

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-054930

03/24/2015

HONORABLE MICHAEL D. GORDON

CLERK OF THE COURT
T. McMillian
Deputy

STATEWIDE FORECLOSURE SERVICES INC DAVID L KNAPPER

v.

CHARLES HOSKINS

JON R HULTGREN
DEAN W O'CONNOR
EDITH I RUDDER
CITS - CCC SPANISH

**MINUTE ENTRY
MATTER UNDER ADVISEMENT
UNDER ADVISEMENT RULING (AS LATER)
DENYING MOTION FOR NEW TRIAL**

Prior to the commencement of the hearing, Applicant Armando Fundora's Exhibits 1 through 13 were marked for identification.

1:37 p.m. Courtroom 108 NE. This is the time set for Evidentiary Hearing to determine who is entitled to proceeds deposited with the Treasurer: Armando Fundora's Motion For New Trial, Motion to Amend Judgment pursuant to Rule 59, ARCP, filed June 24, 2014. No one appears on behalf of Plaintiff. Appearing on behalf of Defendant Armando Fundora is Dean O'Connor. Appearing on behalf of Defendant Agape Adult Care Home Group is Jon Hultgren. Colleen is present interpreting the proceedings into Spanish on behalf of Armando Fundora.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Armando Fundora is sworn and testifies.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-054930

03/24/2015

2:24 p.m. Court stands at recess.

2:32 p.m. Court reconvenes with respective parties and counsel present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Armando Fundora testifies further.

Applicant Fundora Exhibits 1 through 8 and 11 through 13 are received into evidence.

Closing arguments are presented to the Court.

IT IS ORDERED taking this matter under advisement.

ISSUED: Exhibit Release Form

3:04 p.m. Matters conclude.

FILED: Exhibit Worksheet

LATER:

Pending before the Court is Armando Fundora's Motion For New Trial, Motion to Amend Judgment pursuant to Rule 59, ARCP, filed June 24, 2014.

On August 26, 2014, the Court ordered an Evidentiary Hearing on the matter to address potential equitable and all legal claims that might warrant a new trial. The Court has reviewed the matter carefully, and the Court has determined that its original judgment which directed that the funds be distributed to Applicant Agape was the correct decision.

The Court cannot discern from the record which of the warranty deeds (both delivered on May 4, 2012) was executed first. Indeed, it appears that the warranty deed that was executed on May 4, 2012, was never in fact delivered to Mr. Fundora at all. In fact, had that deed been delivered to Mr. Fundora, he could have and presumably would have recorded that deed.

Instead, Mr. Fundora relied on Mr. Hafiz (acting on behalf of Deandra) to record the deed. He did record the deed on March 28, 2013, some nine months later. By then, the warranty deed executed in favor of ZK (judgment creditor) had already been recorded.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-054930

03/24/2015

Thus with respect to ownership, the Court finds that ZK was the title owner of the property. Although ZK later transferred its interest, by way of quit claim on October 4, 2013, to Mr. Fundora, Mr. Fundora took that title subject to the judgment lien recorded properly by Agape. Pursuant to A.R.S. §33-812 (A)(5), Mr. Fundora cannot be paid the proceeds prior to the “ junior lienholders at the time of the sale.” Legally, therefore, Agape is entitled to the proceeds.

The Court has also reviewed Mr. Fundora’s claim that he became the equitable owner of the home no later than May 4, 2012 -- and, therefore, the proceeds followed him. Even if the Court had the authority to recognize an equitable ownership, the Court finds that it would not attach on May 4, 2012. Mr. Fundora testified that, early on, he was advised that he needed a deed to protect his interest in the property. Worried that something had gone awry, he demanded that Hafiz execute a warranty deed but made no effort to ensure that Hafiz deliver that deed to him.

As of May 4, 2012, therefore, he essentially sat on rights that he knew might have been suffering harm. Were this Court to balance the equities *between Hafiz and Mr. Fundora* or ZK and Mr. Fundora, the Court might well come to a different conclusion. In this case, however, equity does not require that the proceeds be awarded to Mr. Fundora over an equally innocent third-party recorded judgment creditor (Agape) who took all reasonable steps to protect its rights secured under law.

There being no reason at law or in equity to grant relief, the Motion will be denied.

IT IS SO ORDERED.

IT IS FURTHER ORDERED signing this minute entry as the formal order of this Court.

MICHAEL D. GORDON

MICHAEL D. GORDON
JUDGE OF THE SUPERIOR COURT

PLEASE NOTE: Effective June 22, 2015, all cases assigned to Judge Michael D. Gordon will be re-assigned to Judge Craig Blakey due to judicial calendar rotations.