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6
7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF ARIZONA**

9
10 LAVEEN MEADOWS HOMEOWNERS’
ASSOCIATION, INC., an Arizona
11 nonprofit corporation,

12 Plaintiff,

13 vs.

14 CARLOS MEJIA, a married man, as his
15 sole and separate property; *et al.*,

16 Defendants.

No. CV2016-094391

**REPLY IN SUPPORT OF PROPOSED
FORM OF JUDGMENT**

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18 Plaintiff, Laveen Meadows Homeowners’ Association, Inc. ("Association"), by
19 and through undersigned counsel, hereby submits this Reply in Support of its Proposed
20 Form of Judgment. The Court should enter judgment against Defendants (“Defendants”)
21 as proposed by Plaintiff, pursuant to Arizona law.
22

23 **A. The Principal Sum is Proper.**

24 As alleged in the Complaint, the original principal balance was \$8,246.48, and is
25 “all encompassing pursuant to Plaintiff’s contractual and statutory lien rights and
26 includes both amounts awarded in an earlier justice court judgment, as well as amounts
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1 not previously reduced to judgment, including attorney fees and costs, but in no event has
2 there been or will there be a double recovery as all credits and offsets are reflected in the
3 principal amount, nor has there been any election of remedies.” Complaint at ¶ 11. As
4 discussed at the damages hearing, the amounts included in the principal complaint are
5 included pursuant to the terms of the Declaration, as well as the Arizona statute. First, the
6 Declaration states: “There is hereby created and established a lien against each Lot which
7 shall secure payment of all present and future Assessments assessed or levied against
8 such Lot or the Owner thereof (together with any present or future charges, fines,
9 penalties or other amounts levied against such Lot or the Owner thereof pursuant to this
10 Declaration or any of the other Property Documents).” **Exhibit A**, Declaration, Section
11 8.3. In addition, under Arizona law, the Association has a lien for “assessments, for
12 charges for late payment of those assessments, for reasonable collection fees and for
13 reasonable attorney fees and costs incurred with respect to those assessments . . .” A.R.S.
14 § 33-1807(A). All amounts included in the principal balance fall into the categories listed
15 both under the Declaration and Arizona statute as secured charges.
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19 Defendant argues that attorney fees are not properly included in the principal
20 portion of the judgment, though his support for such an argument lacks legal foundation.
21 The case cited by Defendant, *China Doll*, requires that in litigation where the prevailing
22 party has a basis for an award of attorney fees, the party seeking fees must present
23 evidence that its attorney billing rate and the time spent are both reasonable. 138 Ariz.
24 183, 673 P.2d 927 (App. 1969). The *China Doll* court, however, only addressed fees
25 incurred in litigation. *Id.*, 138 Ariz. at 186-87, 673 P.2d at 930-31 (“We are concerned
26 only with determining reasonable attorneys’ fees in commercial litigation.”). As a result,
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1 the Plaintiff, which incurred significant fees prior to litigation has relied on the language
2 of its Declaration, as well as the Arizona statute, and thus included those pre-litigation
3 amounts as principal. While Plaintiff remains willing to submit, and in some cases,
4 resubmit, attorney fees and costs incurred pre-litigation or in the justice court action to
5 this Court for review, Arizona law does not require submission of pre-litigation fees. *See*
6 *id.*
7

8 Defendant also argues that there is a three-year statute of limitations for the
9 bringing of foreclosure actions under A.R.S. § 33-1807. First, a statute of limitations is an
10 affirmative defense, which Defendant has lost the ability to assert because he is in
11 default. Second, because the lien arises under the Declaration, the operative statute of
12 limitations is 6 years. *See* A.R.S. § 12-548. If the legislature had intended the statutory
13 foreclosure process to preempt the contractual process, it would have included language
14 to that effect in the statute. The Arizona Planned Community Act (“Act”), A.R.S. §§ 33-
15 1801, *et seq.*, contains express limitations throughout pertaining to the activity and
16 actions governing homeowners associations. For example, numerous statutory sections in
17 the Act contain preemptive language such as, “[n]otwithstanding any provision in the
18 community documents,” followed by the statutory right that preempts an association’s
19 governing documents. *See, e.g.*, A.R.S. §§ 33-1801, 1804, 1808, 1809, 1812, 1813, 1815,
20 1818, and 1807(J). The Arizona Legislature is clear and express when it intends to
21 preempt a contractual or other right by statute under the Act. However, the provision of
22 the Act regarding the three-year limitations period, namely A.R.S. § 33-1807(F), contains
23 no such language preempting an association’s right to foreclose under contractual
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1 provisions of its declaration within six years.¹ The Association's contractual lien and
2 foreclosure rights thus exist independent of, and in addition to, the statutory remedy, and
3 rightly carry their own statute of limitations. In light of the foregoing, the Court must
4 affirm the Association's contractual statute of limitations.

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6 With respect to amounts already reduced to money judgment and included in the
7 principal balance, Defendant argues "Defendant has found no authority to support the
8 assertion that a party can sue serially on the same debt . . ." Def. Obj. at 2-3. Defendant
9 then goes on to cite the very case that gives the Association that authority, *Mid Kansas*
10 *Fed. Sav. & Loan Ass'n of Wichita v. Dynamic Dev. Corp.* Def. Obj. at 6, n. 22. In *Mid*
11 *Kansas*, the court held, ". . . the election statute does not preclude a subsequent
12 foreclosure action after judgment on the debt, as is the case in some other states." 167
13 *Ariz.* 122, 126, 804 P.2d 1310, 1315 (1991). If Defendant can find no authority to support
14 Plaintiff's position, his inability is due to willful blindness. As a result, the principal
15 balance included in the form of judgment is justified and the Court should enter it as
16 submitted.
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19 Finally, language regarding 2018 assessments is appropriate. Under ARCP
20 55(b)(1), the Court is permitted to enter a default judgment without a hearing if the
21 plaintiff's claim is for "a sum certain or a sum that can be made certain by computation."
22 While Plaintiff is not requesting for judgment to be entered without a hearing, the amount
23 of the form of judgment "can be made certain by computation," as is required by Rule
24 55(b). Should the subject property not be sold until 2018, because of a payment
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28 ¹ Notably, another subpart to A.R.S. § 33-1807, paragraph (J)—regarding application of payments—*does* contain preemptive language, but only as far as the application of payments is concerned. This obvious contrast further highlights that the Legislature did not intend to preempt contractual foreclosure remedies.

1 agreement, for example, Plaintiff must be able to include those assessments in the
2 eventual writ.

3 **B. Plaintiff is Entitled to Post-Judgment Fees and Costs.**

4 Plaintiff is entitled to post-judgment attorney fees and costs pursuant to Arizona
5 law and the Declaration. In *Bennett Blum, M.D., Inc. v. Cowan*, the court upheld a
6 contractual provision entitling the prevailing party to an award of post-judgment attorney
7 fees. 235 Ariz. 204, 207, 330 P.3d 961, 964 (App. 2014). The *Bennett Blum* court upheld
8 current Arizona jurisprudence stating:
9

10 The attorney fees stemming from appellants' Rule 60(c) motion and motion
11 to stay fall squarely within the broad *language of this contractual*
12 *provision*. There is no dispute that the underlying action arose from the
13 parties' contract and that Blum was the prevailing party on his breach-of-
14 contract claim in that action. In their Rule 60(c) motion, appellants sought
15 relief from the underlying judgment, and, in their motion to stay, appellants
16 sought to delay execution of the judgment . . . Thus, both the Rule 60(c)
17 motion and the motion to stay necessarily were related to the underlying
18 action on the contract. The trial court denied appellants' motion for stay,
19 and appellants withdrew their Rule 60(c) motion.

20 The trial court therefore had no discretion to refuse to award Blum attorney
21 fees for appellants' Rule 60(c) motion and motion to stay under the contract
22 . . . Because the contract controls, we need not address the applicability of §
23 12-341.01(A).

24 *Id.* 235 Ariz. at 207, 330 P.3d at 964. This is not a narrow holding. The *Blum* court held
25 that, with limited exceptions, the court lacks discretion to refuse post-judgment attorney
26 fees pursuant to the parties' contract. *Id.* Defendant's extended look at other jurisdictions
27 ignores the fact that this issue has been decided by Arizona courts, and Arizona courts do
28 not support Defendant's position. *Id.*

Defendant next argues erroneously that Plaintiff is not entitled to post-judgment
attorney fees and costs because "the underlying contract giving rise to the claim for fees

1 ceases to have any further relevance or vitality.” Def. Obj. at 6. Defendant cites *Mid*
2 *Kansas* as his legal support for this proposition, but *Mid Kansas* says nothing even close
3 to what Defendant is proposing. 167 Ariz. at 129-30, 804 P.2d 1317-18. *Mid Kansas*
4 involved a mortgagee that held the first four deeds of trust on a property, foreclosed on a
5 junior lien, and then tried to sue for a money judgment on the superior lien. *Id.* The *Mid*
6 *Kansas* court did not address the merger of a contract into a judgment, but the merger of a
7 lien into property ownership, an issue which has zero applicability in this case. *Id.* The
8 fact that Defendant cited this case at all is a clear effort to mislead the Court.
9

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11 Defendant also declares, in clear disregard for the facts, that “there is no contract
12 provision entitling Plaintiff to fees incurred collecting a judgment.” As already addressed,
13 Section 8.3 of the Declaration provides, “There is hereby created and established a lien
14 against each Lot which shall secure payment of all present and future Assessments
15 assessed or levied . . . (together with any present or future charges, fines, penalties or
16 other amounts levied against such Lot” Defendant employs the ostrich defense² as to
17 this provision in the hope that the Court will also ignore Plaintiff’s rights.
18

19 **C. Plaintiff Is Not Seeking to Sell Personal Property.**

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21 The proposed form of judgment states, “It is hereby directed that if there is any
22 personal property present at or in the Property at the time of the sale, the same will be
23 deemed abandoned and sold as part of the Property *if not removed* prior to the time the
24 purchaser of the Property elects to take possession of the Property as more fully set forth
25 below . . .” Proposed Form of Judgment, at ¶ 6 (emphasis added). In other words, if
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28 ² The “ostrich defense,” or purposefully ignoring facts which one finds disagreeable, gets its name from an ostrich’s
propensity to bury its head in the sand while still leaving its body exposed to danger. See *State v. Ennis*, 142 Ariz.
311, 689 P.2d 570 (App. 1984).

1 Defendant leaves his personal property in the house when the purchaser takes possession,
2 it will be deemed abandoned. There is nothing in this form of judgment preventing
3 Defendant from retaining ownership of all of his personal property, so long as he does not
4 abandon it.

5
6 **CONCLUSION**

7 Plaintiff respectfully requests that the Court enter judgment as submitted and
8 award all of Plaintiff's costs. Plaintiff has incurred additional fees and costs in
9 responding to Defendant's dispute and will continue to incur additional attorney fees in
10 the event that additional efforts are necessary to bring resolution to this matter.
11 Accordingly, Plaintiff will submit a supplemental application for attorney fees upon entry
12 of judgment in this matter for fees incurred in responding to Defendant's dispute.

13
14 RESPECTFULLY SUBMITTED this 14th day of July, 2017.

15
16 **MAXWELL & MORGAN, P.C.**

17
18 By: 

19 Samuel C. Richardson, Esq.
20 4854 E. Baseline Road, Ste. 104
Mesa, AZ 85206
Attorneys for Plaintiff

21 **ORIGINAL** of the foregoing submitted
22 For e-filing this 14 day of July, 2017 to:

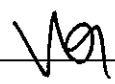
23 The Clerk of the Court

24 **COPY** of the foregoing delivered
25 This 14 day of July, 2017 to:

26 Hon. Margaret Benny
27 Southeast Facility 3C
28 222 E. Javelina
Mesa, AZ 85210

1 COPY of the foregoing mailed
this 14 day of July, 2017, to:

2 Jonathan Dessauls
3 5353 N. 16th St. Suite 110
4 Phoenix, AZ 85016
5 *Attorney for Defendant Carlos Mejia*

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