No. 2014-0853775, pursuant
20 to the litigation guarantee secured by Plaintiff.

21 17. United States of America, Department of the Treasury, Internal Revenue Service is
22 named as a Defendant herein pursuant to the Notice of Federal Tax Lien recorded March 22, 2016, at
23 Document No. 2016-182450, pursuant to the litigation guarantee secured by Plaintiff

24 18. The unknown heirs and devisees of the above-named Defendants, if deceased, are
25 fictitious designations of individuals or legal entities unknown to Plaintiff, whose true name or names
26 Plaintiff requests may be inserted when discovered, as if originally correctly named.

27 19. Plaintiff obtained a money judgment against Defendant Carlos Mejia on October 16,
28 2013 in Maricopa County Judgment Court, South Mountain Precinct, Case Number CC2013-089601,

1 but due to collection issues and the Court's reduction of Plaintiff's requested attorneys' fees, which are
2 still nevertheless part of the Association's lien pursuant to Section 8.2 of the CC&R's, and because
3 there is no election of remedies issues in this matter, Plaintiff has filed this lien foreclosure count for
4 all amounts, including amounts previously reduced by the justice court for the said Defendant's
5 personal obligation.

6 20. Plaintiff is informed and believes that the Defendants claim or assert some right, title,
7 interest, estate, or lien in or to the Property or some part thereof. If any such right, title, interest, estate
8 or lien exists, the same is subsequent, subordinate and inferior to the rights and lien of the Plaintiff,
9 with the exception of JPMorgan Chase Bank, N.A., per the document recorded July 29, 2011, at
10 Document No. 2011-0636115, as it is believed said entity may hold a valid first deed of trust pursuant
11 to statute. To the extent the Property is foreclosed pursuant to said first deed of trust and there are no
12 or insufficient excess proceeds, or if any amount that remains unpaid following any payment made by
13 Defendants after the filing of this Complaint, Plaintiff shall be entitled to a personal judgment against
14 Defendant Carlos Mejia for the amounts set forth above that have not previously been reduced to a
15 personal judgment as to said Defendant or any lesser amounts to the extent of offsetting excess
16 proceeds or interim payments made.

17 21. All conditions precedent have been performed or have occurred.

18 22. This action arises out of contract, and the Association is entitled to recover its attorney
19 fees pursuant to the contract and pursuant to A.R.S. §§ 12-341.01 and 33-1807, but in an amount not
20 less than Three Thousand Dollars (\$3,000.00) in the event of default, plus post judgment interest on all
21 amounts at the rate set forth above, until paid.

22 WHEREFORE, Plaintiff prays for judgment as follows:

23 1. For a judgment declaring that there is an indebtedness due and owing to Plaintiff under
24 the contract and statutes, and that all such amounts are secured by a lien against the Property for:

25 a. The principal sum in the amount of \$8,246.48, plus monthly late charges, and
26 plus accruing assessments commencing January 1, 2017, plus prejudgment interest thereon as more
27 fully set forth above, until foreclosure;

1 b. The amount of Plaintiff's costs herein, including costs of foreclosure, title
2 search and accruing costs to Plaintiff;

3 c. Attorney fees to be fixed by the Court, but in an amount of not less than
4 \$3,000.00 in the event of default;

5 d. The amount of all costs and expenses incurred in connection with any
6 receivership proceedings herein or redemption of taxes, together with interest thereon;

7 e. Any sums advanced by Plaintiff to the receiver, County Treasurer/Assessor or
8 otherwise during the pendency of this action to protect or care for the security, together with interest
9 thereon;

10 f. For post judgment interest on all amounts awarded as more fully set forth
11 above, until paid.

12 2. For a judgment against the Defendants herein, as follows:

13 a. Declaring that said sums are secured by a lien against the Property and that the
14 lien is a superior and priority lien on the Property and on the whole thereof;

15 b. Declaring that to the extent the Property is foreclosed pursuant to the above-
16 referenced first deed of trust against the Property and there are no or insufficient excess proceeds,
17 Plaintiff shall be entitled to a personal judgment against Defendant Carlos Mejia for all such amounts
18 awarded herein as qualified, or any lesser amount to the extent of offsetting excess proceeds from a
19 foreclosure sale of the holder of the first deed of trust or as a result of any payments made following
20 the Complaint filing;

21 c. Declaring that the Association's lien is adjudged to be a superior and priority
22 lien upon the Property and is prior and superior to any right, title, interest, lien, equity or estate of the
23 Defendants herein;

24 d. Declaring that the Association's lien is not subject to any homestead filing
25 pursuant to the express language of A.R.S. § 33-1807(C);

26 e. Foreclosing the interests of the Defendants, and all persons claiming under
27 them, and forever barring the Defendants herein from any or all right, title, claim, interest or lien in
28 and to the Property or with respect thereto, except such rights of redemption as they may have by law;

1 f. Declaring that the lien be foreclosed and a special execution be issued to the
2 Sheriff of Maricopa County, Arizona, directing him to seize and sell the Property as under execution
3 in full or partial satisfaction of all amounts due Plaintiff as aforesaid;

4 g. Directing that at the sale if there is any personal property present at or in the
5 Property at the time of the sale, the same will be deemed abandoned and sold as part of the Property if
6 not removed prior to the time the purchaser of the Property elects to take possession of the Property as
7 more fully set forth below, but no later than expiration of the redemption period, to the extent
8 permitted by law, and that the Property be sold at public auction, and that Plaintiff may be the
9 purchaser at such sale;

10 h. Declaring that the redemption period is thirty (30) days, in accordance with
11 A.R.S. § 12-1282, as amended, if the Court determines that the Property is not now and has not been
12 used at any time pertinent hereto primarily for agricultural or grazing purposes and has been
13 abandoned; otherwise, for a determination that the redemption period is six (6) months;

14 i. Ordering that upon the sale of the Property, and in addition to the rights in
15 paragraph j below, the Sheriff shall issue a certificate of sale to the purchaser, and after the expiration
16 of the statutory redemption period pertaining to real property, if redemption is not made, the Sheriff
17 shall execute a Deed to the holder of said certificate and the grantee therein shall be let into the
18 premises upon presentation of said Deed; and that if the grantee or its assignees are not let into
19 possession upon presentation of said deed therefor, a writ of possession will issue without further
20 Order of the Court;

21 j. Immediately vesting possession of the Property in the purchaser following the
22 sale as the holder of equitable title if the purchaser elects to then take possession of the Property.

23 DATED this 9th day of May, 2016.

24 **MAXWELL & MORGAN, P.C.**


25
26 By 
27 Chad M. Gallacher, Esq.
28 4854 East Baseline Road, Suite 104
Mesa, Arizona 85206
Attorneys for Plaintiff

Exhibit “A”

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20040437118 04/23/2004 11:32
3219-71-1-1-
ELECTRONIC RECORDING

When Recorded Return To:

Standard Pacific of Arizona, Inc.
6710 N. Scottsdale Road
Suite 150
Scottsdale, AZ 85253
Attn: Connie Dean

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
LAVEEN MEADOWS**

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
LAVEEN MEADOWS

This Declaration of Covenants, Conditions and Restrictions is made as of the 19th day of April, 2004 by Standard Pacific of Arizona, Inc., a Delaware corporation ("StanPac"), Elliott Homes, Inc., an Arizona corporation ("Elliott") and Taylor Woodrow/Arizona, Inc., an Arizona corporation ("Taylor/Woodrow"), collectively "Co-Declarants" and individually a "Co-Declarant," with reference to the following:

A. As of the date hereof, Co-Declarants are the owners of fee title to the Property.

B. Co-Declarants intend by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property within the Property. Co-Declarants desire to provide a flexible (yet common) and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property.

NOW, THEREFORE, Co-Declarants hereby declare that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the Property now and hereafter subjected to this Declaration and which shall be binding on all parties having any right, title or interest in said Property or any part thereof, and their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner of all or any part thereof.

ARTICLE 1

DEFINITIONS

Except as otherwise expressly provided in this Declaration, the following terms shall, for purposes of this Declaration, have the meanings set forth below:

1.1 "Annexable Property" means all real property which is described on Exhibit B hereto.

1.2 "Annual Assessments" means the Assessments levied pursuant to Article 8.

1.3 "Architectural Committee" means the committee established pursuant to Article 9.

1.4 "Architectural Committee Rules" means the rules and guidelines adopted by the Architectural Committee pursuant to Section 9.2, as amended or supplemented from time to time.

1.5 "Articles" means the articles of incorporation of the Association, as amended from time to time.

1.6 "Assessments" means the Annual Assessments, the Special Assessments and any other amounts declared by this Declaration to be a part of the Assessments or declared by this Declaration to be secured by the lien created under Section 8.3.

1.7 "Association" means Laveen Meadows Homeowners' Association, Inc., an Arizona nonprofit corporation, and its successors and assigns.

1.8 "Association Rules" means the rules and regulations adopted by the Association pursuant to Section 7.3, as amended from time to time.

1.9 "Board" means the board of directors of the Association.

1.10 "Bylaws" means the bylaws of the Association, as amended from time to time.

1.11 "Common Area" means all real property (including the improvements thereon, all easements and licenses, all other real property interests, and all personal property and facilities) owned, managed or maintained by the Association for the common use and enjoyment of the Owners.

1.12 "Co-Declarants" mean StanPac, Elliott and Taylor Woodrow, and their successors and any Person to whom they may expressly assign any or all of their rights under this Declaration.

1.13 "Co-Declarant Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with any Co-Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which any Co-Declarant (or another co-Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.14 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.15 "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Laveen Meadows, as amended from time to time.

1.16 "Designated Builder" means any Person other than Co-Declarants who (i) is engaged in the business of construction and selling residences in the Property to the public, (ii) has acquired one or more Lots in connection with and in the course of such business, and (iii) is designated by Co-Declarants by written notice to the Association as having any of the special rights, privileges or immunities of Co-Declarants under this Declaration.

1.17 "Dwelling Unit" means any building or part thereof situated upon a Lot and intended for use and occupancy as a residence by a Single Family.

1.18 "First Mortgage" means a Mortgage Recorded against a Lot which has priority over all other Mortgages Recorded against that Lot.

effective unless they have been approved in advance by the Board and they specify that such governing documents, such Parcel or portion thereof, or group of Lots, the Subsidiary Association, and the Subsidiary Association's members are subject and subordinate to this Declaration and the Articles, Bylaws, and other Property Documents unless, in the Board's sole discretion, either: (a) they are inconsistent or in conflict with this Declaration and any other Property Documents; or (b) they fail to contain the specification required by the preceding sentence.

ARTICLE 8

ASSESSMENTS

8.1 Creation of Assessment Right. In order to provide funds to enable the Association to meet its financial and other obligations and to create and maintain appropriate reserves, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Annual Assessments and Special Assessments shall be for Common Expenses and shall be allocated equally among all Lots, subject to the provisions of this Article 8.

8.2 Covenants with Respect to Assessments. Each Owner, by acceptance of his, her or its deed (or other conveyance instrument) with respect to a Lot, is deemed to covenant and agree to pay the Assessments levied pursuant to this Declaration with respect to such Owner's Lot, together with: (a) interest from the date due at a rate equal to the greater of: (i) ten percent (10%) per annum; or (ii) the annual rate of interest, if any, then in effect for new first priority single family residential mortgage loans guaranteed by the Veterans Administration; (b) such late fees as may be established from time to time by the Board; and (c) such costs and reasonable attorneys' fees, costs and other litigation fees and costs as may be incurred by the Association in seeking to collect such Assessments. Each of the Assessments with respect to a Lot, together with interest, late fees, costs and reasonable attorneys' fees, costs and other litigation fees and costs as provided in this Section 8.2, shall also be the personal obligation of the Person who or which was the Owner of such Lot at the time such Assessment arose with respect to such Lot, provided, however, that the personal obligation for delinquent Assessments shall not pass to a successor in title of such Owner unless expressly assumed by such successor (unless title is transferred to one or more such successors for purposes of avoiding payment of any Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title). No Owner shall be relieved of his, her or its obligation to pay any of the Assessments (or any other amounts owing by such Owner to the Association hereunder, all of which shall be deemed a part of the Assessments) by abandoning or not using his, her or its Lot or the Common Area, or by leasing or otherwise transferring occupancy rights with respect to his, her or its Lot. However, upon transfer by an Owner of fee title to such Owner's Lot, as evidenced by a Recorded instrument, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or setoff shall be claimed or allowed by reason of the alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, the Articles or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law or ordinance

were paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due). As provided in Section 8.2, the Board shall have the right to establish from time to time, in its reasonable discretion, late fees which may be charged in the event Assessments or other amounts payable to the Association are not paid on or before the applicable due dates, and may, at its election, provide grace period(s) following the applicable due date(s) before such late fees begin to accrue.

8.7 Maximum Annual Assessment. The Annual Assessments provided for herein shall not at any time exceed the Maximum Annual Assessment, as determined in accordance with this Section 8.7. For the fiscal year ending December 31, 2004, the Maximum Annual Assessment shall be Five Hundred Dollars (\$500.00) for each Lot. Thereafter, unless a greater increase is approved by the affirmative vote of sixty-seven percent (67%) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for such purpose, the Maximum Annual Assessment for any fiscal year shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year increased at a rate equal to the greater of: (a) the percentage increase for the applicable fiscal year over the immediately preceding fiscal year in the Consumer Price Index, All Urban Consumers (All Items) (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor governmental agency), or, if such index is no longer published by said Bureau or successor agency, then the index most similar in composition to such index; or (b) ten percent (10%). Notwithstanding the foregoing, the Board may, without the approval of the Members, increase the Maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (i) premiums for any insurance coverage required by the Declaration to be maintained by the Association; or (ii) charges for utility services necessary to the Association's performance of its obligations under this Declaration, in either case (i) or (ii) notwithstanding the fact that the resulting increase in the Maximum Annual Assessment is at a rate greater than otherwise permitted under the preceding sentence. Nothing herein shall obligate the Board to levy, in any fiscal year, Annual Assessments in the full amount of the Maximum Annual Assessment for such fiscal year, and the election by the Board not to levy Annual Assessments in the full amount of the Maximum Annual Assessments for any fiscal year shall not prevent the Board from levying Annual Assessments in subsequent fiscal years in the full amount of the Maximum Annual Assessment for such subsequent fiscal year (as determined in accordance with this Section 8.7). In the event that, for any fiscal year, the Board elects to levy an Annual Assessment at less than the full amount of the Maximum Annual Assessment for such fiscal year, the Board may, if in its reasonable discretion circumstances so warrant, subsequently levy a supplemental Annual Assessment during said fiscal year so long as the total of the Annual Assessments levied during said fiscal year does not exceed the Maximum Annual Assessment for such fiscal year.

8.8 Notice and Quorum for Meetings to Consider Special Assessments and Certain Increases in Annual Assessments. Notwithstanding any other provision hereof or of the other Property Documents, written notice of any meeting called for the purpose of: (a) approving the establishment of any Special Assessment, as required by Section 8.9 hereof; or (b) approving any increase in the Maximum Annual Assessment greater than that permitted by application of the formula as set forth in Section 8.7, shall be sent to all Members not less than thirty (30) days nor

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the day and year first set forth above.

CO-DECLARANT:

STANDARD PACIFIC OF ARIZONA, INC., a Delaware corporation

By: [Signature]
Its: Carol Grumley
Vice President

By: [Signature]
Its: Bruce Schroeder
Vice President

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 19th day of April, 2004, before me, the undersigned officer, personally appeared Carol Grumley, who acknowledged himself/herself to be Vice President of Standard Pacific of Arizona, Inc., a Delaware corporation, and that he/she, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of such by himself/herself.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]
Notary Public

My commission expires: 11-08-06

