

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-094261

11/24/2014

HON. MARK F. ACETO

CLERK OF THE COURT
M. Scott
Deputy

TROON RIDGE ESTATES I I I & I V
HOMEOWNERS ASSOCIATION

JOSHUA M BOLEN

v.

4 A A R HOLDINGS L L C, et al.

ELIJAH W ROSOV

SCOTTSDALE COMMUNITY
ASSOCIATION
C/O AAM, LLC; ATTN: LAURA ZIFF
1600 W. BROADWAY RD., STE. 200
TEMPE AZ 85282
CITIBANK SOUTH DAKOTA N A
7920 NW 110TH STREET
KANSAS CITY AZ 64153
MICHAEL D RIPSON
28695 N 94TH PL
SCOTTSDALE AZ 85262
LINDSEY O STEARNS

MINUTE ENTRY

On August 28, 2014, Plaintiff filed a "Motion for Partial Summary Judgment". The Court has reviewed the pleadings. Pursuant to Rule 7.1, the Court declines to schedule oral argument.

The Court makes note of the following:

- For a time, Defendants did not timely pay assessments.

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- Plaintiff's "First Amended Complaint" includes a claim for foreclosure of its assessment lien. Through the pending motion, Plaintiff seeks summary judgment on this claim.
- A.R.S. §33-1807(A) controls. It provides that an assessment lien may be foreclosed only if the owner "has been" delinquent on the assessment for a period of one year or in the amount of one thousand two hundred dollars or more.
- While late fees and attorney fees and costs may ultimately be rolled into the lien, the statute excludes such amounts from being considered in determining whether the right to foreclose exists. Rather, pursuant to the statute, only the delinquent assessment amount is considered when determining whether the right to foreclose exists.
- In grammatical terms, the phrase "has been" is an example of the "present perfect continuance tense". The phrase "has been" denotes a condition that started in the past and continues in the present.
- In this case, after Plaintiff initiated this lawsuit, Defendant paid off the delinquent assessment amount.
- Plaintiff argues that §33-1807(A) is a foreclosure friendly statute. More specifically, Plaintiff argues that once a Complaint with a foreclosure claim is filed, the homeowner cannot avoid foreclosure by paying off the delinquent assessments. The Court rejects this argument.

Under the circumstances,

IT IS ORDERED denying Plaintiff's "Motion for Partial Summary Judgment".¹

¹ Among other things, through Count One, Plaintiff seeks a monetary judgment for penalties and fees related to assessments. By denying Plaintiff's "Motion for Partial Summary Judgment", the Court in no way suggests that Plaintiff's claim for penalties and fees related to assessments is not viable.