

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-012813

04/09/2014

HONORABLE MARIA DEL MAR VERDIN

CLERK OF THE COURT
M. Nielsen
Deputy

BALLANTRAE RIDGE HOMEOWNERS
ASSOCIATION

JANET E JACKIM

v.

WINDY WALK PROPERTIES L L C, et al.

DAVID E FUNKHOUSER III

UNDER ADVISEMENT RULING

This matter came before the Court for Oral Argument on February 28, 2014 regarding Ballantrae Ridge Homeowners Association's Application for Distribution of Excess Proceeds from Sale of Real Estate Under Execution Order of Sale on Special Execution, filed October 17, 2013; and Bank of America's Application for Release of Excess Proceeds, filed November 5, 2013. The matter was taken under advisement.

The Court has considered the matters presented including the motions, responses and replies filed, the authority cited and the argument of counsel.

A Sheriff's sale was conducted on the property on September 12, 2013 as a result of a judgment of foreclosure in favor of Ballantrae. Excess proceeds from the sale were in the amount of \$4, 716.06 which were deposited with the Maricopa County Superior Court Clerk.

The Home Owners' Association argues that the lien foreclose should be treated as a special execution under A.R.S. 12-1562 and that they are entitled to the excess proceeds. The Bank argues that under A.R.S. s 33-1807(A), lien foreclosures are treated as mortgages and any excess monies should be disbursed to the Bank.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-012813

04/09/2014

The Court is persuaded by the Bank's position that priority in this case, under the circumstances presented is governed by A.R.S. s 33-727(A). The Bank is entitled to the excess proceeds as the next lien holder in priority.

IT IS ORDERED denying Plaintiff Ballantrae Ridge Homeowners Association's Application for Distribution of Excess Proceeds from Sale of Real Estate Under Execution Order of Sale on Special Execution, filed October 17, 2013; granting the Bank of America's Application for Release of Excess Proceeds, filed November 5, 2013; and directing that Maricopa County Superior Court Clerk distribute excess proceeds in the amount of \$4,716.06 to Bank of America.

IT IS FURTHER ORDERED that Counsel shall submit and lodge an order form for the Court's consideration no later than May 1, 2014.

Effective April 15, 2014 new civil rules and forms are in effect for managing cases moving to trial. Be sure to review the new Civil Rules 16, 26, 37, 38, 72 through 74 and 77.