

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-054930

04/22/2014

HONORABLE MICHAEL D. GORDON

CLERK OF THE COURT
M. MINKOW
Deputy

STATEWIDE FORECLOSURE SERVICES INC DAVID L KNAPPER

v.

CHARLES HOSKINS

CHARLES HOSKINS
MARICOPA COUNTY TREASURER
301 W JEFFERSON #100
PHOENIX AZ 85003

JON R HULTGREN
DEAN W O'CONNOR
EDITH I RUDDER

SUPPLEMENTAL MEMORANDUM ORDERED

Pending before the Court are two competing applications for the release of excess proceeds: (1) Armando Fundora's (Fundora) Application filed November 11, 2013; and (2) Agape Adult Care Home Group, LLC's (Agape) Application filed December 2, 2013.¹ The original complaint was brought against Maricopa County Treasurer, pursuant to Ariz. Rev. Stat. Ann. § 33-812 (2014).

The Court has reviewed the competing claims. Once having determined that the claims are otherwise timely, this Court is directed "to issue an order to Maricopa County Treasurer to release proceeds deposited with the county treasurer after applying the priorities prescribed by [Ariz. Rev. Stat. Ann. § 33-812(A) (2014)]." *See* Ariz. Rev. Stat. Ann. § 33-812(J) (2014). Section 33-812(A) directs that such proceeds be paid--- after higher priorities are paid--- to "the

¹ On February 12, 2014, the Court released funds to Acacia Homeowner's Association pursuant to the parties' stipulation.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-054930

04/22/2014

junior lien holders or encumbrances in order of their priority at the time of the sale.” Ariz. Rev. Stat. Ann. § 33-812(A)(5) (2014).

Fundora acknowledges that his lien was filed after Agape’s lien,² and, therefore, it would ordinarily be deemed a junior lien. Citing to *Rotary Club of Tucson v. Ramos*, 160 Ariz. 362, 773 P.2d 467 (Ariz. Ct. App. 1989), however, Fundora asks the Court to impose an equitable lien on the proceeds because he was defrauded out of the property from the original seller and he recorded the deed as soon as practicable.

In *Ramos*, putative beneficiaries under a Mexican will used the will’s proceeds to pay off liens on real property that was also devised to these beneficiaries.³ *Ramos*, 160 Ariz. 362-364, 773 P.2d 467-469. The beneficiaries innocently relied on a Mexican Court’s Judgment that held that the proceeds belonged to them under the will. *Id.* The Superior Court refused to domesticate the Mexican Judgment and instead found other beneficiaries were entitled to the proceeds. Because these beneficiaries innocently converted the proceeds, the *Ramos* court determined that the imposition of an equitable lien on the real property (in the amount of those converted proceeds) was an appropriate remedy but an equitable trust was not. *Id.* The *Ramos* court looked to the Restatement of Restitution which states:

Where a person converts the property of another without notice of the facts which make him a converter and being still without such notice exchanges it for other property, the other is entitled to an equitable lien upon the property received in exchange to secure his claim for restitution, but is not entitled to enforce a constructive

See Ramos at id. (quoting the Restatement (First) of Restitution, § 203 (1937)).⁴

It appears to the Court that Fundora may have an equitable interest in the proceeds. As to resolving these competing interests, Title 33-812(A) (1-5) directs the Court to pay the “junior lien holders or encumbrances in order of their priority as they existed at the time of the sale.” *See* Ariz. Rev. Stat. Ann. § 33-812(5) (2014).

²Agape is a judgment creditor.

³The dispute focused on the devisees’ competing claims to real property. This Court summarizes the holding, omitting facts that led to the dispute.

⁴Notably, the *Ramos* court refused to impose a constructive trust on the property because the converter did not know that the disposition was wrongful. Here, however, the converter trustor resold the property to a related entity the same day it sold it to Fundora. It appears, therefore, that Fundora may have both a constructive trust of the property and an equitable lien. *See* Restatement (First) of Restitution, § 202 (1937).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-054930

04/22/2014

The parties are directed to provide to the Court simultaneous legal memoranda of points and authorities addressing:

1. Whether Fundora has an equitable lien;
2. If Fundora has an equitable lien, whether the equitable lien is recognized under A.R.S. § 33-812(A)(1-5))2014); and
3. If Fundora has an equitable lien, how the Court should determine priority.

The memoranda shall be filed on **May 16, 2014, at noon.**