

COUNTY COURT, MONTEZUMA COMBINED COURTS COUNTY, COLORADO	
Court Address: 865 North Park Street, Suite 100, Cortez, CO, 81321	DATE FILED: November 17, 2019 5:15 PM CASE NUMBER: 2018S5
Plaintiff(s) CEDAR MESA RANCHES HOMEOWNERS v. Defendant(s) SHERRY NIGHTEAGLE	
<b>△ COURT USE ONLY △</b>	
Case Number: 2018S5 Division: 3                      Courtroom:	
<b>Trial Order on Defendant's Counterclaims</b>	

On March 9, 2018, Plaintiff filed a small claims action against Defendant seeking payment of past due and unpaid HOA assessments for road maintenance in the Cedar Mesa Ranches subdivision. Assessments demanded were from 2015 to 2018 in the amount of \$2325 and then in an amended complaint on 6-15-18 the amount was increased for further assessments. The Court granted Plaintiff \$2425 after trial.

Defendant filed a timely answer and counterclaim to Plaintiff's claim on 5-3-18 for a set-off of the assessments pursuant to CRS 38-35-109(3) due to the Plaintiff having filed "spurious" liens against her property on 5-22-15 and again on 8-5-15. The evidence supports the HOA filed these liens due to unpaid road maintenance assessments. On 11-7-19 trial was held on Defendant's counterclaims after appeal.

Evidence presented at trial supports that Plaintiff filed two liens against Defendant's property in 2015. One lien was filed on 5-22-15 and another on 8-5-15. Defendant demanded in writing on 7-10-15 that the first lien be released, but Plaintiff declined. On 9-11-15 Defendant's attorney sent a letter to the Plaintiff again demanding removal of both liens within twenty-one days (Plaintiff Exhibit #5) and on 9-28-15 the Plaintiff did release both liens within the twenty one days.

Defendant claims the two liens were invalid because they were predicated on a material misstatement that the HOA was a CCOIA community and at that time the Plaintiff knew or should have known it was not a CCOIA community based on District Court Judge Plewe's ruling in 11CV200 in which Plaintiff was a party. This Court agrees.

Plaintiff was on notice by Judge Plewe's ruling that it did not qualify as a CCOIA community, hence the liens placed on Defendant's property predicated on the Plaintiff being a CCOIA community and able to make assessments was a material misstatement and were wrongfully filed. Pursuant to CRS 38-35-109(3) Defendant is entitled to damages in the amount of \$1000. per lien.

Defendant also claims that because the Plaintiff did not remove the lien upon the first demand on 7-10-15, she should also be awarded an additional \$1000. per lien and/or her damages sustained and attorney's fees. The Court finds that the Defendant failed to meet her burden of proof with regard to these claims.

CRS 38-35-109(3) allows Defendant to recover damages and attorney's fees for the willful refusal to release an invalid lien upon a showing that the person or entity filing the lien was benefited and that the Defendant suffered actual damages as a result of the lien. Defendant did not present evidence that the Plaintiff was in any way benefited by the invalid liens. Further, the Defendant did not prove any damage to her or her property resulted from the liens. Defendant did engage an attorney with another home owner to assist in getting the liens removed. The attorney did charge and bill the other homeowner who is not a party to this action. At trial, the Defendant was asked several times if she ever paid out any money for the attorney's fees. Defendant's answer each time was that she was assigned the rights of the non-party homeowner to pursue the fees.

CRS 13-6-407 specifically precludes assignment of claims in small claims proceedings. Hence, the Court denies Defendant's claim for attorneys fees and for the additional damages for failure to meet her burden of proof.

At trial, Plaintiff argued that Defendant should be barred from bringing these claims from 2015 because they are stale claims. The Court disagrees. The Court believes Defendant's counterclaims were filed within the controlling three year time limitations pursuant to CRS 13-80-101 for claims arising from misrepresentation. The Plaintiff intimates that CRS 13-80-103 should control as CRS 38-35-109 is a punitive or penalty statute and therefore the claims are stale and time barred.

Regardless of which time limitation applies, the Court does find that Defendant's counterclaim meets the requirements for revival under CRS 13-80-109.

Defendant's claim pursuant to CRS 38-35-109 were revived when Plaintiff sought road assessment dues for the year 2015. District Court Judge Plewe issued an order in 16CV18 ruling that Plaintiff (a party in that case) could assess road maintenance costs against homeowners in the Cedar Mesa Ranches subdivision which includes Defendant. In 2018, in this case, Plaintiff sought and was awarded, past due road assessment fees against Defendant including those from 2015. Defendant filed their counterclaim to this case in a timely manner seeking the set-off for the invalid liens from 2015. The Court finds that the Defendant's set-off claim arises from the same transaction or occurrence of the Plaintiff's claim and meets the requirements of CRS 13-80-109 for revival.

Plaintiff also alleges a defense of laches as Defendant delayed inexcusably in bringing her claim and Plaintiff is therefore prejudiced by the delay as the HOA has not budgeted for payment of this claim. The Court disagrees. Defendant seeks a set-off against the road assessments that the court ordered her to pay in 2018 at the first trial of this case. The amount awarded to Plaintiff exceeds the amount awarded to Defendant and due to this court's findings pursuant to CRS 13-80-109, the Court does not find the defense of laches persuasive.

WHEREFORE, the Court amends its order of 6-21-18 as follows: Plaintiff is awarded \$2425 for road assessments for 2015, 2016, 2017, and 2018. Defendant is awarded \$1000 for the invalid lien of 5-22-15 and \$1000 for the invalid lien of 8-5-15 for a total amount of \$2000. The Court denies the Defendant's counterclaims for further damages and attorney's fees. The counterclaims for "assigned" claims of the non-party homeowner brought by the Defendant are dismissed pursuant to CRS 13-6-407. As both parties prevailed in some of their claims, each party will bear their own costs.

Issue Date: 11/17/2019

A handwritten signature in black ink, appearing to read "Sarah Frances Law", with a stylized flourish extending to the right.

SARAH FRANCES LAW  
Magistrate