

available when there is no other equally plain, speedy or adequate remedy by appeal).

IT IS FURTHER ORDERED denying Petitioners relief. We find the Attorney General's transfer of \$50 million of the State Direct Payment Settlement from the national mortgage settlement consent judgment to the Legislature for appropriation was not an abuse of his discretion.¹

As background, in May 2012 the Arizona Legislature included a provision in its annual budget bill requiring the Attorney General to transfer \$50 million from the national mortgage settlement into the general fund to compensate the State "for costs resulting from the alleged unlawful conduct of the Defendants." See 2012 Ariz. Sess. Laws, Ch. 294 (2012) ("SB1523"). Section 128 of SB 1523 indicated the legislature intended to use the funds to fund efforts to ameliorate the foreclosure crisis and compensate the State for losses connected to bank-defendants' conduct.

Petitioners brought this taxpayer action pursuant to Arizona Revised Statutes (A.R.S.) §§ 35-212, -213 (2011), alleging SB1523 is an illegal appropriation of custodial trust funds and violates Article III, the separation of powers clause,

¹ The funds at issue are from the Direct Payment Settlement Amount for use by the states, neither the Borrower Payment Fund to compensate persons foreclosed upon nor the Consumer Relief Fund to provide refinancing to qualified consumers and remediation are implicated. The funds at issue were to reimburse the State of Arizona for its damages.

of the Arizona Constitution. The Attorney General asserts that "the consent judgments authorize the [Attorney General] to transfer \$50 million to the State's general fund where it will be used for purposes consistent with the national mortgage settlement."

At the outset, we note that there is nothing in the record to suggest that the restrictive language of the consent decree was an essential part of the settlement. The language was drafted by the Attorney General, and several other settling states elected to take their share of the settlement pool with no stated restrictions. Moreover, because the proceeds became the property of the State, we see no legal basis upon which the Attorney General could unilaterally impose restrictions upon the use of the funds. See *Rios v. Symington*, 172 Ariz. 3, 5, 833 P. 2d. 20, 23 (1992) ("the Legislature commands the power of the purse").

Even if the consent decree did amount to a restriction on the use of the funds, we would find that such a transfer of a portion of the Direct Payment Settlement did not violate the terms of the consent decree. That document stated:

Arizona's share of the State Payment Settlement Amounts ("Funds") provided under this Consent Judgment, and any interest thereon, shall be made payable to the Office of the Arizona Attorney General. The Attorney General shall direct the use of the Funds in Arizona. The Funds shall be used for purposes intended to avoid preventable foreclosures, to ameliorate the effects of the foreclosure crisis, to enhance law enforcement efforts to prevent and

prosecute financial fraud, or unfair or deceptive acts or practices and to compensate the State for costs resulting from the alleged unlawful conduct of the Defendants.

In interpreting settlement agreements, such as this one, we review questions of law de novo. See *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 182, ¶ 27, 181 P.3d 219, 229 (App. 2008). General contract principles govern our construction. *Emmons v. Superior Court*, 192 Ariz. 509, 512, ¶ 14, 968 P.2d 582, 585 (App. 1998). We need not interpret a contract if the intent of the parties is clear and unambiguous from its plain language. *Mining Inv. Grp., LLC v. Roberts*, 217 Ariz. 635, 639, ¶ 16, 177 P.3d 1207, 1211 (App. 2008).

The plain language of the consent agreement states “[t]he Attorney General shall direct the use of the Funds in Arizona” and “[t]he Funds shall be used for purposes intended to avoid preventable foreclosures . . . and to compensate the State for costs resulting from the alleged unlawful conduct of the defendants.”

Nor do we find error with the intended use of the funds. The Legislature indicated in Section 128 that it intended to fund “areas covered by the National Mortgage Settlement, including agencies such as the state real estate department, department of insurance . . . and for other areas impacted.” This allocation of funds not only comports with the goals plainly outlined in the consent judgment, it satisfies both the

Attorney General and Petitioners.² Finding no error, we affirm the superior court's denial of relief.

We need not address the Petitioners' theoretical separation of powers concerns because the Attorney General and Legislature are in full accord on the matter before us.³

/s/

JON W. THOMPSON, Presiding Judge

² Counsel for Petitioners agreed during oral argument that they would have no objection to the funds being used in that manner where such funding had been so directed by the Attorney General.

³ As the Attorney General stated in his brief "this is not a case in which the Legislature commanded the Attorney General to direct settlement proceeds to the State's general fund contrary to the language of a court-approved Consent Judgment. Instead, the [Attorney General] indicated his intention to transfer \$50 million into the State's general fund consistent with the Consent Judgments."