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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

**REPLY IN SUPPORT OF 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, submits this Reply in Support of Motion for Leave to Have Clerical Error Corrected by the Trial Court. Defendant/Appellant Carlos Mejia ("Mejia") has argued vehemently that no allowance should be granted for the trial court to correct the scrivener's error that resulted in the principal judgment amount being a negative number. Mejia has argued that too much time has passed, and that the Association has waived its right

to have the error correct, and that the error is not one that is correctable pursuant to Rule 60(A), ARCP. However, glaringly absent from Mejia's Response is any contention that the trial court did not make the simple mistake identified by the Laveen Meadows Homeowners' Association ("Association") in its Motion seeking to have the scrivener's error corrected. The Association continues to maintain that the trial court should be permitted to correct the scrivener's error.

I. THE ASSOCIATION DOES NOT CHALLENGE TRIAL COURT'S ANALYSIS AND RATIONALE IN RENDERING THE JUDGMENT; ONLY THE SCRIVENER'S ERROR IN THE TRIAL COURT'S CALCULATION.

As explained in the Association's pending Motion for Leave to have Clerical Error Corrected by the Trial Court (hereafter "Motion for Leave"), the trial court prepared a detailed exhibit explaining the analysis used to arrive at the principal balance of the foreclosure judgment. The Association's ledger was admitted into evidence and established the basis for the Association's claim for the amounts due and owing. (Amended Index of Record [hereafter "IR"], #54.) The trial court used the Association's ledger accounting as the starting point for the calculations identified on Exhibit "1" to the judgment. (IR, #76,)

As explained in the Association's pending Motion for Leave, the Association had posted to the ledger the attorneys' fees and costs that had been incurred during the prosecution of the foreclosure matter currently before this Court on appeal. These fees and costs were sought through an appropriate *China*

Doll Affidavit, Application for Fees and Statement of Costs. The Association did not seek these fees to be awarded as part of the principal balance of the foreclosure lawsuit. Therefore, because the Association kept on one running ledger all charges that related to Mejia's account, those attorney's fees and costs needed to be subtracted from the ledger balance in order to obtain an accurate picture of the foreclosable balance. These foreclosure-related litigation fees and costs totaled \$3,464.06. (IR, #54.) Also posted to the ledger were \$120.00 in late fees incurred in 2016 that were not being sought as part of the principal foreclosure balance. Because these late fees still appeared on the ledger accounting, they also needed to be subtracted from the ledger balance in order to provide an accurate depiction of the then-foreclosable balance. (IR, #54.)

On Exhibit "1" to the foreclosure judgment, the trial court identified three categories of charges that were included on the Association's ledger but that the trial court determined should not be part of the Association's foreclosable balance: (1) amounts incurred prior to May 11, 2013 as beyond the statutory statute of limitations; (2) late fees from 2016 that were on the ledger but that were not being sought; and (3) attorney's fees and costs incurred during the pending foreclosure litigation. (See Exhibit "A" to the Association's Motion for Leave.) With respect to the first category of charges the trial court determined to subtract from the Association's ledger, the Association disagreed with the trial court's decision, but

determined not to pursue appeal of the question of the applicable statute of limitations. With respect to the second and third categories of charges the trial court determined to subtract from the Association's ledger accounting, the Association was in perfect agreement. In fact, the Association identified these amounts for the trial court at the evidentiary hearing and explained that these categories of charges should be subtracted from the ledger accounting in order to identify the foreclosable balance. (IR, #54.) As such, the trial court's analysis in reaching the principal balance of the foreclosure judgment is not being challenged. In fact, for purposes of the pending appeal, the Association concedes that the trial court made no error in evaluating the ledger and determining which categories of charges should be included and excluded from the principal balance. However, the trial court mistakenly pulled the wrong number as the court's starting point for the calculations. If the trial court wished to show in its calculations all three categories of charges that the court determined needed to be subtracted from the Association's ledger to arrive at the principal foreclosure balance, the starting number should have been \$12,427.54. (IR, #54.) The figure of \$8,843.48 was arrived at by pre-subtracting for the trial court two of the very categories of charges the trial court determined should have been subtracted. (IR, #54.) This inadvertent misstatement by the trial court of the starting number for its judgment calculations is nothing more than a scrivener's or clerical error. The underlying

analysis of the trial court's judgment, as clearly established by Exhibit "1" to the foreclosure judgment, remains unchallenged by the Association.

II. THE ASSOCIATION'S MOTION FOR LEAVE IS TIMELY.

As explained in the Association's Motion for Leave, Rule 60(A), ARCP, expressly allows clerical errors to be corrected by the trial court even during the pendency of an appeal. (*See* Rule 60(A), ARCP.) Mejia contends that the Association's failure to raise the clerical error at the trial court precludes the Association from doing so now and cites the case of *Ace Automotive Products, Inc. v. Van Duyne*, 156 Ariz. 140, 750 P.2d 898 (App. 1987) in support of his contention. (*See* Mejia's Response to Motion for Leave, p. 2.) However, this Court's decision in *Ace Automotive* supports the Association's ability to raise the issue for the first time on appeal.

In *Ace Automotive*, the defendant failed to appear at trial. *Id.*, 156 Ariz. at 142, 750 P.2d at 900. As such, a judgment was entered against the defendant based on the evidence before the trial court. *Id.* On appeal, the defendant argued for the first time that the trial court erred in calculating the amount of the judgment. *Id.*, 156 Ariz. at 142, 750 P.2d at 900. In its opinion, this Court explained that while "objection to judgmental error, except where fundamental, cannot be advanced for the first time on appeal . . . [c]lerical errors, by contrast, are governed" by a rule that specifically contemplates such errors being raised for the

first time on appeal. *Ace Automotive Products, Inc.*, 156 Ariz. at 142, 750 P.2d at 900. This Court further explained that what “the trial court intended” was paramount to determining whether the error was judgmental in nature or clerical in nature. *Ace Automotive Products, Inc.*, 156 Ariz. at 143, 750 P.2d at 901. After differentiating between judgmental errors, which cannot be raised for the first time on appeal, and clerical errors, which can, this Court in *Ace Automotive* determined that based on the evidence presented at trial, the judgment at issue was entered exactly as intended by the trial court. *Id.*, 156 Ariz. at 143, 750 P.2d at 901. Thus, the alleged error was judgmental in nature, rather than clerical, for which “the defendants’ failure to object at trial preclude[d] correction on appeal.” *Id.*

Unlike the circumstances that led this Court to preclude an error in calculation from be corrected on appeal in the *Ace Automotive* matter, in this matter, the Association was present at trial and presented the very evidence the trial court relied on to enter the judgment. (IR., #54, and #76.) It was the evidence presented by the Association that provided the foundation for the trial court’s judgment. (*Id.*)

As explained in the Association’s Motion for Leave, what the trial court “intended” to do was made very clear by Exhibit “1” to the judgment. In Exhibit “1”, the trial court provided a detailed step-by-step explanation of the amounts that it intended to subtract from the Association’s ledger balance. (IR, #54.) The trial

court expressly advised that it intended to subtract three categories of charges from the evidence presented by the Association of the balance due. What the trial court “intended” is not being challenged by the Association’s Motion for Leave. It is merely the trial court’s scrivener’s error of pulling the wrong number from the Association’s accounting ledger to use as the starting point of the trial court’s calculations that the Association is requesting be corrected. Because Exhibit “1” to the judgment clearly established the trial court’s intent, and because the scrivener’s error committed by the trial court inadvertently frustrated that intent, the error the Association now seeks leave to have corrected is clerical in nature according to this Court’s ruling in *Ace Automotive*. Consequently, Rule 60(A), ARCP, expressly allows the Association to raise such an issue for the first time on appeal. This Court’s holding in *Ace Automotive*, wherein this Court explained that “[c]lerical errors, by contrast” to judgmental errors, may be raised pursuant to Rule 60(A), ARCP, for the first time on appeal, render the Association’s Motion for Leave timely.

III. THERE HAS BEEN NO WAIVER OF THE ASSOCIATION’S ABILITY TO SEEK TO HAVE THE JUDGMENT CORRECTED.

As explained above, the Association, pursuant to Rule 60(A), ARCP, is permitted to seek permission to have the trial court correct its clerical error during the pendency of this appeal. Mejia’s arguments that the Association waived its right to do so by passing certain milestones in the appellate process before filing

the instant Motion for Leave are without merit. Mejia cited the case of *Minjares v. State*, 223 Ariz. 54, 58-59, ¶¶ 16-19, 219 P.3d 264, 268-269 (App. 2009) in support of his contention. However, this Court's analysis in *Minjares* confirms that there has been no waiver by the Association.

In *Minjares*, the defendant appealed to this Court a judgment that had been entered against it. *Minjares*, 223 Ariz. at 56, ¶ 1, 219 P.3d at 266. The defendant did not raise as an issue on appeal its contention that the judgment provided for interest at an incorrect rate. *Id.*, 223 Ariz. at 57, ¶ 5, 219 P.3d at 267. Following its unsuccessful appeal, the defendant filed a motion with the trial court arguing for the first time that the trial court erred by entering an incorrect rate of interest on the judgment. *Id.*, 223 Ariz. at 56, ¶ 1, 219 P.3d at 266. The plaintiff argued that if the defendant believed the interest rate in the judgment was erroneous, the error should have been raised prior to appeal, and addressed on appeal. *Id.*, 223 Ariz. at 58, ¶ 16, 219 P.3d at 268. On appeal for the second time, this Court affirmed the superior court's finding that with respect to errors such as this, the defendant's right to seek to have the error corrected had not been waived. *Id.*, 223 Ariz. at 59, ¶ 19, 219 P.3d at 269.

In this matter, the Association has sought leave for the trial court to correct its clerical error in a much earlier stage of the appellate process than the defendant in the *Minjares* matter. As this Court in *Minjares* dealt specifically with a statutory

provision related to interest rates on judgments awarded against the State of Arizona, the analysis from the case is largely irrelevant. Nevertheless, to the extent the analysis in *Minjares* provides assistance in evaluating Mejia's allegation of waiver, the case confirms that neither the filing nor conclusion of an appeal automatically waives the right to seek correction of clerical errors.

IV. THE CORRECTION OF THE CLERICAL ERROR DOES NOT PREJUDICE MEJIA'S ABILITY TO PURSUE THE APPEAL.

The fundamental question presented to this Court by the pending appeal is whether a defendant can strip a trial court of jurisdiction over a foreclosure matter by delivering a partial payment following default, just before judgment is entered. Granting the trial court leave to correct its scrivener's error does not change the nature of the appeal before this Court. Mejia would clearly prefer the optics of a negative number as the principal balance of the foreclosure judgment as it helps shape his theme for this case. However, the question of whether the principal balance of the foreclosure judgment was negative or positive does not actually disrupt the core of Mejia's arguments.

Mejia argued that since his eleventh-hour payment of \$5,000.00 resolved all unpaid assessments as of the date the payment was delivered, the Association should not have been able to foreclose. As the Association acknowledged in its briefing and at the evidentiary hearing, the \$5,000.00 payment was sufficient to pay the monthly \$46.00 regular assessments that had accrued since Mejia

purchased the property five years earlier. The Association claimed, however, that the Association's lien included additional amounts beyond just assessments that could be foreclosed provided the Association's lien satisfied the statutory threshold of \$1,200.00 or one year delinquent at the time of filing. (*See* A.R.S. § 33-1807(A).) There has never been any dispute that at the time the matter was filed, Mejia's delinquency satisfied both statutory prerequisites to foreclosure. Whether the resulting principal balance after Mejia's last-minute payment was negative or positive is not a relevant element to the substantive questions raised on this appeal. Other than disrupting Mejia's attempt to establish a theme for this appeal that sounds emotionally appealing, Mejia will suffer no prejudice to his appeal if the trial court is permitted to correct its scrivener's error.

V. CONCLUSION.

As the foregoing explains, the trial court's detailed calculations and explanation of what amounts the trial court intended to subtract from the Association's account clearly show that a simple scrivener's error was committed that resulted in the principal foreclosure balance being a negative number. The Association does not seek to challenge the analysis that lead the trial court to its conclusion; it seeks only to allow the trial court to recalculate its figure using the correct starting number. The Association's motion is timely as Rule 60(A), ARCP, expressly allows clerical errors to be corrected while a matter is pending on appeal

with leave of this Court. Moreover, the Association has not waived its ability to make such a request, and Mejia's appeal will suffer no substantive prejudice by allowing the trial court to correct its error. As such, the Association requests that this Court grant its Motion for Leave to Have Clerical Error Corrected by the Trial Court Correct. The Association reiterates its request for attorneys' fees and costs pursuant to Rule 21, ARCAP, in connection with its Motion and this Reply.

DATED this 14th day of January, 2019.

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