

EXHIBIT A

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-054274

07/01/2015

COMMISSIONER BRIAN S. REES

CLERK OF THE COURT
L. Carlson
Deputy

VAL VISTA GREENS INC

EDITH I RUDDER

v.

TRISH O COURY, et al.

JONATHAN A DESSAULES

RULING/ORDER

The Court has been presented with a Motion to Set Aside the Default Judgments or, Alternatively, to Declare Judgments Satisfied filed on June 2, 2015. Additionally, the Court has been asked to enjoin the sheriff's sale of the properties in question by Motion filed on June 11, 2015. The Plaintiff responded and the Defendants replied. No party requested Oral Argument or an Evidentiary Hearing.

IT IS ORDERED denying the Motion to Set Aside the Default Judgments or, Alternatively, to Declare Judgments Satisfied. The Court finds that the Rule 60(c) elements of inadvertence or mistake apply to a Defendant's behavior, not the Plaintiff's. In this case there was no mistake or inadvertence by the Defendants. The Defendants were properly served and failed to appear or defend. They have offered no excuse for their failure to appear and defend when it was appropriate to do so, evidently choosing to wait for an "after the fact" attack. The Court's conclusion is supported by the timing of the \$500.00 payment that the Defendants made shortly after being served with the Complaint. The equities, if any are to be considered in this case, are against the Defendants.

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Additionally, the Court finds that the judgment was not satisfied until after the judgment was entered and filed. The payments made prior to the filing of the judgment did not fully satisfy the judgment. The numbers presented to the Court were not contested and accurate. The judgment was based upon the undisputed evidence as presented. The Court believes that it is still true.

Finally, the Plaintiff has agreed not to deliver the judgment to the sheriff for sale of the property until such time as these matters are concluded. In this manner, the Court denies the Motion to Enjoin as moot.

This leaves the Court with the remaining issues of A.R.S. section 33-1807 and how to resolve this case with finality. Defendants claim that A.R.S. section 33-1807 (A) provides that an HOA may not foreclose on its lien for attorney's fees only, and the attorney's fees are the only remaining unpaid part of the judgment. The Court disagrees. The Court believes that the Defendants are not reading the entire subsection (A) in sequence. Subsection A provides that the HOA may foreclose on the entire list of assessments and charges and attorney's fees, but the triggering mechanism for this right is that the "assessments" taken alone must exceed \$2,200.00 or be more than a year old before the foreclosure proceeding may be brought. In this case both criteria were met at the time the proceedings were brought. Therefore, the proceedings were lawful. The Defendants are suggesting that they can then stop proceedings by only meeting the requirement of paying the "assessments". The Court disagrees. The Court believes that once proceedings have been initiated, they can only stop them by redeeming. Redemption includes payment of the then existing attorney's fees.

The Court has examined the statute and the case law on redemption after foreclosure. There is no case on point. It is one of first impression. In a tax lien foreclosure case, for example, the statute provides that the redemption must occur before service of the Complaint. No rule exists here. Foreclosure and redemption otherwise appear to be matters in equity. (While the taking of a home is a grave matter in equity, it does not appear to be the Defendants' residence in this case. It does not appear fair to relegate a portion of a Default Judgment to a mere lien after the Defendants have acted so delinquently, as here, intentionally forcing the foreclosure.) But the Court finds that the statutory language separating charges and fees from assessments is part of the triggering mechanism for when a case may be initiated, so the HOA does not take foreclosure actions too quickly or too lightly. The Court recognizes the other portions of A.R.S. section 33-1807 that requires an HOA to credit payments to assessments first, before the other fees and charges. But, the Court again believes that this is to prevent foreclosure actions from commencing too quickly or too lightly, not to allow a Defendant to play games with their payments and cause unnecessary expenses to the HOA.

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The Court does not believe that a post-judgment ruling requires a signature or Rule 54(c) language, but the Court nonetheless finds there is no just cause for delay and will sign this minute entry order.

/ s / COMMISSIONER BRIAN S. REES

JUDICIAL OFFICER OF THE SUPERIOR COURT