

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-013865

08/14/2020

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

As explained in the Court's minute entry filed on May 29th, pending before the Court are dueling Applications for Release of Excess Proceeds resulting from a Sheriff's Sale. The amount remaining 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 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 agreed. The documents offered by Global seemingly appeared to demonstrate that Global had an interest in the excess proceeds, but Global did not offer an affidavit or declaration authenticating the documents offered. The Findsens also argue 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),

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-013865

08/14/2020

review denied (July 3, 2018). The declaration of Mr. Findsen supported the claim that Global's predecessors-in-interest demanded full payment more than six years ago. Nevertheless, Global had not had an opportunity to cross-examine Mr. Findsen about his declarations.

To allow the parties to properly develop and litigate the two issues, i.e., (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 Court set and held a hearing on June 29th. The minute entry setting the hearing stated that the hearing was an opportunity "to offer testimony and exhibits" in support of their applications. Prior the hearing, Global submitted a Notice of Filing Affidavit of Kamran Baghbeh, and the Findsens filed an objection thereto. At the hearing, the Court received testimony of Marc J. Findsen. The applicants offered no other evidence during the hearing.

Global rests its claim on the Affidavit of Kamran Baghbeh ("Baghbeh"). Apparently, in the development of its case, it became apparent to Global that there was a gap in the chain of title between the original lender and Global. Global attempts to cure that gap with an instrument titled "Gap Assignment of Deed of Trust" and an email from Sharita Benton, Director, Credit Risk Operations, E*Trade Financial Corporation. As the Findsens objections to the Affidavit of Kamran Baghbeh demonstrate, Global's claimed interest in the excess proceeds has evidentiary deficiencies. For example, Baghbeh does not have the personal knowledge regarding the records of Global's purported predecessor's interest, and Global did not offer certified copies of those records. Further, there are valid questions about the need for the Gap Assignment of Deed of Trust, who signed that instrument, and what authority that person had to sign the Gap Assignment of Deed of Trust. Yet, Global did not offer a witness for the hearing, or submit any exhibits. The email from Ms. Benton is hearsay. For these reasons, the Court concludes that Global failed to demonstrate a clean chain of title that would permit it to recover the excess proceeds.

Further, while Mr. Findsen's testimony was not conclusive as to whether demands for full payment were made by Global's predecessors in interest, his testimony was uncontested. The Court finds that it is more likely than not that Global's predecessors in interest did make a demand(s) for full payment.

Accordingly,

IT IS ORDERED denying Global's Application for Release of Excess Proceeds.

IT IS FURTHER ORDERED granting the Findsens' Application for Release of Excess Sale Proceeds.