

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-013865

05/27/2020

HONORABLE DAVID W. GARBARINO

CLERK OF THE COURT
L. Brown
Deputy

U S BANK NATIONAL ASSOCIATION

CRAIG CARSON HOFFMAN

v.

BETH FINDSEN, et al.

BETH K FINDSEN

KATHRYN A BATTOCK
EMILIE S BELL
COMM. GARBARINO

MINUTE ENTRY

Pending before the Court are dueling Applications for Release of Excess Proceeds resulting from a Sheriff's Sale. The amount at issue on deposit with the Clerk of Court is \$31,063.58. Defendants/Applicants Beth and Marc J. Findsen (collectively, the "Findsens") are the former owners of the property sold by the Sheriff (the "property"). Applicant Global Proceeds, LLC ("Global") claims to be the holder of a note once secured by a deed of trust recorded against the property and senior to the Findsens' interests in the property (now reduced to excess proceeds).

In their Objection to Global's Application for Release of Excess Proceeds, the Findsens argue in part that Global failed to adequately demonstrate its interest in the property. The Court agrees. The documents offered by Global seemingly would demonstrate that Global has an interest in the excess proceeds, but Global did not offer an affidavit or declaration authenticating the documents offered. For this reason, the Court concludes that Global is not entitled to recover the excess proceeds at this time.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-013865

05/27/2020

The Findsens also argue that the Default Judgment entered against Global's alleged predecessor-in-interest bars Global's recovery of the excess proceeds. This argument has no merit. A junior lienholder's interest in excess proceeds are not extinguished by the foreclosure of a senior interest. *See* A.R.S. §§ 12-1562(A), 33-727(B); *Vista Santa Fe Homeowners Ass'n v. Millan*, 1 CA-CV 18-0609, 2019 WL 5152257, at *2 (App. Oct. 15, 2019); Restatement (Third) of Property (Mortgages) § 7.4 (1997). “[L]iens and other interests terminated by the foreclosure attach to the surplus in order of the priority they enjoyed prior to the foreclosure.” Restatement (Third) of Property (Mortgages) § 7.4. The Court rejects the Findsens' argument to the contrary. Also, for the same reasons, the Court rejects the Findsens' anti-deficiency arguments.

Lastly, the Court considered the Findsens' argument that the statute of limitations barred Global's claim to the excess proceeds. As the Court of Appeals has noted, a “demand of a full payment before all installments fall due constitutes a sufficiently affirmative act of acceleration.” *Andra R Miller Designs LLC v. US Bank NA*, 244 Ariz. 265, 270, ¶ 15, 418 P.3d 1038, 1043 (App. 2018), *review denied* (July 3, 2018). The declaration of Mr. Findsen supports the claim that Global's predecessors-in-interest demanded full payment more than six years ago. Nevertheless, Global has not had an opportunity to cross-examine Mr. Findsen about his declarations. Accordingly, before the Court concludes that the statute of limitation has run based upon Mr. Findsen's statement, Global should be given an opportunity to cross-examine Mr. Findsen on the record. Accordingly,

IT IS ORDERED setting a forty-five minute video hearing on **June 10, 2020 at 11:15 a.m.**, before this Division for the Applicants to offer testimony and exhibits for the Court's consideration regarding (1) the authenticity of the documents submitted by Global and (2) whether demands for full payment were made by Global's predecessors in interest more than six years ago. The time allotted for the hearing will be divided evenly between the applicants.

The parties shall use the following information to call into and connect to the hearing from a computer, tablet or smartphone:

<https://global.gotomeeting.com/join/134503029>

You can also dial in using your phone.

(For supported devices, tap a one-touch number below to join instantly.)

United States: +1 (646) 749-3112

- One-touch: tel:+16467493112,,134503029#

Access Code: 134-503-029

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-013865

05/27/2020

Join from a video-conferencing room or system.

Dial in or type: 67.217.95.2 or inroomlink.goto.com

Meeting ID: 134 503 029

Or dial directly: 134503029@67.217.95.2 or 67.217.95.2##134503029

New to GoToMeeting? Get the app now and be ready when your first meeting starts:
<https://global.gotomeeting.com/install/134503029>