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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

LAVEEN MEADOWS
HOMEOWNERS' ASSOCIATION, an
Arizona nonprofit corporation,

Plaintiff/Appellee,

v.

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

Defendant-Appellant.

No.: 1-CA-CV 18-0276

Maricopa County Superior Court
No.: CV 2016-094391

**MOTION FOR LEAVE TO HAVE
CLERICAL ERROR CORRECTED
BY THE TRIAL COURT**

Plaintiff/Appellee Laveen Meadows Homeowners' Association
("Association"), pursuant to Rule 6(a), ARCAP, hereby request leave to allow the
trial court to correct a clerical error in the judgment on foreclosure signed August
3, 2017 in accordance with Rule 60(a), ARCP.

Rule 60(a), ARCP, provides as follows:

A court must correct a clerical mistake or a mistake arising from oversight or omission if one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with

notice. But after an appeal has been filed and while it is pending in the appellate court, such a mistake may be corrected only with the appellate court's leave. After a mistake in the judgment is corrected, execution must conform to the corrected judgment.

Consequently, courts are required to correct clerical mistakes or errors in judgments, but if a judgment has been appealed, permission must first be obtained from the Court of Appeals. In *Ace Automotive Products, Inc. v. Van Duyne*, 156 Ariz. 140, 750 P.2d 898 (Ct. App. 1987), this Court explained “whether error is judgmental or clerical turns on the question whether the error occurred in rendering judgment or in recording the judgment rendered.” *Van Duyne*, 156 Ariz. at 142, 750 P.2d at 900. This Court further explained that “the power to correct clerical error does not extend to the changing of a judgment, order, or decree which was entered as the court intended.” *Id.*, 156 Ariz. at 142-143, 750 P.2d at 900-901.

Fortunately, in this matter, the trial court was very clear as to what it intended to do. Unfortunately, the trial court inadvertently used the wrong starting number to render its calculations as to the principal balance. Exhibit “1” to the Judgment on Foreclosure clearly identifies that there were three charges the trial court intended to subtract from the principal sum it wished to award the Association. (See Exhibit “1” to the judgment attached hereto as Exhibit “A”.) The trial court determined to subtract from the principal sum “all amounts prior to May 11, 2013.” (See Exhibit “A”.) The trial court also intended to subtract from the principal sum “2016 late fees in ledger but not included in principal balance”.

(*See* Exhibit “A”.) The 2016 late fees totaled \$120.00. (*See id.*) Finally, the trial court also intended to subtract from the principal sum “Litigation atty [sic] fees & costs in ledger but not included in principal balance.” (*See id.*) These attorneys’ fees and costs, which appeared on the ledger but which were not part of the principal sum totaled \$3,464.06. (*See id.*)

It is likewise clear from the record where the trial court obtained these figures. The financial transaction ledger, admitted as Exhibit “F” at the June 20, 2017 evidentiary hearing, detailed every charge associated with Defendant/Appellant Carlos Mejia’s (“Mejia”) account, including assessments, late fees, attorneys’ fees and costs. (*See* Financial Transaction Ledger attached hereto as Exhibit “B”.) In preparing the financial transaction ledger for the June 20, 2017 evidentiary hearing, the Association identified with an “x” every charge that constituted “2016 Late Fees not included in principal balance of judgment”. (*See id.*) Those 2016 late fees not included in the principal balance of the judgment totaled \$120.00. (*See id.*) Also on the financial transaction ledger, the Association identified with a “☆” every charge that constituted “Litigation Attorneys’ fees and costs”. (*See id.*) The “litigation attorneys’ fees and costs” totaled \$3,464.06. (*See id.*)

The testimony presented at the June 20, 2017 evidentiary hearing pointed out the 2016 late fees and the litigation-related attorney’s fees and advised that trial

court that the charges appeared on the ledger but should not be included as part of the principal balance of the foreclosure judgment. (See Transcript of Proceedings from June 20, 2017 (“June 20 Transcript”) attached as Exhibit “C” to Defendant/Appellant/Cross-Appellee’s Notice of Filing Transcripts, dated November 20, 2017, 17:24-19:15.) The trial court clearly agreed as Exhibit “1” to the foreclosure judgment identified these amounts and explained that they should be “minused” from the principal sum. (See Exhibit “A”.) The clerical error occurred, however, when the trial court took the resulting balance of \$8,843.48 from the financial transaction ledger (from which the 2016 late fees and litigation-related attorneys’ fees and costs had already been subtracted) as the starting point for the trial court’s calculations. Comparison between the Association’s calculations on the financial transaction ledger and the trial court’s calculations on Exhibit “1” to the foreclosure judgment reveals that the clerical/mathematical error resulted in identifying a principal sum that was not what the trial court intended:

<u>Association’s Calculations</u> (see Exhibit “B”)	<u>Trial Court’s Calculations</u> (see Exhibit “A”)
\$12,013.54 – Beginning Balance	\$8,843.48 – Beginning Balance
+\$414.00 – 2017 Assessments	-\$2,411.50 – Pre 5/11/2013 Amounts
-\$120.00 – 2016 Late Fees	-\$120.00 – 2016 Late Fees
<u>-\$3,464.06</u> – Attorneys’ Fees and Costs	<u>-\$3,464.06</u> – Attorneys’ Fees and Costs
\$8,843.48 – Resulting Balance ¹	\$2,847.92 – Resulting Balance ¹

¹ Resulting Balance prior to application of \$5,000.00 payment from Mejia.

As the trial court clearly identified what it intended to do with respect to awarding the principal foreclosure sum in favor of the Association, the clerical error is readily apparent. The trial court inadvertently subtracted twice the 2016 Late Fees and litigation-related attorneys' fees and costs from the principal by using as the starting figure for the trial court's calculations a figure that already accounted in full for these deductions. (*Compare* Exhibit "A" with Exhibit "B".) As such, pursuant to Rule 6(a), ARCAP, the Association requests leave of this Court to present this clerical error to the trial court to allow the trial court to correct the miscalculation in accordance with Rule 60(a), ARCP. Pursuant to Rule 21, ARCAP, the Association seeks an award of attorneys' fees and costs incurred in connection with this Motion.

DATED this 26th day of November, 2018.

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