

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-029071

09/15/2009

JUDGE DOUGLAS L. RAYES

CLERK OF THE COURT  
T. Tankersley  
Deputy

CALIFORNIA RECONVEYANCE COMPANY      PHILIP R WOOTEN

v.

MARICOPA COUNTY TREASURER

EMILIE S BELL  
RANDY NUSSBAUM  
GREGORY P GILLIS

RULING MINUTE ENTRY

This matter was taken under advisement after the oral argument of September 15, 2009 on Petition Kelly Chowdhury's ("Chowdhury") Objection to Application for Release of Excess Proceeds Filed by Note Trackers, LLC. The Court has considered Chowdhury's Objection to Application, Note Trackers, LLC's ("Note Trackers") Response and the arguments of counsel.

This matter involves a dispute of approximately \$14,000 of excess proceeds remaining after a trustee's sale. Chowdhury was the titled owner of the subject property. Note Trackers is the agent of Washington Mutual Bank, the second position leinholder on the subject property at the time of the trustee's sale.

On November 17, 2008, California Reconveyance Company filed a complaint concerning the approximate \$14,000 of excess funds involved herein alleging that after conducting a trustee's sale there were excess funds available for distribution to parties with a recorded and legal interest in the property. On July 6, 2009, both Chowdhury and Note Trackers filed Application for Release of Surplus Funds from Trustee's Sale.

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Although Washington Mutual has a superior right to receive proceeds, Chowdhury objects to its Application on two grounds. First Chowdhury claims that there is nothing in the record to establish that at the time it filed the Application on behalf of Washington Mutual that Note Trackers was its agent. After counsel for Note Trackers, Emilie Bell, represented at the oral argument that there was in fact such an agreement at the time Note Trackers filed the Application, Chowdhury withdrew that basis for her objection.

Chowdhury's second basis for her objection is that by failing to respond to the complaint and file its Application within 180 days of the filing of the complaint, Note Trackers waived whatever claim it had.

ARS § 33-812(I) provides in part:

“... If a response is not filed within the one hundred eighty day period by the person found by the Court to have a superior right to receive the proceeds, the Court shall enter an order in favor of any applicant or respondent entitled to the proceeds.”

The Court finds that ARS § 33-812(I) mandates that if a response was not filed by Note Trackers within the 180 day period the “Court shall” enter an order in favor of any applicant entitled to the proceeds. The 180 day period is mandatory and the Court does not have the discretion to extend it.

IT IS ORDERED sustaining Chowdhury's objection to Note Trackers Application for Release of Excess Proceeds. Therefore,

The Court shall sign and enter the proposed Order Submitted by Chowdhury releasing the excess proceeds to her.